A BRIEF STUDY ON CYBERSPACE AND DISPUTES IN CYBERSPACE

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INTRODUCTION:

Traditionally, disputes are resolved within the boundaries of the parties' respective physical jurisdictions. However, consumers of an online business could be found anywhere in the United States or the globe. How does the company manage such a large audience? Since so many "anonymizer" devices exist to protect identity in cyberspace, it is practically difficult to confirm the customer's location. Even the digital cash equivalent, such as e-Cash, or a service like PrivateBuy.com may be used by a customer to make an anonymous payment for goods or services. An online business can limit its customer base to the countries where it is ready to comply with regulation when goods need to be physically delivered. This is nearly impossible when digital goods and services are supplied online, and the business may have to rely on the accuracy of the customer's information on their location. Of course, a large number of e-commerce businesses have internet in order to target a global market. In addition to discussing alternative means for resolving disputes and complaints in a global online economy, this segment will examine efforts to address the jurisdictional conundrum of cyberspace.

MEANING OF 'CYBERSPACE':

The worldwide computer network (internet) and the entities and objects that exist within it interact in a space known as cyberspace.[2] A further indication that actions within that network take place in cyberspace rather than the precise location where the server is located is the fact that equipment operators perform it and, unlike in the real world, no physical effort is required. Cyberspace was first coined by author William Ford Gibson in his science fiction book Neuromancer in 1984[3].

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[2] https://www.techopedia.com/definition/2493/cyberspace#:~:text=Cyberspace%20refers%20to%20the%20virtual%20computer%20world%2C%20and,to%20aid%20in%20communication%20and%20data%20exchange%20activitie

[3] https://www.techopedia.com/definition/2493/cyberspace

With the introduction of personal computers, it became possible to connect these gadgets over a network that, when joined, creates a top-notch system known as cyberspace. Such networks of machine-clones generate cyberspace, a dynamic and virtual environment. In other terms, cyberspace is the web of communications, computers, and consumer devices that connects the entire planet.[4]

Almost anything that involves networks and computers has been referred to as "cyber," particularly in the security industry. Examining cyberspace conflicts, such as state-on-state cyber warfare, cyber terrorism, cyber militias, etc., is another new area of research. Sadly, there is no agreement on what "cyberspace" is, let alone what the effects of battles in cyberspace will be.[5]

The authors provide the following definition to help make sense of this circumstance: Cyberspace is a temporally dependent network of linked information systems and the people who use them. They give a history of the concept and explain why this strategy might be better than others. They specifically go over terminology created by William Gibson and cybernetics pioneer Norbert Wiener. The authors establish a case for integrating time-dependence in our suggested definition by demonstrating how it is an underappreciated component of cyber space.

The authors also consider the ramifications of cyberspace's temporal dependence, particularly in relation to cyber conflicts, which they define as disputes involving two or more parties in which at least one party engages in cyber attacks against the other (s).[6] The authors specifically discuss the effects on the capacity for swift deployments of offensive and defensive measures in cyberspace, the viability of mapping cyberspace, and the requirement for ongoing patrolling and reconnaissance.

NATUREOF CYBER SPACE:

Unlike the physical world, cyber space is really different and unique. It is an undefined area which is dynamic and exponential in nature. It doesn't have any specific shape or size. The size and shape of cyberspace is as much as wide as human's imagination.

IMPORTANCE OF CYBERSPACE:

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[4] https://www.merriam-webster.com/dictionary/cyberspace
[5] https://acqnotes.com/acqnote/careerfields/cyberspace
[6] https://www.britannica.com/topic/cyberspace

It makes sense that computers and electronic communication networks would have an impact on military operations given how quickly and widely information is exchanged on them. It is fascinating to follow the development of the adage "the media is the message" as it relates to how the Air Force views cyberspace[7]. Initially, government strategies focused on the strengthening of protection against infiltration, supposing cyberspace to be identical to the communication devices that form computer networks. Later, the focus on data integrity resulted from regulations that believed that cyberspace encompassed not only the networks but also the data transmitted by them. Adding cyberspace to the Air Force's mission statement means that there is now more than simply equipment and data that is considered content.

FEATURES OF CYBERSPACE:

The boundaries of when and how to interact in cyberspace are exceeded. Cyberspace has the following features, among others:

➢ Identity and adaptability: The absence of face-to-face contact affects how people display their identities. You can, of course, choose to express simply a portion of your personality, remain anonymous, or even adopt a fictitious or fraudulent identity.

➢ We all have the same opportunity for communication in cyberspace. Some refer to this as Net Democracy.

➢ Geographic borders do not restrict who can communicate with whom because it transcends space. Anyone who lives in another nation can contact you.

➢ Extended and compressed time: Multiple people may be using computers at the same time and communicating with anyone via the internet.

➢ As interactive time increases, participants have more time to consider their responses and establish a temporary area.

The largest portion of cyberspace is the Internet. It includes the Internet Relay Chat (IRC), USENET newsgroups, and the World Wide Web (Web) (IRC). Any of them can be accessed using a nearby network or wireless Internet access. The most visited location is the Web, which

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[7]https://www.bing.com/ck/a?!&&p=139395cb875b521e1c436f7c1a49fcca0d33c5a7cc24d51da37444e3ae036c21Jml
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maW5zaWQ9NTMxMA&ptn=3&fclid=5c56c36f-ee15-11ec-baf0-
eeb62984d86e&u=a1aHR0cHM6Ly93d3cuWdpLWdsb2JhbC5jb20vZGljdGlvbmFyeS9jeWJlcnNlY3VyaXR5LW
5ldy1jaGFsbGVuZ2UtaW5mb3JtYXRpb24tc29jaWV0eS82NjE5&ntb=1

is made up of millions of Web sites. A personal website can be made by anyone to arrange content such as articles, images, videos, music, and discussion boards.

CYBER SPACE V/S INTERNET:

Normally people use these 2 words; cyber space and internet as synonyms without knowing the difference between two. Internet is nothing but a well connected global network which really hemp us for communication with the aid of some communication protocols which are standardized in nature. Along with this, Internet also act a platform for knowledge or information. Whereas Cyberspace is a borderless imaginary space created by internet which works within the created network environment in a virtual mode.

ADVANTAGES OF CYBERSPACE:

When operating in such an information-driven environment, these two benefits should become obvious. The organization first decentralizes as much as it can in a military setting. All of them operate online and have access to the data they need to make decisions. We must make judgments where they will have the biggest impact, not at the organizational level where the information is most complete[8]. Second, the organization may operate as a group of somewhat independent agents, with the environment dictating how it behaves. There are, however, some negative repercussions for every positive one. The key to sustaining the dominance of information continues to be information-based technologies encoded in electronic format[9].

TYPES OF DISPUTES IN CYBERSPACE:

Whether a firm is online or offline, disputes will always arise over the course of its existence. Apart from commercial disputes, there are number of other disputes also related to cyber space. Let's look at what are they:

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[8]https://www.bing.com/ck/a?!&&p=7b7ac889fd139083c5feab5c1e9ac8127accf2f7c55a5e4a2289ddfab78c7d54Jmlt
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maW5zaWQ9NTMzMA&ptn=3&fclid=5c56d353-ee15-11ec-b36d-
fa0f1de92222&u=a1aHR0cHM6Ly93d3cucmVzZWFyY2hnYXRlLm5ldC9wdWJsaWNhdGlvbi8zMjg5Mjg2MzFf
V2hhdF9pc18nY3liZXJzcGFjZSSc&ntb=1

[9]https://www.bing.com/ck/a?!&&p=27c31961524f48c0ab7dc19785ffa141b20ca4b2ea4dbc6d0e0f9b55bd685e39Jml
tdHM9MTY1NTQ1MzYwNSZpZ3VpZD03MTc1YjAxYS1iN2ZhLTRhMDAtYjZkOS0yNTA3MDRmOTBhMTA
maW5zaWQ9NTM0OQ&ptn=3&fclid=5c56e2b5-ee15-11ec-a5f8-
74d369fba906&u=a1aHR0cHM6Ly9saW5rLnNwcmluZ2VyLmNvbS9jaGFwdGVyLzEwLjEwMDcvOTc4LTMtM
DMwLTcwNzA2LTRfMQ&ntb=1

> ➢ *Conflicts about service outages, data security breaches, etc. between the business and the Internet Service Supplier (ISP) or provider of web hosting services -* This happens in every second in India as till now our country doesn't possess a good data protection regime like UK and USA. Our data protection regime is segmented through Information Technology Act 2000, Indian Penal Code, Contract Act, Right to InformationAct,2005 etc. Like UK, we don't have a well defined and comprehensive data protection laws. Even though our Supreme Court mentioned Right privacy, which includes data privacy also as a part of art.21, still now our laws related to this matter is not up to dated.

> ➢ *Business-to-business (B2B) disputes-* This arises between a company and its suppliers and includes things like breach of contract, falsifications, and customer complaints about the services that suppliers give.

> ➢ *Business-to-consumer (B2C) disputes -* This include those involving non-payment for goods or services, breach of contractual responsibilities, poor contract performance, misrepresentations, privacy policy violations, and security breaches involving personal information. The biggest potential for conflict exists between the business and its clients. We can see a lot of data theft issues, data misuses, cheating and committing of fraud using data of the clients etc in this fields. In most of such cases, due to absence of proper mechanisms to protect and safeguard the storing of data of clients, data loses and loosing of confidentiality of matters etc happens.

> ➢ *IPR Issues* –
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> - **Copy right issues -** If the business utilizes copyrighted information without authorization and in excess of fair use, it may be held accountable for copyright infringement. Best example for such issue is "Linking". Here through linking one website user will be linked to another website by clicking on a word or link provided in the first website. This may happens even without the knowledge of the user. Here if the linking is taking the user to a copyrighted website, then obviously it ends up with a copyright infringement case. In the very famous case of *Shetland Times Ltd V/S Jonathan wills and another* case, the aforesaid news papers website got linked with another's, the British law declared it as infringement of copyright and immediately passed an injunction order to stop it.

- **Trade mark issues** – Another IPR issue is related to trade marks. Main cyber issue related to this is Domain Name disputes. This happens when one organization or person registers a trademark which is similar to an already registered Domain name. normally this will happen unintentionally, but still there are people intentionally does this to wrongfully gain the profit and name of the real owner of the domain names, which us commonly called as "cyber squatting". It includes selling, registering and using the trade mark of a person or organization with a bad intention to make use of their good will and profit. The very famous case of *Yahoo! Inc V/S Akash Arora and others*[10] is related to this. In this case, the petitioner was using the domain name 'Yahoo!' And defendant started to use similar trademark 'Yahooindia.com', which may confuse the public. In this case, the Supreme Court understood the issue and passed a judgment by preventing the defendant parties from the use of the similar domain name Yahooindia.com.

- *Data Privacy and Data Protection Issues* – Another issue relating to cyberspace is data privacy and protection issues. Our honorable Supreme Court had already declared right to privacy as a fundamental right under art. 21 of Indian Constitution. This right to privacy includes data privacy also. Data privacy is nothing but the right to use own data without any interference from the world. Whereas Data Protection talks about the various mechanisms to protect and safeguard the data of a person. Data privacy is a fundamental right in UK and they have their own strict mechanisms to safeguard the data of their subjects unlike India. Currently India follows the US's segmented approach towards data protection where the data protection regime of India is covered under several statutes like Information and Technology Act 2000, IPC and the Personal data protection Bill etc. And these statutes includes only some penal provisions, which means, currently India doesn't have any kind of protective mechanism to safeguard the data of public.

- *Jurisdictional Issues* – Another issue existing in cyberspace is related to jurisdiction. It's always a problem to find the correct jurisdiction to file a case if that case includes any cyber crimes. Normally, to solve cyber crimes, the current followed norm is to follow Personal jurisdiction. But here again another issue is that, the concept of personal

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[10] 1991 IIAD Delhi 229

jurisdiction and its meaning varies from country to country. This also creates a lot of issues in cyber world.

- ➢ *Free speech or Defamation issues* – Another issue relating to cyber space is the availability of free speech to people. In India, under Art. 19(1) (a), our constitution provides freedom of speech and expression to people. Sometimes people use this freedom to defame others which is a punishable offence in India. These days, with the help of social media platforms, it's really easy for people to defame others.

- ➢ *Conflict of Laws* – This is another issue related to cyber space. As every country has its own laws relating to cyberspace and internet, it totally differs from one another. So when it comes to cross- border cyberspace issues, still now problems are created due to this diversity in laws.

- ➢ *Credit card Frauds* – This is another kind of problem that arises in cyberspace. It's a kind of stealing of the credit card information of a person and using it for their wrongful gains. As we don't have a strict data protection regime, such cases are also increasing day by day.

- ➢ *Cyber Stalking* – Cyber stalking is nothing but harassing or threatening a person by using cyber space. For this normally the offenders uses emails and online calls, messages etc. This is just the same as what physical stalking but done it in digital space.

- ➢ *Password sniffing* – This is another kind of problem, where the password sniffing software screen record everything including the password of a system using cyberspace, as a result, its very much easy for the offenders to get the passwords of people and use it for malpractices.

- ➢ Another issues related to cyber space includes wide spread of pornography usage, usage of cyber space for terrorist funding, online cheating using personal data and bank data etc.

The difficulties are perhaps more pronounced in relation to B2C transactional disputes, which are frequently of low monetary value, even though many of the issues (such as jurisdiction, choice of law, high cost of cross-jurisdictional litigation) which arise in relation to the different categories of disputes are similar. When it comes to consumer issues, conventional ways of resolving international commercial conflicts, such international commercial arbitration, are frequently too expensive, inconvenient, and burdensome. Therefore, the management of disputes

resulting from B2C transactions will be the main topic of this section. However, it should be recognized that many of the topics and ideas covered here are also relevant to other kinds of disputes.

REGULATORY FRAMEWORK OF CYBER DISPUTES IN INDIA:

In India, even though we doesn't have a comprehensive data protection regime for ourselves, still we provide some kind of protection in cyber space using the following statutes;

- Information Technology Act,2000
- Information Technology (Intermediary Guidelines and Digital Media Ethics code rules, 2021
- Personal Data Protection Bill 2009
- Non – Personal data Governance Framework
- National Cyber Security Strategy, 2020
- Companies Act, 2013
- Indian Penal Code, 1860
- Right to Information Act, 2005

DISPUTE RESOLUTION MEACHANISM AVAILIABLE IN INDIA:

Currently we doesn't have a special court especially for to solve the cyberspace disputes or issues. What we have is a dispute resolution mechanism under IT Act 2000. Under this Act, the government can establish an Adjudicating Authority which will act as a quasi judicial body.

- *Adjudicating Authority –* This post is other ways called as "AO". The central government appoints a person to this post, who has all the power to order for an investigation based on the evidences, and also possess jurisdiction to decide civil matters. He/she can punish the offender and ask the offender to pay compensation as well.
- *Cyber Appellate Tribunal –* This will act as an appellate body to the orders of Adjudicating Authority. In other words, all the appeals from the adjudicating authority

shall lies to this tribunal. This body is not bound to follow CPC,1908 or any other procedure established by law including Principles of Natural Justice, which means that it have all the power to decide its own procedures and to decide the place of hearing etc. Only limitation is that it should not violate the IT Act 2000 or IT Rules 2021.

- *High Court –* Any person who is not satisfied with the order of the Appellate Tribunal can appeal to the respective High Court within 60 days from the date of order passed by the Appellate Tribunal. In case, if the person couldn't file it within the 60 days, then if the High Court is satisfied with the reason, then it may extend the time period for a further 60 days more. High Courts will act as the highest appellate body for these matters in India.

DRAWBACKS OF THE CURRENT RESOLUTION SYSTEM:

Even though we have a dispute resolution system for cyber disputes, its not up to dated and not working effectively. Till now, no statistics relating the cases it decided or pending cases are available for assessment. Without proper assessment, we can't decide its growth and development. Another drawbacks of the current system is that,

- The Adjudicating authorities are given plenty of powers and they are not bound to follow any kind of statutory provisions. Under IT Act, 2000 thy can decide their own procedures and decisions. This absolute power given to these authorities creates diversity in procedures and decisions and as a result, the number of appeals to appellate tribunal is always high compares to other tribunals.
- Another problem is related to get the order issued under IT Act 2000 from state governments. As it's a followed norm that the order should be taken from state government's website which is really hard to browse and get the order. In my Personal opinion, it must be kept with central government, so that it will be very easy for both individuals and companies to get access to it.
- Currently India doesn't have a proper guiding document for cyber dispute investigation or cyber forensic matters. This lacuna creates diversity in procedures and ultimately leads to conflicts.

CONCLUSION:

From this research paper, it is very clear that the cyberspace plays a pivotal role in our daily life. Because as we all are living in this digital era, where everything is getting digitalized day by day, understanding the concept of cyberspace and its importance, related issues with cyberspace and solutions for them became very important. More than all this, having a proper regulatory regime for this matter is very important. There are many disputes relating to cyberspace which includes the jurisdiction issues, choice of law problem, data privacy and protection issues and many other contractual and non – contractual disputes etc. Some of them can be sought out through some procedures, but rests of them are still kept as unanswered questions.