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ABSTRACT:

“The following article focuses on the issue of jurisdiction as defined in IPC it deals with Intra and extraterritorial jurisdictions and the various case laws governing the same. It also deals with the interplay of sections 3 and 4 on account of extraterritorial jurisdictions and the ways of dealing with the various issues that arise on account of extraterritorial jurisdiction process of punishing an individual under this and the various case laws associated with it. The crimes committed by Indians in abroad and crimes by foreigners in Indian soil how these issues are dealt with reference to various precedents and case laws”.

JURISDICTION UNDER THE INDIAN PENAL CODE:

Jurisdiction is defined as *“a government’s or a legal entity’s general power to exercise authority over all persons and things within its territory, especially a state’s power to create interests that will be recognized under common-law principles as valid in other states.”*¹ Where State jurisdiction is founded in international law, it rests on several titles. At present, legal opinion unanimously accepts the titles of jurisdiction constituted by national territory (*territorial jurisdiction*) and nationality (*personal jurisdiction*).

As to a State’s territorial sovereignty, this has two features: completeness and exclusiveness. It should be further noted that the two aforementioned titles of jurisdiction – territoriality and nationality – are construed extensively to allow national regulations to have extraterritorial effects. The general statute governing the law of crimes in India is the Indian Penal Code [*hereinafter ‘IPC’*], and it contains elements of both intra-territorial jurisdiction and extra-territorial jurisdiction.

I. GENERAL PRINCIPLES OF JURISDICTION UNDER THE IPC:

Under the IPC, jurisdiction is covered under sections 1 to 5. Jurisdiction can be broadly classified into two types under the IPC: Intra Territorial Jurisdiction and Extraterritorial

¹ Black’s Law Dictionary, 712 (9th ed. 2009).

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Jurisdiction.² While it is generally understood that the operation of a statute is supposed to be intra-territorial, certain statutes empower Courts to exercise jurisdiction beyond the bounds of the State i.e., courts may exercise extraterritorial jurisdiction.³ The IPC exhibits both these types of jurisdictions. Further, section 5 of the IPC, embodies another principle of law – that of the precedence of *lex specialis* (special or local law) over *lex generalis* (general law).⁴

II. SECTION 1: EXTENT AND APPLICATION:

Section 1 establishes that the IPC extends to “*whole of the India,*” including the Union territory of Jammu and Kashmir post the passing of the Jammu and Kashmir Reorganisation Act 2019. As stated under article 1(3) of the Constitution, the ‘Territory of India’ comprises: (a) the territories of the States; (b) the Union Territories as specified under the First Schedule and (c) such other territories as may be acquired.⁵ This essentially implies that every action committed anywhere in India which may have criminal implications, shall be governed by the IPC.

III. SECTION 2: INTRA-TERRITORIAL JURISDICTION:

Section 2 of the IPC deals with intra-territorial jurisdiction, and applies to “*every person.*” The law is to be applied equally to all persons in India, and no consideration is to be given to caste, sex, creed, privilege or even *nationality*.⁶ The IPC is also applicable to foreigners as seen in the landmark judgments of *State of Maharashtra vs. Mayer Hans George*⁷ and *Mobarik Ali Ahmed vs. State of Bombay*.⁸ In the former case, the holding of the court as that it was not necessary for the law to be published or made known outside India, while in the latter case the

² KI Vibhute, *PSA Pillai’s Criminal Law* (11th, LexisNexis 2013) 315.

³ *Id.*

⁴ Section 5 embodies the Latin maxim “*generalia specialibus non derogant*” which means general words do not repeal special laws or legislations.

⁵ Constitution of India, Article 1(3).

⁶ *Mobarik Ali Ahmed v. State of Bombay*, AIR 1957 SC 857.

⁷ AIR 1965 SC 722.

⁸ AIR 1957 SC 857.

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court held that the basis for jurisdiction under section 2 of the IPC lay in the *place* where the offence was committed, and not upon the ‘corporal presence’ of the offender.

*There are certain exemptions*⁹ accorded to certain individuals on account of an office they hold – the President of India under Article 361(2) of the Constitution of India, as well as other foreign sovereigns are exempt from criminal proceedings in India. Ambassadors and diplomats of foreign states, as well those individuals who form an official part of the dignitaries’ mission. The section, read with section 11 of the IPC also covers corporations and companies, and vicarious criminal liability of the company for an offence committed by an employee has to be determined on a case-to-case basis. This principle also covers public corporations.¹⁰ Foreign armies if present in the foreign country is exempt from the jurisdiction of the state on whose soil they are, and the same applies to naval personnel aboard warships of a foreign state (*where the flag state has jurisdiction in respect of collision and other incidents of navigation*¹¹).

Lastly, the territorial jurisdiction of the IPC also covers ships, aircrafts and other modes of transport *if they are registered in India* and, as will be discussed in detail subsequently foreign ships are also covered by the IPC. While the established principle is that jurisdiction extends up to 12 nautical miles from the appropriate baseline, the holding in the *Italian Marines* case was to the contrary.

Aside from the case of the *Italian Marines* there seem to be only a few recent cases disputing section 2 of the IPC. One of these is *Lee Kun Hee & Ors. Vs. State of U.P. & Ors.*¹² The counsel for the appellants raised Section 2 to emphasize that culpability of an accused can only be relatable to an act "...of which he shall be guilty within India". He went on to state that since the appellants have not committed any act within the territorial jurisdiction of India, they ought

⁹ Pillai (n4) 318-319.

¹⁰ *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta*, AIR 1967 SC 997.

¹¹ United Nations Convention on the Laws of the Sea, Article 94(7) read with Article 97.

¹² 2012 Indlaw SC 111.

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not to be blamed of being guilty of an act "within India", and as such, cannot be proceeded against in a Court in India for facing prosecution under the provisions of the IPC.

The Court referring to the case of *Mobarik Ali*¹³, stated that “Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power.”

Thus, the court held that the argument put forth by the counsel for the appellants would not hold. Again, here we see that if the effect of a particular crime is felt in India, the ‘corporal presence of the offender’ is inconsequential.

IV. THE INTERPLAY OF SECTIONS 3 AND 4: EXTRA-TERRITORIAL JURISDICTION:

Extraterritorial Jurisdiction is covered under sections 3 and 4 of the IPC. The rationale for this type of jurisdiction is that each state ought to have a “*legitimate right*” to govern its native-born subjects everywhere and anywhere.¹⁴ To punish an individual under Section 3, two conditions must be satisfied – one, there should be an allegation that the person committed an act, which if it were to be committed in India would be punishable under the IPC, and two, that the person is liable under some Indian law to be tried in India for that offence. If these conditions are satisfied then he may be punished as provided under the Code.¹⁵ Section 4 expands on section 3, stating that the IPC shall apply to any offence committed by an Indian citizen, regardless of where the offence was committed and that if an offence is committed aboard a ship or aircraft registered in India it shall be covered by the IPC, notwithstanding whether the offender is an Indian citizen or not. Considering the liability of a foreigner for

¹³ *Mobarik Ali Ahmed v. State of Bombay*, AIR 1957 SC 857.

¹⁴ Pillai (n4) 320.

¹⁵ *Kari Singh v. Emperor* (1912) ILR 40 Cal 433.

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offences committed in India, it was held in the case of *Mobarik Ali*,¹⁶ that a foreigner who commits an offence within India can be punished, regardless of his corporeal presence in India at the time. The court further went on to declare that nationality cannot be a limiting factor in respect of criminal jurisdiction. However, sections 3 and 4 of the IPC must be read with section 188 of the Code of Criminal Procedure [*hereinafter ‘CrPC’*] which requires prior sanction of the government for trying an offence committed abroad.

Cases which deal with these sections are slightly more in number as opposed to their counterpart jurisdictional sections under the IPC. A landmark case in this regard is *Ajay Agarwal vs. Union of India*¹⁷, where it was alleged that the Punjab National Bank was cheated by the appellant who was an N.R.I based in Dubai. He was charged with *sections 120B read with Ss. 420 (Cheating), 468 (Forgery) and 471 (Forged documents), I.P.C.*

Referring to the cases of *Abdul Kader vs. State AIR 1964 Bom 133 and Mobarik Ali*, the Court held that regardless of the corporeal presence of the offender, if the effects of the offence (conspiracy and cheating, respectively) were felt in India, then the courts would have jurisdiction to try the particular offender. The Court went on to say that in this particular case, that though the wrongful act was initially committed in Dubai, a part of it was committed in Chandigarh; and thus, even though the offender was not based in India, the offences would be understood to have been committed in India. Thus, sanction under section 188, CrPC was not required.

This case was referred to in *Barakara Abdul Aziz vs. National Bank of Oman (S.A.O.G.) and Another*¹⁸, and the Bombay High Court also held that if part of the act was committed outside India, and a part of it within India, it would be deemed to have been committed within India.

¹⁶ *Mobarik Ali Ahmed v. State of Bombay*, AIR 1957 SC 857.

¹⁷ *Ajay Agarwal v. Union of India*, 1993 Indlaw SC 1142.

¹⁸ 2009 Indlaw MUM 1682.

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V. CONCLUSION:

The concept of jurisdiction is a largely settled one, with regard to the IPC. Jurisdiction is referred to as the extent to which the court can exercise power over the case. There are two basic types of territorial jurisdiction related to Indian criminal courts. It is a jurisdiction within the territory and a jurisdiction outside the region.

Intra-Territorial jurisdiction deals with crimes committed within India's sovereign territory, and extraterritorial jurisdiction deals with crimes committed outside India's sovereign territory. Criminal courts can only exercise authority within these jurisdictions. Various proceedings have been filed regarding the jurisdiction of the criminal court, but both the law and the court provide clear provisions for doing so.

Confusion is still present as these provisions have not properly dealt with the issues. It is necessary for improvements of these laws in order to ensure that citizens of India, as well as foreign nationals, are held liable for offences committed within the scope of the IPC.