

## 1<sup>st</sup> IJLT-CIS LECTURE SERIES: "Jurisdictional Issues in Cyberspace"

A high-powered panel debating a slightly unconventional but very current topic made for an interesting day at the first IJLT-CIS lecture on "Jurisdictional issues in Cyberspace" organised at the National Law School of India University Campus on April 3, 2010. On the panel were Justice S. Muralidhar (judge, Delhi High Court), Aditya Sondhi (advocate, Bangalore High Court) and Amit Sachdeva (advocate, Delhi High Court).

Justice Muralidhar opened the proceedings by providing a background of the event leading upto his decision in the *Banyan Tree* case,<sup>1</sup> which is the most current exposition of law on the point of jurisdiction in cyberspace. A unique aspect of the case was the fact that neither the appellants (based in Singapore) or the respondents (based in Hyderabad) were located within the territorial jurisdiction of the Court, and the case had been referred to the division bench of the Court for determination of this point of law. In this context, a brief introduction to the problems with the lack of clarity on matters of jurisdiction was provided by Justice Muralidhar, where he cited the example of the Delhi High Court being regarded as a favourable forum for IP-related matters, and litigants therefore resorting to forum shopping by using the most ingenious arguments to bring their case within the jurisdiction of a particular forum.

The rival contentions in this case rested on the matter of whether the plaintiffs by merely having an interactive website that was accessible to users in Delhi, would fall within the territorial jurisdiction of the Delhi High Court. The plaintiffs however, used § 20 of the CPC, rather than § 134 of the Trademarks Act, in order to establish their claim of jurisdiction. Justice Muralidhar then dwelt for some length on the absence of specific rules or guidelines governing the application of territorial jurisdiction – the TRIPS lacking provisions to deal with this aspect, the inadequacies in Private International Law,<sup>2</sup> and the ambiguous requirements of "fair play and substantial justice" which left much to the discretion of judges. He also spoke about the CPC limiting territorial jurisdiction and the problem of locating materials in cyberspace as related to a particular location – whether the country of source, server or script ought to be considered.

Justice Muralidhar subsequently discussed the chronology of cases across jurisdictions,

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<sup>1</sup>*Banyan Tree Holdings v. Murali Krishna Reddy*, CS (OS) No. 894/2008 (Delhi High Court).

<sup>2</sup>The Yahoo! Case and the problems of implementation of orders delivered by courts in foreign jurisdictions.

which the Court considered before finally delivering its verdict. Using a number of judgments, he elaborated on the evolution of the standard for territorial determination in America from the “test of minimum contact” to the “Zippo sliding scale test”. Justice Muralidhar then made a few observations about the futility of exercise of jurisdiction beyond territorial limits, using the example of the Union Carbide case in India. He concluded that besides evolving a solution to the vexed problem of jurisdiction, arrangements also had to be made in private international law for effectively implementing verdicts in other jurisdictions.

After Justice Muralidhar, it was the turn of Mr. Aditya Sondhi to elaborate on the problems resulting from the lack of clarity regarding jurisdiction in cyberspace. Mr. Sondhi had been counsel for the appellants in the *Presteege Developers* case,<sup>3</sup> which relied on the judgement in *Banyan Tree* while deciding in favour of the appellants. He began by explaining the scope of § 20 of the CPC, and then proceeded to the conflicts arising out of the abuse of cyberspace jurisdiction, including forum-shopping resorted to by litigants, due to the lack of clarity on the issue, on which the air had only recently been cleared by the Delhi High Court in *Banyan Tree*.

Mr. Sondhi advocated an indigenous solution to the problem of territorial jurisdiction issues in cyberspace, pointing out that even the invocation of § 134 of the Trademarks Act involved conflicts with the principles of private international law. He highlighted contemporary developments in the field of jurisdiction in consumer law, pointing out that statutes like the Consumer Protection Act, 1986 overrode the restrictions of contractual jurisdiction, by placing the forum of convenience at the discretion of the consumer, but added a cautionary note by stating that this sort of discretion ought not to be extended to commercial matters. He further drew an analogy between cyberspace and outer space, arguing that the two could be similarly treated in matters of jurisdiction, and concluded with the statement that cyberspace ought not to create jurisdiction where there was none, or take away jurisdiction where it had been validly conferred.

The discussion resumed after lunch, with Mr. Amit Sachdeva taking the stage. Mr. Sachdeva is an expert on cyber laws and has authored several books in this field, and presented a different perspective on the issue from the previous panelists. He began on a dissenting note, arguing that forum-shopping ought to be permitted, provided it did not cause damage to the other party. He then went on to elaborate his stance, explaining the rationale behind the various tests adopted in the U.S. to determine jurisdiction in cyberspace. In a lively and interactive session, Mr. Sachdeva fielded numerous questions from the audience, and also sought to address their queries and concerns

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<sup>3</sup>*Presteege Property Developers v. Prestige Estates Projects*, MFA No. 4954/2006 (Karnataka High Court).

regarding the issue. He concluded by appreciating the efforts of the Indian judiciary in attempting to clear the air on the issue, but added a note of caution by stating that it was still far from resolved and that many questions remained to be answered.