



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Internet Jurisdiction and India: A New Development

Dhruv Kohli^a Ishaan Pandey^b

^aGujarat National Law University, Gandhinagar, India ^bGujarat National Law University, Gandhinagar, India

Received 20 August 2022; *Accepted* 08 September 2022; *Published* 15 September 2022

Ever since its invention, the internet has assumed significant importance in the lives of human beings around the globe. What was invented as a result of a military experiment has today become the driving force for many economies around the globe. The expansion of the internet in the 21st century has also aided in the advancement of the notion of the world as a “global village”. As we progress, the modern economy is no longer adhering to the traditional shop method and instead has transformed into a wide digital market, in which individuals can get access to a variety of products from the comforts of their homes. While the benefits of online shopping are infinite, there does exist a difficulty, especially when issues of intellectual property infringement through the online medium arise. The first issue for the courts when it comes to such cases is to solve the conundrum of jurisdiction. The authors of the present paper look into the same question by analyzing foreign jurisprudence and then look into how Indian courts have addressed the issue of jurisdiction when it involves the landscape of the internet.

Keywords: *internet, jurisdiction, civil procedure, cyber law, information technology.*

INTRODUCTION

The term Jurisdiction refers to the power of a court to hear and adjudicate matters and pass consequent orders and judgments. It's a government's/judicial general power to exercise authority over all persons and things within its territory. Such power is usually regulated by the

procedural code applicable to that Court. In India, the Civil Procedure Code, 1908¹ regulates all procedural aspects of Civil Courts, while Tribunals may be governed by the statute under which they are established, in addition to the code. The concept of Jurisdiction seems to arise out of various facets of Natural Law, Public International Law and Constitutional Principles applied throughout the world, but in fact, it arises mainly out of the Latin Maxim, *ubi jus ibi remedium*.² Thus, for a breach or infringement of any right guaranteed to any person by law, there has to be a remedy.³ This maxim forms a vital part of the Common Law⁴ and gives rise to the Inherent Jurisdiction of Civil Courts to try cases.⁵ Jurisdiction is defined as the limit of judicial authority or extent to which a court of law can exercise its authority over suits, cases, appeals, etc.⁶ Supreme Court in various judgments sought to explain the meaning of the term 'Jurisdiction' in detail.⁷

An examination of the cases referenced above shows a few endeavours to clarify the word Jurisdiction which has been announced to be the ability to hear and decide the issues of law and the reality or the authority by which their legal forces take information on realities and choose causes or the position to hear and choose the lawful debate or the ability to hear and decide the topic in the question among the gatherings to a suit and to arbitrate or practice any legal control over them or the capacity to hear, decide and proclaim judgment on issues under the steady gaze of the court or the force or authority which is given to a court by the government to comprehend and learn causes among parties and to give a judgment into the impact or the ability to enquire into current realities to apply the law to articulate the judgment and put it into execution.⁸

Jurisdiction of a court may be classified under the following categories:

¹ Civil Procedure Code 1908

² This means that wherever there exists a right in law, there must exist a remedy as well

³ *Shiv Kumar Chadha v Municipal Corp of Delhi* 1993 SCR (3) 522

⁴ *Mailand v Upjohn* (1889) 58 LJ Rep (NS) CD 363

⁵ *Ibid*

⁶ *Official Trustees West Bengal v Sachindra Nath Chatterjee* 1969 AIR 823

⁷ *Hriday Nath Roy v Ramchandra* AIR 1929 Cal 445

⁸ *Ibid*

Territorial or local jurisdiction: Under this territorial or local jurisdiction, the geographical limits of a court's authority are clearly delineated and specified. It cannot exercise authority beyond that geographical/ territorial limit. For example, if a certain crime is committed in Madhya Pradesh, only the courts of law within the borders of Madhya Pradesh can hear and decide the case. Furthermore, Section 16⁹ of the Code of Civil Procedure explains the territorial jurisdiction on the grounds of the location of the immovable property. In the case of *Harshad Chimani Lal Modi v D.L.F Universal Ltd*,¹⁰ the court interpreted Section 16¹¹ that the suit pertaining to immovable property should be brought to the court. The court does not have the power to decide the rights of property which are not situated. However, the court can still pass a relief if the opposite party agrees to try the suit in such a case.¹²

Pecuniary Jurisdiction: Pecuniary means 'related to capital.' It approaches the question of whether the court is competent to try the case of financial value. The code allows analyzing the case unless the suit's value exceeds the financial limit of the court. Section 15¹³ of the Code of Civil Procedure commands the organization of the suit in the court of the low grade. It refers to the pecuniary jurisdiction of a civil court. It is a course of the method and it does not affect the jurisdiction of the court. The main objective of establishing pecuniary jurisdiction is to prevent the court of a higher level from getting burdened and to aid the parties.¹⁴

However, the court shall interfere if it finds the judgment to be wrong. For example, 'A' wants to accuse 'B' due to a violation of the contract to obtain Rs 5000 in Bombay. The Bombay High Court has original jurisdiction and small causes court with jurisdiction up to Rs 50000. So, a suit to obtain Rs 5000 should ideally be dealt with small causes court. In the case of *Karan Singh Vs Chaman Paswan*¹⁵ the plaintiff filed a suit in the subordinate court involving an amount of Rs 2950, but the court rejected the case. Later his next appeal was allowed by the High Court, but it ordered him to pay the deficit amount. The appellant contested that the decision of the district

⁹ Code of Civil Procedure 1908, s 16

¹⁰ *Harshad Chimani Lal Modi v DLF Universal & Anr* 2005 INSC 0836

¹¹ *Shiv Kumar Chadha v Municipal Corp of Delhi* 1993 SCR (3) 522

¹² *Ibid*

¹³ Code of Civil Procedure 1908, s 15

¹⁴ *Ibid*

¹⁵ *Karan Singh v Chaman Paswan* 1954 AIR 340

court will be a nullity, but the High Court dismissed the claim. Later the Supreme Court confirmed the decision of the High Court declaring that the decision of the district court won't be void.¹⁶

Jurisdiction as to the Subject-Matter: The subject matter can be defined as the authority vested in a court to understand and try cases concerning a special type of subject matter. In other words, it means that some courts are banned from hearing cases of a certain nature. No question of choices can be decided by the court which does not have subject matter jurisdiction. Section 21¹⁷ of the Code of Civil Procedure is related to the stage challenging the jurisdiction.

Original and Appellate Jurisdiction: Appellate jurisdiction refers to the court's authority to review or rehearse the cases that have been already decided in the lower courts. In the Indian circumstances, both the High Court and Supreme Court have the appellate jurisdiction to take the subjects that are brought in the form of appeals. Original Jurisdiction refers to the court's authority to take notice of cases that could be decided in these courts in the first instance itself. Unlike appellate jurisdiction wherein courts review the previously decided matter, here the cases are heard afresh.

Exclusive and Concurrent Jurisdiction: In Civil Procedure, exclusive jurisdiction means where a single court has the authority to decide a case to the rejection of all the courts. This jurisdiction is decided on the basis of the subject matter dealt with by a specific court. Concurrent jurisdiction exists where two or more courts from different systems simultaneously have jurisdiction over a particular case.¹⁸ In this situation, parties will try to have their civil or criminal case heard in the court that they perceive will be most favorable to them.

General and Special Jurisdiction: General jurisdiction implies that general courts don't restrict themselves to hearing just one sort of case. This kind of jurisdiction implies that a court has the ability to hear a wide range of cases. So, the court that has general jurisdiction can hear criminal, common, family legal disputes, and significantly more. Explicit jurisdiction is the capacity of the

¹⁶ *Ibid*

¹⁷ Code of Civil Procedure 1908, s 21

¹⁸ *Ibid*

court to hear a lawsuit in a state other than the respondent's home state if that litigant includes the least contacts inside the state where the suit will be attempted.

Legal and Equitable Jurisdiction: Equitable jurisdiction has a place with the authority of the courts to make explicit moves and pass a few orders to convey an equitable and sensible result. These decisions are as a rule outside the domain of law, as help given by the courts may not be essentially affirmed by the statute. In the case of *K.K. Velusamy v N. Palanisamy*,¹⁹ the Supreme Court of India held that Section 151²⁰ does not give any special jurisdiction to civil courts, but only presents the application of discretionary power to achieve the ends of justice.²¹ This suggests that the court cannot give any such order which may be denied under any law in such an order that may be prohibited under any law in order to achieve the ends of justice. This would lead to the conclusion that such equitable jurisdiction is secondary to the authority of the courts to implement the law.²²

Expounding and Expanding Jurisdiction: Expounding jurisdiction means to describe, clarify and explain jurisdiction. Expanding jurisdiction means to develop, expand or prolong jurisdiction. It is the duty of the court to clarify its jurisdiction and it is not proper for the court to extend its jurisdiction.

JURISDICTION AND THE INTERNET OF THINGS (IOT)

Throughout the abovementioned discussion, we've traversed across the traditional types of jurisdictions that is being exercised since 1908, in this context. But over time, the world has changed. With the advent of the 'tech' age, society has evolved. And, consequently, the law has to evolve to keep up with the changes occurring at a hare's pace. The Internet is a way for computers to connect and communicate. A significantly new concept emerged in the late 1990s when DARPA, developed it for the American Military. However, it was later introduced into the civilian realm. The Internet does not have a controlling authority. It does not have specified

¹⁹ *KK Velusamy v N Palanisamy* (2011) 11 SCC 275

²⁰ Code of Civil Procedure 1908, s 151

²¹ *Ibid*

²² Code of Civil Procedure 1908, s 21

offices or a registered headquarters. It is a mere amalgamation of millions of miles of fiber optic cables laid down across the oceans, hundreds of thousands of servers, and hundreds of Internet Service Providers. As businesses inclined toward the Internet in the last part of the 1990s worry over the legitimate dangers of working on the web immediately moved to the front, as lawful issues were inborn in selling items, giving client care, or basically keeping a data situated site started to arise. Certain legitimate dangers, like selling defective items or incorrect data revelation, were at that point not able to organizations, as these dangers are experienced and tended to every day in the disconnected world.

The unique challenge introduced by the Internet is that compliance with local laws is seldom adequate to guarantee a business that it has restricted its openness to lawful danger. Since websites are open around the world, the possibility that a website proprietor may be hauled into a court in a faraway jurisdiction is substantially more than a simple scholarly exercise, it is an undeniable chance. Also, worries over the legitimate dangers made by the Internet stretch out beyond business exercises. Public interest information-based websites with respect to questionable themes might confront the possibility of arraignment in far-off jurisdictions notwithstanding their lawfulness inside the home locale. Hence, it is high time that an evaluation of the existing condition pertaining to the Internet of Things and the relevant jurisdiction is initiated. This very paper is an attempt in that direction.

Jurisdiction on the Internet

Yochai Benkler of the NYU Law School has often held that communication systems are divided into 3 layers; layers that are interconnected to each other²³. While these 3 layers are mainly described for the offline medium, the same could be used for the description of internet jurisdiction²⁴. The first is the application layer, a layer where courts have the entitlement to apply their own laws. The second is the substantive layer, wherein courts enforce their substantive laws to a particular dispute, and finally is the enforcement layer, in which court orders are

²³ Michael Gest, 'Is there a there there? Towards greater certainty for Internet Jurisdiction (2001) 16 BTLJ 1345, 1353

²⁴ *Ibid*

enforced in the online environment. Since the internet per se has no limitation, questions concerning jurisdiction over the internet lead to the rise of several pertinent questions like should a local court have jurisdiction over every online purchase or whether the policy should be in favour of e-commerce setups²⁵. However, the most important question is “when is it appropriate to assert jurisdiction over activities based on the internet?”

To answer all these questions, courts in jurisdictions like that of the United States and Canada have often taken recourse to several different forms of tests in order to determine jurisdiction. In the United States, the test is mainly summed up as “minimum contacts²⁶”, in Canada, it is couched up as “real and substantial connection²⁷”. Although these tests are also used by courts in various other jurisdictions, the analyses which these tests present are somewhat different. The different analyses, therefore, present a void, the void being the presence of a uniform test to determine jurisdiction over the internet. However, to come up with a uniform test for determining jurisdiction, there are certain factors that have to be taken into consideration.²⁸

The first factor which is often pointed out is that of “foreseeability”. Case law analysis involving questions of internet jurisdiction has highlighted that foreseeability lies at the heart of the question of jurisdiction and often if the actions of the party were considered foreseeable, only then it is hauled into a foreign court. While the factor of foreseeability has easier application in the offline medium, in the online medium, with the worldwide availability of the internet, many have said that application of physical laws and thus foreseeability is not possible and have called for a separate cyberspace jurisdiction²⁹.

The second factor that is of importance is the business of courts and lawmakers to assert jurisdictions in areas where harm has been experienced locally. This issue of biasedness is further complicated by the fact that all countries face this particular issue. Therefore, for instance, if Indian authorities would wish to assert jurisdiction over American internet giant

²⁵ *Ibid* 1355

²⁶ *International Shoe Co v Washington* (1945) 326 US 310

²⁷ *Morguard Investments Ltd v De Savoye* [1990] 3 SCR 1077

²⁸ *Ibid*

²⁹ David R Johnson & David G Post, ‘The Rise of Law in Cyberspace’ (1996) 48 *Stan Law Review* 1367

Google or Amazon, they would want those other countries don't assert jurisdiction over Indian websites and companies working over the internet.³⁰

Another factor that is of importance is the adoption of a "technology-neutral" approach. Technology-neutral changes mainly refer to guidelines or tests that are adaptable to the changing world of the internet and technology. Although the development of a single standard test that takes into account all of these considerations is not an impossible task, courts and lawmakers have not travelled the path of development of such a test and instead have used already existing guidelines, which we shall be looking at in the upcoming sections.

THE RISE & FALL OF THE ZIPO TEST

The rise of the test

The 1996 North American case of *Inset Systems, Inc. v Instruction Set, Inc.*³¹ is often said to be the origin of Internet jurisdiction cases. In this case, a Connecticut company, brought a trademark infringement action against a Massachusetts company, arising out of its use of the domain name, "Inset.com". The legal question before the court was one of jurisdiction - did the defendant's actions lead to it being covered under the Connecticut court's jurisdiction? The court held that it could assert jurisdiction as the defendant's activity led to the establishment of minimum contacts and had purposefully directed its activities toward Connecticut. The decision given by the court has been criticized on various grounds. The first ground is that the court's reasoning that creating a website would inherently mean purposefully directing its activity towards every jurisdiction widens the meaning of "purposefully directing". Second, the Court did not engage in any analysis of the Internet itself, but rather found it sufficient to analogize the Internet to a more traditional media form, in this case, a continuous advertisement, and apply the existing law. Thirdly, the court did not take into consideration the defendant's actual activity on the internet.³²

³⁰ *Ibid*

³¹ *Inset Systems Inc v Instruction Set Inc* 937 F Supp 161 (D Conn 1996)

³² *Ibid*

Despite the anomalies and its setbacks, the *Inset* case was heavily backed by courts in both United States and Canada. For instance, in the case of *Maritz, Inc. v Cybergold, Inc*³³, the court despite recognizing the vitals of the internet and the lack of corollary knowledge had gone on to accept the *Inset* decision. The Canadian court in *Alteen v Informix Corp*.³⁴ had to recognize and accepted the decision given in the *Inset* case. The change in the internet jurisdiction jurisprudence came with the decision rendered in 1997 in the case of *Zippo Manufacturing Co. v Zippo Dot Com, Inc*.³⁵ In this decision, the courts held that activities on the internet are different in nature and an all-encompassing analogy that would fit all cases cannot be there.³⁶ The court in this case had come up with the “active-passive” approach. To sum up this approach simply, the courts had held that the nature and quality of the commercial activity conducted on the Internet to decide jurisdiction issues. In the coming years, due to the lack of presence of any guiding principles, courts in America as well as in Canada had extensively used the active-passive approach to decide internet jurisdiction issues.³⁷

The fall of the Zippo test

In the period starting from the year 2001, several courts in the United States started moving from the active-passive approach to a broader and effects-based approach. The most notable judgment in this context is that of *Calder v Jones*³⁸. As per the doctrine promulgated in this case, personal jurisdiction over a defendant can be established if 3 conditions are fulfilled, namely “a) the defendant’s intentional tortious actions b) expressly aimed at the forum state c) causes harm to the plaintiff in the forum state”. It was this doctrine that courts in internet jurisdiction cases had started to apply to determine the question jurisdiction. This doctrine also came to be known as the “effects test”.³⁹

³³ *M Ibid aritz Inc v Cybergold Inc* 947 F Supp 1328 (ED Mo 1996)

³⁴ *Alteen v Informix Corp* [1998] NJ No 122 1997

³⁵ *Zippo Manufacturing Co v Zippo Dot Com Inc* 952 F Supp 1119

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ *Calder v Jones* 465 US 783 (1984)

³⁹ *Ibid*

In the case of *Blakey v Continental Airlines, Inc.*⁴⁰, the above doctrine was applied by the New Jersey Supreme Court to assert that it had jurisdiction over the defendants. In the case of *Nissan Motor Co. Ltd. v Nissan Computer Corporation*,⁴¹ the court applied the Calder doctrine in a case of online IPR infringement to determine the question of jurisdiction. Again, in the case of *Euromarket Designs Inc. v Crate & Barrel Ltd.*,⁴² the question of law was whether an Illinois-based company could sue an Irish retailer with an interactive Web site that allowed Illinois residents to order goods for shipment to a foreign address in a local court for trademark infringement. The court after carefully considering the facts, which involved the nature of the activity of the parties held that the defendant deliberately established minimum contacts with Illinois and purposefully availed itself of the privilege of conducting activities in Illinois under the effect's doctrine set out in Calder.⁴³

An analysis of the decisions rendered post-2000 showcases that although courts never explicitly gave any reasons to transverse from the *Zippo* doctrine, there were still a number of reasons for this transgression. One of the primary reasons is that the test outlined doesn't fit in all cases. For instance, in a case where online chat rooms⁴⁴ were declared as passive, many might be inclined to dismiss cases involving allegedly defamatory or harassing speech on jurisdictional grounds. Such speech may often be targeted toward a particular individual or entity located in a jurisdiction different from that of the poster or the chat site itself. If the target is unable to sue locally due to a strict adherence to the passive versus active test, the law might be seen as encouraging online defamatory speech by creating a jurisdictional hurdle to launching a legal claim.⁴⁵

Secondly, a majority of the sites do not fall in the definite category of "active or passive" websites and instead fall in the middle zone. In such scenarios, it became extremely difficult for the courts to answer the question of jurisdiction. Moreover, with no standard definition of what exactly

⁴⁰ *Blakey v Continental Airlines Inc* 164 NJ 38 (NJ 2000)

⁴¹ *Nissan Motor Co Ltd v Nissan Computer Corporation* 89 F Supp 2d 1154 (CD Cal 2000)

⁴² *Euromarkets Designs Inc v Crate & Barrel Ltd* 96 F Supp 2d 824 (ND Ill 2000)

⁴³ *Ibid*

⁴⁴ *Barrett v Catacombs Press* 44 F Supp 2d 717 (ED Pa 1999)

⁴⁵ *Ibid*

constitutes an active website or a passive website, it was not possible for courts to classify websites as active or passive on frivolous grounds. Thus, while in the initial days, the desire for certainty in relation to internet jurisdiction led to the widespread acceptance of the *Zippo* test, over time its setbacks overshadowed its benefits.

Alternatives to Zippo Test

With the inadequacies of the *Zippo* test recognized, courts in the United States have again taken recourse to certain other tests in order to determine the answer of internet jurisdiction. One of the tests which the courts have taken recourse is that of *Purposeful Availment*.

Test of Purposeful Availment

The 1945 case of *International Shoe Company v Washington*⁴⁶ gave rise to the test of “purposeful availment”.⁴⁷ In this case, the court had said that “in order to exercise jurisdiction over the defendants, the defendant must have purposefully directed its activities towards the forum state or otherwise “purposefully availed” of the privilege of conducting activities in the forum state”. In the case of *Burger King Corporation v Rudzewicz*⁴⁸ the court while accepting the test of purposeful availment had also stated that “in order to assert jurisdiction over the defendants, it must be shown that the defendants have engaged in “significant activities” within the forum state or have created “continuing obligations” between himself and residents of the forum state”.⁴⁹

While the above decisions applied the test of purposeful availment in an offline setup, it was in *Benusan Restaurant Corporation v The King*⁵⁰ where the court applied the test in the online medium. In this case, Defendant had a small jazz club known as “The Blue Note” in Columbia, Missouri, and created a general access web page giving information about the said club as well as a calendar of events and ticketing information. In order to buy tickets, web browsers had to use the names and addresses of ticket outlets in Columbia. The plaintiff owned a popular club

⁴⁶ *International Shoe Company v Washington* 326 US 340 (1945)

⁴⁷ *Ibid*

⁴⁸ *Burger King Corporation v Rudzewicz* 471 US 462 (1985)

⁴⁹ *Ibid*

⁵⁰ *Benusan Restraunt Corporation v The King* 937 F Supp 295 (SDNY 1996)

by the name of "The Blue Note" in New York and also owned the rights over the mark "The Blue Note". Accordingly, the plaintiff sued the defendants in New York. The court while addressing the case had held that "*the defendants have not committed any such act which results in purposefully availing of the state of New York. Creating a site, like placing a product into the stream of commerce, may be felt nationwide or even worldwide but, without more, it is not an act purposefully directed towards the forum state*".⁵¹

While the court in the case of *Ballard v Savage*⁵² defined purposefully availed as "*taking deliberate actions within the forum state or creating continuing obligations with the residents of forum states*" in the case of *Neogen Corporation v Neogen Screening Incorporate*⁵³ the court stated that "*if the web site is interactive to a degree that reveals specifically intended interaction with residents of the state*" the requirement of purposeful availment would be said to have been fulfilled.⁵⁴

Thus, in essence, to sum up, the position on the basis of the established jurisprudence on the question of internet jurisdiction, the courts have come to the conclusion that "*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 the jurisdiction of the forum state by "specifically targeting" customers within the forum state. A mere hosting of an interactive web page without any commercial activity being shown as having been conducted within the forum state, would not enable the forum court to assume jurisdiction. Even if one were to apply the "effects" test, it would have to be shown that Defendant specifically directed its activities towards the forum state and intended to produce the injurious effects on the plaintiff within the forum state*"⁵⁵.

SOME OTHER COMMON LAW JURISDICTIONS

Having looked at all developed jurisprudence in reference to the internet jurisdiction of the United States, we now also take a look at some of the decisions given in some other common law jurisdictions, namely the United Kingdom. In the United Kingdom, in the case of *1-800*

⁵¹ *Ibid*

⁵² *Ballard v Savage* 65 F 3d 1495 (1995)

⁵³ *Neogen Corporation v Neogen Screening Incorporate* 282 F 3d 883, 890 (6th Cir 2002)

⁵⁴ *Ibid*

⁵⁵ *Banyan Tree Holding (P) Ltd v A Murali Krishna Reddy & Ors* 2010 (42) PTC 361 (Del)

*Flowers Inc v Phone names*⁵⁶, the defendant was a phonebook company, that was settled in the United Kingdom and the plaintiff was involved in the selling of flowers. Customers from every corner of the world could place an order of flowers from the plaintiff's website. There was, however, no evidence to show that UK residents had placed orders on its website. It was argued that because the website was accessible from the UK and UK residents could place orders online, the use by the Defendant of the mark 1-800 on its website amounted to use in the UK. The court in the first appeal as well as the Court of Appeals had held that "the mere fact that websites could be accessed anywhere in the world did not mean, for trademark purposes, that the law should regard them as being used everywhere in the world. Apart from this, the intention of the website owner also has to be taken into consideration."⁵⁷ Subsequently, the appeal was dismissed. Thus, looking at the developed jurisprudence, it appears that mere accessibility of a website is not considered as a valid reason for confirming jurisdiction and something more than that has to be showcased to assert jurisdiction in cases of internet jurisdiction.

INTERNET JURISDICTION IN INDIA

Having looked at the developed jurisprudence in relation to internet jurisdiction in common law countries like the United States and the United Kingdom, we now shift our focus to our nation, i.e., India. In India, with the coming of computers and other allied technology in the mid-1980s, the courts per se never had the opportunity to address the question pertaining to jurisdiction over the internet. It was only in the period post-2000 that courts in India got the opportunity to answer the question pertaining to jurisdiction on the Internet.

The earliest case law in India as to the question of internet jurisdiction was that of *Casio India Company Limited v Ashita Tele Systems Private Limited*.⁵⁸ It was a case of passing off where the defendant was carrying on business from Bombay and had got the domain name "casioindia.com" registered. The plaintiff, on the other hand, was the 100% subsidiary of Casio Computer Ltd., Japan (Casio Japan) which was the registered owner of the trademark "Casio"

⁵⁶ 1800 *Flowers Inc v Phone Names* (2002) FSR 12 CA

⁵⁷ *Ibid*

⁵⁸ *Casio India Company Limited v Ashita Tele Systems Pvt Ltd* 2003 (27) PTC 265 Del

in India used for a large number of electronic and other products. He had also obtained the registration of a large number of domain names in India. In this case, the single judge bench of the Delhi HC after referring to the Australian case of *Dow Jones & Co. Inc. v Gutnick*⁵⁹ held that “since the defendant’s website was accessible in Delhi, it was sufficient to invoke the territorial jurisdiction of this court”.⁶⁰

4 years later, however, the Delhi HC opted out for a different approach in the case of (*India TV Independent News Service Pvt. Limited v India Broadcast Live LLC and Ors.*)⁶¹ in this case, the plaintiff company ran a Hindi news channel "INDIA TV" and had claimed that it had adopted the said mark as well. The plaintiff was also the owner of the domain name "INDIA TV". Defendant Nos. 1 and 2 hosted a website "indiatvlive.com" which the plaintiff came across in January 2007 while carrying out an internet search. The website contained the words "INDIA TV" which were displayed prominently inside the sketch of a television. The plaintiff subsequently filed a suit against the defendants and the question of jurisdiction had come up before the court.⁶²

The court while addressing the question of jurisdiction in paragraph 46 had stated that “*the mere fact that a website is accessible in a particular place may not itself be sufficient for the courts of that place to exercise personal jurisdiction over the owners of the website.*” However, an important point to note here is that the court stated the above expression in tandem with accepting the “active-passive” division of websites. Thus, the courts had held that since the defendant’s website was “active” in nature, it had “availed” itself of the state of Delhi and thus, the court had the jurisdiction to entertain the suit.

With two different approaches in two different cases, the answer as to internet jurisdiction in India was clouded with a lot of uncertainty and confusion. Coincidentally, it was the Delhi HC itself that came to the rescue. In the case of *Banyan Tree Holding (P) Ltd. v A. Murali Krishna*

⁵⁹ *Dow Jones & Company Inc v Gutnick* 210 CLR 575

⁶⁰ *Ibid*

⁶¹ (*India TV Independent News Service Pvt Ltd v India Broadcast Live LLC & Ors* 2007 (35) FTC 177 (Del)

⁶² *Ibid*

*Reddy & Ors*⁶³, the question of jurisdiction had come up before the Delhi HC. Incidentally, in this case, none of the parties was residing within the state of Delhi. The court while answering the question of jurisdiction had held that “*the plaintiff would have to show that the Defendant has availed itself of the jurisdiction of the forum court. For this, it would have to be prima facie shown that the nature of the activity indulged in by Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the plaintiff within the forum state*”. thus, in essence, the court recognized the test of purposeful availment.⁶⁴

This decision of the Delhi HC was further applied and accepted in the case of *Impresario Entertainment & Hospitality (P) Ltd. v S&D Hospitality*.⁶⁵

In the case of *World Wrestling Entertainment, v M/S Reshma Collection & Ors*.⁶⁶ the court had held that “*the simple availability of the site in a party state which ‘requests’ its business, through which Defendant’s goods and administrations are sold, is sufficient to raise reason for activity and in deciding the individual jurisdiction in the party-state*”.⁶⁷

In the SC of India *Kusum Ingots & Alloys Ltd. v Union of India*,⁶⁸ the court accepted a new alternative, the forum convenience test. The general principle is that a court can recognize that a select forum is inconvenient for the parties involved in a suit and can, in accordance with that recognition, send the case to a more appropriate court. This change is to be made in the interests of all the parties and intent of reaching the end of justice⁶⁹.

CONCLUSION

With courts progressively opposing the Zippo aloof versus a dynamic way to deal with Internet locale, it is the ideal opportunity for the reception of another framework that is cooked by India's

⁶³ *Neogen Corporation v Neogen Screening Incorporate* 282 F 3d 883, 890 (6th Cir 2002)

⁶⁴ *Ibid*

⁶⁵ *Impresario Entertainment & Hospitality (P) Ltd v S&D Hospitality* CS (COMM) 441/2017

⁶⁶ *WWE v M/S Reshma Collection & Ors* AO (OS) 506/2013 and CM Nos 17627/2013 & 18606/2013

⁶⁷ *Ibid*

⁶⁸ *Kusum Ingots & Alloys Ltd v Union of India* 2004 6 SCC 254

⁶⁹ *Bryan A Garner & Henry Campbell Black, Black’s Law Dictionary* (St Paul, Minn West Group 1999)

necessities. Dissimilar to the Zippo test, which experiences a progression of downsides including conflicting and unfortunate results just as the constraints of an innovation explicit methodology, a focusing on based investigation gives all invested individuals including courts, internet business organizations, and purchasers with the apparatuses expected to direct more effective legal risk analysis.