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Forum Shopping: Recent Trend and Analysis of its Effect on the Legal System

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Recently, the Chief Justice of India DY Chandrachud, criticized forum shopping when a litigant mentioned his case before the bench of CJI although he had requested the same for hearing one day ago before the bench of another judge.¹ This kind of practice is known as ‘bench hunting’ or ‘forum shopping’ Litigants use this method to mention their case before a judge who is more sympathetic or has views that will favor the plaintiff’s case. The concept of forum shopping has been explained briefly in this article. Indian courts have constantly tried to prevent this practice, some important cases regarding forum shopping discuss the views of the judiciary and the actions taken against the same. Forum shopping adversely affects the working of the courts and puts the defendants in a disadvantaged position. The Hon’ble Supreme Court of India laid down tests in order to determine forum shopping and the cases regarding the same have also been discussed. It is important to curtail this practice because of its detrimental impact on the legal system and this article attempts to cover the same.

Keywords: *forum shopping, plaintiff, court, jurisdiction.*

¹ Khadija Khan, ‘CJI Chandrachud Condemns “Forum Shopping”: What Is This Practice?’ (*The Indian Express*, 23 May 2023) <<https://indianexpress.com/article/explained/explained-law/cji-chandrachud-forum-shopping-sc-8624879/>> accessed 18 June 2023

¹ *Ibid*

INTRODUCTION

Forum Shopping is the practice of choosing the court in which to bring an action from among courts among those courts that would properly exercise jurisdiction based on the determination of which court is likely to provide the most favorable outcome. Forum shopping is a way in which a specific court or jurisdiction is selected by the advocates representing the plaintiff or the plaintiff themselves because the chances of winning the dispute increase in that court or jurisdiction. In order to carry out forum shopping, there must be more than one court having the jurisdiction to hear the case.² It is not necessary that a court that appears to be the most favorable for the plaintiff's case is the most relevant to the case.³ The purpose of forum shopping is always the same, which is to obtain a perceived or real advantage in a lawsuit by taking advantage of the discrepancies in the laws, rules, and judicial preferences of the courts that might have jurisdiction over the lawsuit.⁴

Parties to a dispute can use forum shopping for several reasons. A plaintiff may file a suit in his/her home state rather than some other state having jurisdiction because of reduced travel costs, the local judge would be more sympathetic to the plaintiff, etc. Some may also choose to forum shop because of the different remedies available, they may select a court that provides maximum damage rewards or it has a greater probability of receiving injunctive relief or monetary damages.⁵

In many cases, it is not in the hands of the plaintiff to select a forum, it is decided. For example, when there is an accident between two trucks and both of them are registered in Ranchi, Jharkhand, then it is quite clear that it is the jurisdiction of the district court of Ranchi in this case. In the case of Public Interest Litigation (PIL), a litigant might file the PIL in the Supreme

² *Vijay Kumar Ghai v State of West Bengal* (2022) 7 SC 124

³ *Khadija Khan* (n 1)

⁴ *Ibid*

⁵ *Ibid*

Court of India rather than filing in the high court of his state to gain more attention. That is why several frivolous petitions are filed before the apex court.⁶

It is interesting how terming something a type of shopping connotes an inherent disapproval of that thing. At best, it implies that the activity is frivolous, and at worst, it implies that it is sordidly materialistic. This negative attitude towards litigants' attempts to select the court is reasonable, especially from the perspective of a defendant facing a claim for punitive damages that resembles a telephone number in a jurisdiction with which it has little connection. However, when claimants are faced with choosing a forum, the usage of this somewhat aggressive term obscures both its causes and crucial elements of the process, which makes it difficult to formulate a suitable answer.

VIEW OF THE INDIAN JUDICIARY

Recently, the Chief Justice of India DY Chandrachud criticized the practice of forum shopping⁷ when a litigant mentioned his case before the bench of CJI although he had requested the same for a hearing one day ago before the bench of Justice KM Joseph. At times, advocates use this method in order to avert or bypass a particular judge where it is unlikely to receive a favorable order or judgment. It is known as 'bench hunting'.

In the case of Vijay Kumar Ghai and Ors v State of West Bengal and Ors⁸, the apex court termed forum shopping as 'a disreputable practice by the courts and has no sanction and paramountcy in law'. In the case of Dr. Khair-Un-Nisa and others Shalini Sharma and others v UT of J&K & others⁹, the Jammu and Kashmir High Court inflicted a cost of INR 1 lakh on Child Welfare Committees and Juvenile Justice Board members for forum shopping. They had filed their

⁶ Sohini Chowdhury, 'this Is Not a Moot Court Competition' : Supreme Court Reprimands Law Student for Filing Frivolous Petition' (*Live Law*, 03 December 2021) <<https://www.livelaw.in/top-stories/supreme-court-dismiss-law-student-petition-right-to-vote-pil-article-32-186864>> accessed 17 June 2023

⁷ Khadija Khan (n 1)

⁸ *Ibid*

⁹ Basit Amin Makhdoomi, 'Jammu & Kashmir High Court Imposes ₹1L Cost on CWC and JJB Members for "Forum Shopping" Regarding Their Re-Appointments' (*Live Law*, 30 March 2023) <<https://www.livelaw.in/news-updates/jammu-kashmir-ladakh-high-court-forum-shopping-res-judicata-abuse-court-process-identical-prayer-subsequent-petition-child-welfare-committee-juvenile-justice-board-225131>> accessed 18 June 2023

petition regarding re-appointment earlier in the Srinagar bench of the High Court and the Single Judge and while the case was pending in that court, they also filed a petition in the Jammu bench which amounted to forum shopping. The Hon'ble Court termed it as "forum shopping/bench hunting; a case of pure and simple and blatant abuse of process of law, the bench recorded that the second petition on the same cause of action and the same subject matter was not maintainable."

In the case of *Dhanwantri Institute of Medical Science v State of Rajasthan & Ors*¹⁰, the Principal Bench of the Rajasthan High Court upheld the order of the Single Judge of the Jaipur Bench, in which the court had inflicted a cost of Rs 10 lakh for forum shopping. The Dhanwantri Institute of Medical Science had filed a petition in the Jaipur Bench of the High Court, where it was dismissed as withdrawn. The next day, the institute filed the same petition, seeking the same remedies at the principal bench of the Rajasthan High Court, where they concealed the facts of the earlier petition of the Jaipur Bench. The Hon'ble Court observed the following: "It is well settled that one, who seeks to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, is required to come with clean hands. The facts, as also noticed by the learned Single Judge clearly show that the conduct of the appellant-writ petitioner is highly condemnable and the observation made by the learned Single Judge that the writ petitioner was engaged in bench hunting cannot be said to be without any basis." In the case of *Union of India & Ors. v Cipla Ltd*¹¹, the apex court enacted a 'functional test' that the courts must use in order to check the practice of forum shopping. In the case of the Govt. of NCT of Delhi v Rosmerta HSRP Ventures Private Limited,¹² the court inflicted costs on the private company after it was discovered that it had engaged in forum shopping in an arbitration case.

TEST ADOPTED BY THE SUPREME COURT TO CHECK FORUM SHOPPING

As mentioned above, in the case of **Union of India & Ors. v Cipla Ltd**¹³ the Hon'ble Supreme Court laid a test which would help the judges in ascertaining whether the court has the territorial

¹⁰ *Dhanwantri Institute of Medical Science v State of Rajasthan & Ors* (2022) (Raj) 220

¹¹ *Union of India & Ors v Cipla Ltd* (2017) 5 SCC 262

¹² *Govt of NCT of Delhi v Rosmerta HSRP Ventures Private Limited* (2016) SCC OnLine Del 5472

¹³ *Union of India & Ors v Cipla Ltd* (2017) 5 SCC 262

jurisdiction to hear the case or he is indulging in forum shopping. The court cited some examples from a few cases and after analyzing those cases, laid down the ingredients which lead to forum shopping:

- In *Rajiv Bhatia v State (NCT of Delhi)*,¹⁴ the court cited this case to illustrate a type of forum shopping where a petitioner does not receive the desired relief from one court and then files the same petition with the same relief in another court concealing the facts of the previous case.
- In *Arathi Bandi v Bandi Jagadrakshaka Rao*,¹⁵ the court cited this case as an example where the litigant creates a situation to establish a 'false' jurisdiction of a court, that is, that court did not have the territorial jurisdiction as per the original facts of the case but the petitioner attempted to change the facts and create a situation in which the jurisdiction of that court falls. Another example of this practice is *World Tanker Carrier Corpn v SNP Shipping Services (P) Ltd.*¹⁶ This was criticized by the court and it observed that if such an "assumption of jurisdiction in created circumstances" is allowed, it would promote forum shopping.
- In *Ambica Industries v CCE*,¹⁷ the court cited this case in order to explain another form of forum shopping where the petitioner files his petition in another court that does not have the required territorial jurisdiction only because the law laid down by that High Court is beneficial for his case rather than the view held by the High Court which has original territorial jurisdiction.

The reference to these decisions by the Hon'ble Court undoubtedly formulates some principles for forum shopping that the High Courts and the lower courts are required to apply. The courts need to check whether there is any resemblance in the functioning of the proceedings of one High Court and the other High Court or whether the plaintiff/respondent is trying to

¹⁴ *Rajiv Bhatia v State (NCT Of Delhi)* (1999) 8 SCC 525

¹⁵ *Arathi Bandi v Bandi Jagadrakshaka Rao* (2013) 15 SCC 790

¹⁶ *World Tanker Carrier Corpn v SNP Shipping Services (P) Ltd* (1998) 5 SCC 310

¹⁷ *Ambica Industries v CCE* (2007) 6 SCC 769

manipulate the court. Through these tests, the court will be in a position to determine if the plaintiff is forum shopping or not.

OVERLAPPING JURISDICTION

Before discussing the concept of overlapping jurisdiction, let's take an example in order to understand the issue. A traveler bus which is manufactured and registered in Odisha meets with an accident in West Bengal with the unfortunate loss of the lives of some passengers. If the basic laws of territoriality are applied in this case, both the High Courts of Odisha and Calcutta will have territorial jurisdiction because the cause of action took place in West Bengal and the bus that was met with an accident is registered in Odisha. This illustration also shows a way in which the scope of jurisdictions is broadened which raises the possibility of overlapping jurisdictions, including extra-territorial jurisdiction. The above facts show that the accident took place in one state, which increases the probability of a claim being brought against the manufacturer in Odisha by a resident of West Bengal. This is an illustration of extra-territorial or territorial jurisdiction. An important point that needs to be noted here is that it is plausible to have jurisdiction over a corporation that is not domiciled in West Bengal as per the laws of basic territorial jurisdiction. Once there are overlapping jurisdictions for a specific kind of claim, inevitably, lawyers will eventually compare the options available to them. This will undoubtedly result in their clients seeking to gain a distinct advantage by filing the case in that court where it will have the best chance of success. While the phenomena of overlapping jurisdictions have existed since the introduction of legal systems, it appears that claimants' intentional choice of forum is a more recent development and has increased in frequency and variety.

DETRIMENTAL EFFECT OF FORUM SHOPPING ON THE LEGAL SYSTEM

It is generally agreed upon that selecting a forum could unfairly favor the plaintiff and adversely affect the respondent when it is to governing laws. When the plaintiff selects a forum as per his needs and convenience, it can cause inconvenience to the defendant. For example, if the plaintiff sues the defendant in his home jurisdiction or in the court which is closest to his residence, then the defendant will have to travel to that court on the date of hearings bearing all the expenses.

In such cases, the doctrine of *forum nonconveniens* comes into play. The courts apply this doctrine when the plaintiff's choice of forum distresses or otherwise oppresses the defendant.

Forum shopping can also have a detrimental impact on the 'efficiency' of the proceedings of the court. If the hearings are conducted in a jurisdiction that is not connected to the facts of the case, this may incur additional expenditures and the speed of the proceedings would be hampered. The task of the court, which is fact-finding, is complicated by the challenges faced in receiving and inspecting the evidence and it eventually affects the correctness of the court's decision. Enforcement of the court's decision is also affected. It may have some complications if the decision is given by a court and the defendant does not own any assets in its territorial jurisdiction. There can be various reasons for the same, and one of them can be that, the court of the territorial jurisdiction in which the enforcement was ordered, does not agree with the enforcement, it may consider the decision unfair as per its views. While forum shopping, the plaintiff may fail in considering these factors and it will ultimately be detrimental to him.

Forum shopping also overburdens the courts. When a court hears a case that lies outside its territorial jurisdiction due to the tactics of the plaintiff and it should be heard by another court, it creates an additional burden. It also creates a disparity in the workload of separate courts. By fostering a sense of bias or favouritism, it might threaten the legitimacy and authority of judges and courts.

CONCLUSION

It can be deduced that the courts do not tolerate this practice. Even though the courts impose charges to deter litigants from abusing the process of law, it is still prevalent. The petitioners still use this method in order to manipulate the court and get a favourable order. The main issue is that there is no law or rule which restricts this practice. Forum shopping is a trend that cannot be banned completely. It will be practised by the litigants trying to gain a favourable outcome from a particular judge or a particular court. But it can be reduced with the help of laws. A rule must be created by the Parliament in which if a petitioner is found to be indulging in forum shopping, he would be fined a particular amount and if he is found repeating the same, the fine would increase substantially. The practice of forum shopping should be prohibited in Indian

laws like 'res judicata' regulating this practice is solely dependent on the courts and the petitioners take advantage of the same. It is simply termed as an 'abuse of the process of law'.