

STATE JURISDICTION

1. Define State Jurisdiction'. Differentiate between the basis of Jurisdiction and the exercise of Jurisdiction.

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1. Introduction-

JURISDICTION generally describes any authority over a certain area or certain persons . In the law jurisdiction refers to particular area containing a definite legal authority.

Jurisdiction also refers to the origin of courts authority. Jurisdiction can also be used to definite the proper court in which to bring a particular case. Finally jurisdiction refers to the inherent authority of a court to hear a case and to declare a judgment.

As pointed by an author State jurisdiction is the power of a state under international law to govern persons and property by its municipal law. It includes both the power to prescribe rules (prescriptive jurisdiction) and the power to enforce them (enforce jurisdiction).

The later includes both executive and judicial powers of enforcement. Jurisdiction may be concurrent with the jurisdiction of other states or it may be exclusive. It may be civil or criminal. The rules of state jurisdiction identify the persons and the property within the permissible range of a state's law and it's procedures for enforcing that law. They are not concerned with the content of a state's law except in so far as it purports to subject a person to it or to prescribe procedure to enforce it.

State jurisdiction connotes essentially the extent of each state's right to regulate conduct on the consequences of events. A state may regulate its jurisdiction by legislation, through its court or by taking executive or administrative action. State jurisdiction concerns both international law and internal law of the state.

While the former determines the permissible limits of a states jurisdiction in the various forms it may take, the latter prescribe the extent to which, and manner in which, the state in fact asserts its jurisdiction. Each state has normally jurisdiction over all persons and things within its territory.

2. Meaning of jurisdiction

- State jurisdiction is the capacity of a State under International Law to prescribe the rules of law, enforce the prescribed rules of law and to adjudicate. State Jurisdiction, also means that a state court has the right to make a legally binding decision that affects the parties involved in the case. It is derived from State sovereignty and constitutes its vital and central feature. It is the authority of a State over persons, property and

events which are primarily within its territories.

3. The term 'jurisdiction' Includes-

- i. Legislative Jurisdiction (prescribing rules)
- ii. Executive Jurisdiction (enforcing rules)
- iii. Judicial Jurisdiction (adjudicating rules)

4. Basis/ Principles of jurisdiction

i. Territoriality Principle

a. Territorial

For purpose of jurisdiction, The territory of a state is not only its landmass, but it also includes the following

- i. Maritime belt (Territorial sea)
- ii. A ship bearing its national flag
- iii. Ports

A state shall have jurisdiction on basis of its territory over:

i. Everything falling under its territory (all the areas i.e. the land, water and airspace covered inside a state and also all movable as well as immovable property within state).

- ii. Everybody living within its territory (all citizens and all aliens)

Territorial jurisdiction has a subjective and objective element:

i. Subjective: State will have jurisdiction if crime is committed over its territory.

ii. Objective: State will have jurisdiction if the crime had effect over its territory.

b. Extra Territorial Principle –

Jurisdiction over embassies abroad, state owned property abroad like (ships, planes etc.)

S.S lotus Case (France v. Turkey) (1927) – PCIJ

French Steamer –S.S. Lotus collided with a Turkish vessel- S.S. Boz-Kourt in high seas, 8 Turkish nationals drowned when The Turkish ship was hit by Lotus.

Issue – Turkey's Jurisdiction to try the case against Monsieur Demons (French
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Lieutenant on watch duty) was in question.

- In this situation, it is impossible to hold that there is a rule of international law that prohibits Turkey from prosecuting demons just because he was aboard a French Ship. This stems from the fact that the effects of the alleged offence occurred on a Turkish Vessel.
- The Lotus principle or Lotus approach, usually considered a foundation of international law was laid down in this case which says that sovereign states may act in any way they wish so long as they do not contravene an explicit prohibition

Lotus principle as regards collisions at sea **has been overturned** by article 11(1) of the High Seas Convention, 1958, which emphasised that only the flag state or the state of which the alleged offender was a national has jurisdiction over sailors regarding incidents occurring on the high seas.

ii. Nationality Principle

Jurisdiction on basis of Nationality of the criminal.

- The State will have a claim over Jurisdiction over its national even if he/she commits crime outside the territory of the State. This principle is the basis of the extradition laws.
- Same way state can claim jurisdiction over an alien if it commits crime against its nationals even outside its territory.

In general, the two most important principles upon which nationality is founded in states are first by descent from parents who are nationals (**jus sanguinis**) and second by virtue of being born within the territory of the state (**jus soli**).

- The nationality principle implies that a State jurisdiction extends to its nationals and actions they take beyond its territory. It is based upon the notion that the link between the State and its nationals is a personal one independent of location. Criminal jurisdiction based on the nationality principle is universally accepted. While civil law countries make extensive use of it, the Common Law countries use it with respect to major crimes such as murder and treason. The Common Law countries, however, do not challenge the extensive use of this principle by other countries.
- A State may prosecute its nationals for crimes committed anywhere in the

world; the ground of this jurisdiction is known as active nationality principle. Also, it may claim jurisdiction for crimes committed by aliens against their nationals abroad; the ground of this jurisdiction is known as passive national principle.

Nottabohm case – (Liechtenstein v. Guatemala) (1955)

Facts: Friedrich Nottebohm – born in Germany – resided in Guatemala for a long time but never took citizenship. He frequently visited Germany and also Liechtenstein where his brother live.

In 1939 Nottabohm was visiting Liechtenstein and World War II began. He applied for Liechtenstein citizenship and it was accepted and he got Liechtenstein citizenship which because of German law terminated his German Citizenship.

He returned to Guatemala on a Liechtenstein passport, Later Guatemala sided with the allies against Germany and treated Nottabohm as a German citizen and arrested him as an enemy alien in 1943 and handed over to US. All his property was seized by Guatemalian government. All this was later claimed as unjust treatment by Lichtenstein and it filled a case against Guatemala for that. Guatemala claimed that he was not a Lichtenstein citizen as per international law.

The court Agreed and laid down the **Nottebohm Principle** which said that ‘The national must prove a meaningful connection to the state in question’.

Held: The Court ruled that Nottebohm’s naturalization as a citizen of Liechtenstein was not based on any genuine link with that country but for the sole purpose of enabling him to replace his status as national of a belligerent state, there was no relationship between Liechtenstein and Nottebohm, the change of nationality was merely a subterfuge mandated by the war. Under this circumstance, Guatemala cannot be forced to recognize it.

iii. Passive Personality Principle

- Under this principle, a state may claim jurisdiction to try an individual for offences committed abroad which have affected or will affect nationals of the state.

iv. Universality Principle

- State can take jurisdiction over certain crimes by anyone anywhere in the world without any link to its territory, nationality etc.
- Before the Second World War, such universal jurisdiction has been considered as contrary to International Law by the Common Law countries, except for acts regarded as crimes in all countries, and crimes against international community as a whole such as piracy and slave trade.
- After the Second World War, universal jurisdiction has been universally recognized over certain acts considered as international crimes. International crimes are those committed against the international community as a whole or in violation of International Law and punishable under it, such as war crimes, crimes against peace and crimes against Humanity.
- In recent years, crimes such as Hijacking of aircraft, violation of human rights and terrorism, have been added to the list of international crimes currently, under the universality principle, each State and every State has jurisdiction over any of the international crimes committed by anyone anywhere.

v. Protective Principle –

- This Principle is used to exercise Jurisdiction over an alien outside the territory of the State. It is a very controversial principle because it can easily be abused to undermine the sovereignty of other state.
- In practice however, this principle is applied in those cases where the acts of the person which take place abroad constitute crimes against the sovereignty of the State, such as plots to overthrow a government, treason, espionage, forging a currency, economic crimes and breaking immigration laws and regulations.
- This principle is often used in treaties providing for multiple jurisdictional grounds with regard to specific crimes, such as the 1979 Hostage Convention and the 1970 Hague Aircraft Hijacking Convention.

4. Distinction between basis of jurisdiction and Exercise of jurisdiction

- In general, every state has exclusive jurisdiction within its own territory, but this jurisdiction is not absolute, because it is subject to certain limitations imposed by international law. Thus in practice it is not always necessary that a state may exercise jurisdiction in its territory, on the other hand, in some circumstances a state may exercise jurisdiction outside its territory.
- More over there is a distinction between the exercise and basis of jurisdiction.

i. Illustration I

- An Englishman and a German Murder a French man in Paris and thereafter run away to England.
- So long as they are in France, they can be arrested and tried by France courts for they have committed the murder in France and the fact that they are foreigners does not make any difference.
- THE very fact of their presence in France gives jurisdiction over them. Neither Germany nor England can interfere in this although they may demand their extradition.
- When they come to England, the English courts can try the Englishman but they cannot try the German although German accused for the time being is within the jurisdiction of the English courts.
- THIS is due to the fact that there is NO BASIS for jurisdiction for English courts, cannot try a foreigner for having committed murder in some foreign state.

ii. Illustration II

- A French armed public ship flying the flag of France was in the British territorial waters when M, the Cabin boy of the ship, committed the offence of murder by shooting dead D, the captain of ship. Both M and D were British nationals serving at that time as members of the officer crew of the cruiser.
- Immediately after the incident the offices of a British police petrol launch were obtained and the injured was taken to the nearest British port to

render medical help to the captain, if the doctors found that the life was not extinct.

- Extradition proceedings instituted by the French Government failed. M, who had been kept under arrest during extradition proceeding was released but arrested immediately thereafter for the murder committed within British territorial waters.
- During the trial that took place, M, pleaded that the British courts had no jurisdiction to try him for the murder committed on board a French cruiser flying French flag.
- In this case the defense cannot succeed because the theory that the public ship of a State should be treated to be a floating portion of that State has long been discarded.
- Secondly, the offence was committed within the territory of Britain.
- Thirdly, seeking good offices of British police and medical aid, etc. amounted to a waiver of the immunity. Thus M could be tried by British courts.

iii. Central bank of India v/s Ram Narain

- wherein the Supreme Court considered the question whether Penal Code could be applied to a person who was not a citizen of India at the time of committing the offence.
- The Supreme Court observed : "A foreigner was not liable to be dealt with in British India for an offence committed outside British India under the provisions of the sections as they stood before the adaptations made in them after the partition in India.
- Illustration (a) to Section 4, I.P.C. delimits the scope of the section. It indicates the extent and ambit of this section.
- It runs as follows: (a) A, a coolie, who is native Indian subject commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found. In the illustration, if A was not a native Indian subject at the time of the commission of the murder the provisions of Section 4, I.P.C. could not apply to the case.
- The circumstances, that after the commission of the offence a person becomes domiciled in another country, or acquires citizenship of that country cannot confer jurisdiction on courts of that territory retrospective for trying offences committed and completed at a time when that person was neither the national of that country nor was he domiciled there."

5. Exceptions of the exercise of jurisdiction

i. Diplomatic agents

- Diplomatic agents enjoy certain privileges and immunities. They are immune from jurisdiction of the civil and criminal courts of the receiving states.
- In this connection the old view was that the diplomatic agents enjoy these immunities and privileges because they were deemed to be outside the jurisdiction of the receiving states.
- In the present time this theory has been discarded. According to the modern view, diplomatic agents enjoy certain immunities and privileges because of the special functions they perform.
- This was affirmed in a case *Exparte Petroff* (1971) by the supreme court of Australia. Oppenheim also subscribe to this view.

ii) Foreign Embassies :

- FOREIGN EMBASSIES are often considered to be outside the jurisdiction of the state in which they are situated. For the sake of convenience , Embassies are treated a part of their home states.
- The correct view, however is that though not part of their home states,
- Embassies enjoy certain immunities because of the special functions performed by the diplomatic agents.

iii) Foreign Sovereigns :

- Foreign sovereigns are often treated to be outside the jurisdiction of other states and possesses many privileges and immunities.
- This is based on the principle that one sovereign cannot exercise jurisdiction over another sovereign.
- In the case of *CHRISTINA*, Lord Wright observed, there are general principles of international law according to which a sovereign state is held to be immune from the jurisdiction of another state.
- The rule may be said to be based on the principle **PAR IN PAREM NON HABIT IMPERIUM**, no state can claim jurisdiction over another state.

iv) International Organisations

- International organizations also enjoy certain immunities and privileges from the jurisdiction of the states in which they are situated.
- Eg: The UN International Labour Organisation and other specialised agencies enjoy several privileges and immunities. There are certain conventions also in this regard.

v) Extradition Treaties

- Under the provision of the extradition treaties the persons who run away from their country after committing crimes may be extradited .
- THAT is to say, the state where they have committed certain crimes may ask the state where the accused is for the time being to return him so that he could be Prosecuted and punished according to the laws of the land.
- Thus in respect of such persons also, the state may exercise some sort of jurisdiction even outside its territory.

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