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Certificate in Legal Awareness (CLA)

CLA-03

Cyberspace Technology and Social Issues

Block – II

Social Issue in the Regulation of Cyberspace

UNIT-6 The Regulability of Cyberspace

UNIT-7 E-Governance

**UNIT-8 Issues Concerning Democracy, National Sovereignty,
Personal Freedom**

UNIT 10 THE REGULABILITY OF CYBERSPACE

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10.1 INTRODUCTION

Internet is not a physical or tangible entity but rather a giant network which interconnects innumerable smaller groups of linked computer networks. The term 'online' (relating to the form of communication and its mode of transmission by telecommunication lines) can also be used. There has been a rapid increase in the use of the online environment where millions of users have access to internet resources and are providing contents on a daily basis. This content can be accessed from any computer connected to the network

though the content may be actually stored on a number of different computers or 'servers' which need not be in the same jurisdiction as the person who is accessing the material. Internet users may be completely unaware where the resource being accessed, is in fact physically located. This computer networking has been very helpful for businesses of all types for a variety of commercial transactions and consumer services. Apart from transactions involving physical goods, delivery of digitized information products such as music, photographs, novels, motion pictures, multimedia works and software can also be done online. In future also it leads to an increase of economic and creative interactions and inevitably also leads to expansion of disputes involving acquisition, use, possession, processing and communication of information.

The rules for regulating business interaction in a country are different from rules for online commerce. Every country in the world is regulated by law, which is the primary source of regulation. Social norms which guides ones behaviour also function as secondary regulatory constraint. The third constraint is the market which regulates through price mechanism by limiting the amount which a person can spend on different needs; another constraint may be the nature of the world in which we exist. In the real world, the person or the entity with whom interaction relating to business is going on can be located; and thereby the validation of a transaction is facilitated. But in Cyber Space it is very difficult, since parties to a transaction may be sitting in adjoining rooms or in distant locations but the network offers no way to know it. It is often argued that cyberspace is unavoidable but it is not regulable, its behaviour can't be regulated. According to Dr. Dan L. Burk, Assistant Professor of Lawseton Hall University, there is simply no coherent homology between Cyberspace and real space, and screening or blocking of Internet resources by country is nearly impossible. On the other hand it is argued by Lawrence Lessing in his article, "The Laws of Cyberspace", that Cyberspace has the potential to be the most fully and extensively regulated space that has ever been known – anywhere at any time in our history. According to him just as in real space, behaviour in Cyberspace is regulated by four sorts of constraint i.e. law, social norms, market and codes (also called architecture).

Every technological revolution brings with it a new spate of legal issues and legal problems to be addressed. The real purpose of our study is to stress the need for regulation of Cyberspace and the possibility and scope of its regulation.

10.2 OBJECTIVES

After studying this unit, you should be able to:

- explain the need and desirability for regulation of internet content both in developed and developing countries;
- discuss that in relation to harmful content on on-line services, the greater emphasis is on self-regulatory scheme of industry governance;
- discuss the nation's legal policies and framework for regulating cyberspace;
- state the desirability for international framework of principles, guidelines and rules for global communication; and
- discuss the need for coordinated national, if not international criminal laws to deal with illegal content on online services.

10.3 DESIRABILITY OF REGULATION OF CYBERSPACE

10.3.1 Need for Regulation of Cyberspace

The following reasons can be cited in favour of the above proposition:

- 1) The most visible and readily sensational concern is about the use of internet particularly for the distribution of obscene, indecent and pornographic content. The use of internet for child pornography and child sexual abuse and the relative ease with which the same may be accessed calls for strict regulation.
- 2) The challenge that Cyberspace is posing to traditional notions of jurisdiction and regulation is another factor. The increasing business transaction from tangible assets to intangible assets like Intellectual Property has converted Cyberspace from being a mere info space into important commercial space. The attempt to extend and then protect intellectual property rights online will drive much of the regulatory agenda and produce many technical methods of enforcement.
- 3) With the inventions of new technologies, the media has enhanced the possibility of invasion of the privacy of individual and bringing it into the public domain. The major area of concern where some sort of regulation is desirable is data protection and data privacy so that industry, public administrators, netizens, and academics can have confidence as on-line user.
- 4) Encryption is the process of converting a message or document into a form which hides the content of the communication from the eyes of an eavesdropping third party and needs to be decrypted if its content is to be read. New cryptographic techniques (cryptography is the process used to encode/encrypt electronic information) are commonly cracked in a relatively short time by computational force or by other analytical means. Therefore another area in which regulation has assumed importance is in the debate over whether the public should be permitted to use 'cryptography' or not.
- 5) Internet has emerged as the 'media of the people' as the internet spreads fast there were changes in the press environment that was centered on mass media. Unlike as in the established press, there is no editor in the Internet. In the press and publication environment, editors check the truthfulness of facts and circulate them once the artistic values are confirmed. On the internet however, people themselves produce and circulate what they want to say and this direct way of communication on internet has caused many social debates. Therefore the future of Cyberspace content demands the reconciliation of the two views of freedom of expression and concern for community standards.
- 6) Another concern is that, money laundering, be 'serious crime' becomes much simpler through the use of net. The person may use a name and an electronic address, but there are no mechanisms to prove the association of a person with an identity so that a person can be restricted to a single identity or identity can be restricted to a single person. Viruses, rumor-mongering, hate-mail and mail box bombardment are all describable phenomena and because of the fear of retribution all are more likely to use fake identity or may be anonymous mailers rather than a readily identifiable person. Therefore Cyberspace needs to be regulated to curb this phenomenon.

Please answer the following Self Assessment Question.

Self Assessment Question 1

Spend 3 Min.

Describe the need for regulation of cyberspace?

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10.4 HOW CYBERSPACE CAN BE REGULATED

In “Code and other Laws of Cyberspace”, Lawrence Lessing argues that the architecture (code) of the internet i.e. The hardware and software of Cyberspace that define the system can be a form of regulation. It is a set of rules implemented or codified in the software by the code writers, requiring the constant certification of identity.

In “A Non delegation doctrine for the digital age” (Cited: 50 Duke L.J. 5), James Boyle argued that regulation of the internet can increasingly rely on a three fold strategy:

- i) Privatization: The state can use a private body to achieve those goals which it could not get directly and then implement that body’s decision through mandatory technological arrangements. For e.g. for Copyright enforcement in Cyberspace, the Clinton administrations original plan was to make Internet Service Providers (ISPs) strictly liable for copyright violations by their subscribers – thus creating a private police force, largely free of statutory and constitutional privacy constraints with strong incentives to come up with innovative surveillance and technical enforcement measures.
- ii) Propertization: According to him, first of all an attempt is to be made to extend and then protect intellectual property rights online. This will produce many technical methods of enforcement.
- iii) Technological Controls the system is to be designed so as to hardware in desired regulatory features. For e.g. Digital texts and music could be encoded to a particular person. Detection devices could be built in to players, so that others cannot play one’s music. Unique identifiers could be built into computer chips, so that a person’s computer would broadcast a universal ID with an associated set of legal characteristics as you roamed the net.

Blocking software or Internet contents grading system are other forms of regulations based on technology. In Korea, the government has started the internet contents grading system. The system forces the sites designated as 'content harmful to minors' to attach an electronic tag that the blocking software can catch. Especially the Korean government categorises homosexual sites as content harmful to minors and those sites are often blocked.

10.5 LEGAL AND SELF REGULATORY FRAMEWORK

In any country the role of government is seen as the provider of legal and regulatory framework within which its subjects have to function. In this context of regulation of cyberspace it can be said that the Internet's design precludes central control which may be regulated by government to make the information economy safe, secure, certain and open. Rather in the last few years outstanding progress has been made in identifying appropriate structures for industry self-regulation with the minimum appropriate level of government intervention. The development of technology to permit content labeling and the early growth of complaint hot lines in a number of countries have helped to provide the ingredients for self-regulatory schemes. Here we will discuss some of the major developments in the area of national and international cooperative, major developments for effective online industry regulation in various countries, and end-user voluntary use of filtering/ blocking technologies. This approach is taken in United Kingdom, Canada, New Zealand and a considerable number of Western European countries.

But the idea that Cyberspace should be presumptively self-governing has resounded in thoughtful scholarship and has been criticized by many scholars and it has been argued that the selective government regulation of Cyberspace is warranted to protect and promote liberal democratic ideas. However in this unit we will not go into the jurist's debate whether Cyberspace can be self regulated or not but try to find out the possibilities in the existing legal framework in various countries for regulating internet content.

10.5.1 Filtering Devices and Rating Systems

'Filters' are software tools used to block access to unwanted material. By the 1990's, concerns about problematic content on on-line services had prompted the development of a range of content filter software and rating systems including the Platform for Internet Content Selection ('PICS'); for example, E-mail filters automatically delete the bulk of unread e-mail messages commonly known as 'spam' and can also be customized to delete incoming messages from particular sources. There can be site blocking filters to screen out specified websites or websites containing specified keywords that the system presumes to relate to other objectionable content. Site blocking filters also may use a protocol 'PICS' developed by the World Wide Web Consortium ('W3C') to develop common protocols for the World Wide Web's evolution and ensure its interoperability. Organizations in several countries have established labeling schemes, which conform to the PICS standards, designed for use by parents and schools. For example, RSACi (Recreational Software Advisory Council labeling scheme for the Internet) rating system addresses the level of violence, sex, nudity, and language on a website and operates as a classification of the content on an Internet site rather than making a judgment about its appropriateness for any given audience or purpose. Such an approach has advantages over those filtering programmes that operate on a keyword basis to exclude offensive

material but inevitably, a significant amount of useful, inoffensive content is also blocked. However its major disadvantage is that it is limited to rating functions, rather than more general information. Consequently, it is not adapted to perform more complex information retrieval searches. Other labeling schemes are Safe surf, Cyber Patrol and SurfWatch.

In 1997 W3C created the 'Metadata Activity', which includes the Resource Description Framework (RDF) Working Group. RDF is a protocol for description of Internet content based on a set of 105 'categories' of information, known as the 'Dublin Core', which is used to Filter out obscene content. However it does not deal with controversial content or aim to protect children from harmful content, but describes those aspects of content such as authorship, publishers, date and source in a similar way to that developed by library catalogues and facilitates more effective searching. Examples of its applications include search engine data collection and digital library collections. Therefore it has not been widely used as an alternative to those schemes that eliminate content on the basis of controversial content alone (see speech by Gareth Grainger).

Please answer the following Self Assessment Question.

Self Assessment Question 2	<i>Spend 3 Min.</i>
What do you mean by the term filters? Give examples.	
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10.6 GOVERNMENT POLICIES AND LAWS REGARDING REGULATION OF INTERNET CONTENT

According to Electronic Frontiers Australia (EFA, March 2002) report on government policies regarding internet censorship in various countries, government policies can be classified into the following four categories:

- 1) The policy to encourage self regulation.
- 2) Criminal law penalties (Fines or Jail Terms) applicable to content providers who make content "unsuitable for minors" available online.
- 3) The government has also mandated blocking of access to content deemed unsuitable for adults; for example Australia, China, Saudi Arabia, Singapore etc.
- 4) A number of countries have either prohibited general public access to the internet or require internet users to be a registered / licensed by a government authority before permitting them restricted access.

However concerns over access to content on internet vary markedly around the world and this is reflected by the respective regulatory policies, which we will now discuss below.

10.7 REGULATION OF CYBERSPACE CONTENT IN THE UNITED STATES

The exponential growth in the usage of on-line services in the United States in the late 1980s and early 1990s led to demands for its operations to be regulated.

10.7.1 Communications Decency Act 1996 (CDA)

The Section 502 of the CDA amended sections 223(a) and (d) of Title 47 of the United States Code ('USC'). It prohibits the making and transmission of obscene or 'indecent' material to a minor by means of a telecommunications device, and the use of an interactive computer service to send or display 'patently offensive' material to minors. The provisions also prohibited a person from knowingly permitting a telecommunications facility under that person's control to be used to commit these offences. However Supreme Court in *American Civil Liberties Union v, Janet Reno, Attorney General of the United States; American Library Association, Inc. v, United States Department of Justice* (the 'CDA Case', 1997) declared unconstitutional the above two statutory provisions as a violation of both freedom of speech and personal privacy.

10.7.2 Internet Online Summit (December 1997)

One of the consequences of the US Supreme Court's rejection of the CDA in July 1997 was the calling of an Internet on-line Summit, entitled 'Focus on Children', to examine alternative strategies to promote children's interests on-line. The Summit's main focus was on the issue of appropriate content for children and personal safety, it also emphasized the need to enforce existing obscenity laws and laws against child pornography. At the Summit, the US Internet Service Provider ('ISP') industry announced its new 'zero tolerance' policy against child pornography, involving full cooperation with law enforcement agencies, and the use of the Cyber tip line also announced at the summit. Strategies for specialist training for police officers in the investigation of computer crime were put forward.

10.7.3 COPA

In 1998 US Congress enacted Children Online Protection Act (COPA), which was very narrow in scope and covered only communications that were made for commercial purposes on the World Wide Web but the same was struck down by Supreme Court in *Aschcroft vs American Civil Liberties Union* (2004).

10.7.4 CIPA

In 2000 Children Internet Protection Act (CIPA) was passed. This Act requires the schools and libraries to install filters on computers used by minors and adults.

10.7.5 Other Related Legislation

The two legislations which need to be mentioned here are:

- i) Uniform Electronic Transactions Act, 1999 (UETA) - to remove barriers to electronic commerce by validating and electronic records and signatures. However the substantive rules of contract remain unaffected by it.

ii) Uniform Computer Information Transaction Act, 2000 (UCITA)

According to UCITA, for a transaction to be 'Computer Information Transaction', the main focus of the transaction must be acquiring the computer information, access to it, or its use and not a mere incident of another transaction. The act applies to contracts for the development or creation of computer information, such as software development contracts and contracts to create a computer database. This Act does not apply to many cases in which one person provides information to another person for another transaction such as making an employment or loan application.

10.8 REGULATION OF CYBERSPACE CONTENT IN AUSTRALIA

In Australia, the growth in the use of the Internet and the concern for abusive content on the internet led to the establishment of the Australian Broadcasting Authority ('ABA') which was established pursuant to the Broadcasting Services Act 1992 by the Commonwealth of Australia for the regulation of broadcasting media in Australia. The ABA's 1996 report on content of on-line services, recommended in favour of a scheme of industry substantial self-regulation for on-line services with voluntary codes of practice supported by the labeling of on-line content using PICS and identified the advantage of PICS protocol in Australia. Following on from this Report, on 15 July 1997 the Australian Minister for Communications and the Arts and the Australian Attorney-General announced 47 principles for a national approach to regulate the content of on-line services (Internet), 'inferring' towards the view that 'material accessed through on-line services should not be subject to a more onerous regulatory framework than 'off-line' material such as books, videos, films and computer games'. For the investigation into matters relating to future regulatory arrangement of online services ABA formed a children and content online task force which works in three key areas (a) contact and safety issues (b) illegal content and (c) unsuitable content areas that affect children and has also developed a set of practical recommendations, aiming to address this.

Broadcasting Services Amendment (Online Services) Act, 1999

This Act came into force on January 1, 2000. There is a provision for additional access prevention method other than ISP blocking of overseas hosted material at server level.

10.9 REGULATION OF CYBERSPACE CONTENT IN EUROPEAN UNION

The approach of a large majority of (perhaps all) European Union Member States in dealing with illegal and harmful content on the Internet appears to be in accord with the 1996 recommendations of the European Commission advocating the use of filtering software and rating systems, and an encouragement of self-regulation of access-providers. In these countries, laws regarding material that is illegal offline, such as child pornography and racist material, also apply to Internet content. With regard to material unsuitable for children, the EU Safer Internet Action Plan covering the period 1999-2002 has a budget of 25 million euro and has three main action lines;

- Creating a safer environment through promotion of hotlines, encouragement of self-regulation and codes of conduct,
- Developing filtering and rating systems, facilitation of international agreement on rating systems,
- Awareness: Making parents, teachers and children aware of the potential of the Internet and its drawbacks, overall co-ordination and exchange of experience.

10.10 REGULATION OF CYBERSPACE CONTENT IN UNITED KINGDOM

In September 1996 UK Government issued R3 Safety-Net action plan (now Internet Watch Foundation, IWF), developed by UK ISP trade associations and where it is agreed by Government involve industry for establishment of complaints hotline and related take-down procedures for illegal Internet content, primarily child pornography. In February 2002, the IWF announced that it would henceforth also deal with “criminally racist content”.

10.10.1 Related Legislation in UK

- 1) Data Protection Act, 1998 for the regulation of processing of information relating to individuals including the obtaining, holding, use or disclosure of such information.
- 2) Electronic Communications Act, 2000 to facilitate the use of electronic communications and electronic data storage.

10.11 REGULATION OF CYBERSPACE CONTENT IN INDIA

In India, cyber laws are contained in the Information Technology Act 2000. The main objective of the Act is to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as e-commerce, which involve the use of alternatives to paper-based methods of communication and storage of information to facilitate electronic filing of documents with the Government agencies.

Digital Signatures [Chapter II]

Any subscriber (i.e., a person in whose name the Digital Signature Certificate is issued) may authenticate electronic record by affixing his Digital Signature. Electronic record means data record or data generated image or sound, stored, received or sent in an electronic form or microfilm or computer generated microfiche.

Electronic Governance [Chapter III]

Where any law provides submission of information in writing or in the typewritten or printed form, it will be sufficient compliance of law, if the same is sent in an electronic form. Further, if any statute provides for affixation of signature in any document, the same can be done by means of Digital Signature.

Similarly, the filing of any form, application or any other documents with the Government Authorities and issue or grant of any licence, permit, sanction or approval and any

receipt acknowledging payment can be done by the Government offices by means of electronic form. Retention of documents, records, or information as provided in any law, can be done by maintaining electronic records. Any rule, regulation, order, by-law or notification can be published in the Official Gazette or Electronic Gazette.

However, no Ministry or Department of Central Government or the state Government or any Authority established under any law can be insisted upon acceptance of a document only in the form of electronic record.

Regulation of Certifying Authorities [Chapter IV]

The Central Government may appoint a Controller of Certifying Authority who shall exercise supervision over the activities of Certifying Authorities.

Digital Signature Certificate [Chapter VII]

Any person may make an application to the Certifying Authority for issue of Digital Signature Certificate. The Certifying Authority while issuing such certificate shall certify that it has complied with the provisions of the Act.

Penalties and Adjudication [Chapter IX]

If any person without the permission of the owner, accesses the owner's computer, computer system or computer net-work or downloads copies or any extract or introduces any computer virus or damages computer, computer system or computer net work data etc. he/ she shall be liable to pay damage by way of compensation not exceeding Rupees One Crore to the person so effected.

The Cyber Regulations Appellate Tribunal [Chapter X]

Under the act, the Central Government has the power to establish the Cyber Regulations Appellate Tribunal having power to entertain the cases of any person aggrieved by the Order made by the Controller of Certifying Authority or the Adjudicating Officer.

Offences [Chapter XI]

Tampering with computer source documents or hacking with computer system entails punishment with imprisonment up to three years or with fine up to Rs. 2 lakhs or with both.

Publishing of information, which is obscene, in electronic form, shall be punishable with imprisonment up to five years or with fine up to Rs. 10 lakh and for second conviction with imprisonment up to ten years and with fine up to Rs. 2 lakhs.

10.12 INTERNATIONAL INITIATIVES FOR REGULATION OF CYBERSPACE

Today there is a need for an international framework of principles, guidelines and rules for global communications for the twenty-first century. In July 1997, the German Government hosted an International Conference in Bonn on the topic 'Global Information Networks', in cooperation with the European Commission. It was attended by Ministers from 29 European Union, EFTA, CCEC and G7/G8 countries as well as by representatives of on-line content providers, access and service providers and users of on-line services. It resulted in the adoption of the 'Bonn Declaration' of the Ministers as well as declarations by industry and user participants.

The Bonn Declaration pointed in the direction of:

- 1) using current national legal frameworks for the enforcement of criminal law provisions where appropriate in respect of on-line crime;
- 2) development by industry of common principles for schemes of self-regulation regarding content of on-line services; and
- 3) establishment of national hotlines for complaints regarding on-line content and for some appropriate interconnection and interaction between national hotlines.

Martin Bangemanns, EC Commissioner in her speech of 8 September 1997 to the International Telecommunications Union in Geneva has pointed out that there is a need for an international charter for global communications, and in particular governing activities carried out over the Internet, could provide a suitable framework covering such issues as the legal recognition of digital signatures, encryption, privacy, protection against illegal and harmful content, customs and data protection. The tools for achieving these objectives would include mutual recognition, self-regulation and, if needed, regulation.

In 29 June 1998, on invitation by Martin Bangemann, business leaders from around the world participated in a discussion on global communication issues, with the objective to explore the need for strengthened international coordination which resulted in the formation of Global Business Dialogue and it was resolved that wherever possible, it should avoid legislation, and concentrate on market-led, industry-driven, self-regulatory models and any regulation should ensure competition. It should focus on a well-defined list of issues on which quick progress can be made with the close cooperation of business, consumer groups and governments of all countries who wants to participate and work on these issues should be industry-led and coordinated with relevant international bodies. Two organizations closely involved in this process were the Transatlantic Business Dialogue and the US-Japan Business Council. Attendance at the first meeting of the GBD's Business Steering Committee took place in New York on 14 January 1999 and consisted largely of representations of major corporations from United States, Europe and Japan. However, the issue of Internet content was not considered amendable to relatively fast solutions by the GBD and so Internet content is not receiving immediate attention from this Group.

In 27 February 1999, the first meeting of the International Network of Experts on Self-Regulation for Responsibility and Control on the Internet was held at New York. This network was brought together by the Bertelsmann Foundation, a charitable foundation which owns the controlling interest in Bertelsmann Corporation, the German media and publications enterprise, as a part of its advocacy of self-regulatory solutions to the problems of Internet content. The three regulatory agencies represented at the meeting were the Australian Broadcasting Authority, the Canadian Radio Telecommunications Commission (by Mr. Ted Woodhead) and the Singapore Broadcasting Authority (by Ms. Ling Pek Ling); all of which are actively dealing with the issues of self-regulation of harmful content on the Internet.

The above study reflects different legal policies in the world for regulation of cyberspace and International efforts to deal with it. However some sort of criminal penalties should also be there in all national laws for which coordinated criminal laws are needed to deal with illegal content on on-line services.

10.12.1 Organization for Economic Cooperation and Development (OECD)

The OECD an international organization working in the area of data privacy and information security, established an ad hoc process of meetings (the first was on 1-2 July 1997 and second on 22 October 1997) on approaches being taken in major industrial countries for the regulation of content conduct on the Internet. The meeting acknowledged the primary role of the private sector in regulating the Internet. However at the joint OECD/Business and Industry Advisory Committee forum held on 25 March 1998 in Paris, the OECD resolved to do no further work in this area. On 19 April 2006, OECD task force on spam has recommended that Governments and industry should step up their coordination to combat the global problem of spam. It calls on governments to establish clear national anti-spam policies and give enforcement authorities more power and resources. Co-ordination and co-operation between public and private sectors are critical, the report notes.

10.12.2 UNESCO

The United Nations Educational, Scientific and Cultural Organization (UNESCO) was founded on 16 November 1945. At the 29th UNESCO General Conference held in Paris from 21 October to 12 November 1997 the Director-General of UNESCO made a preliminary report on the feasibility of an international instrument on the establishment of a legal framework relating to cyberspace. It recommended the preservation of a balanced use of language on cyberspace, which represented the concern of non-Anglophone countries at the domination of English as the language of the Internet. Today, UNESCO functions as a laboratory of ideas and a standard-setter to forge universal agreements on emerging ethnical issues: the organization also serves as a clearing house – for the dissemination and sharing of information and knowledge – while helping Member States to build their human and institutional capacities in diverse fields.

Please answer the following Self Assessment Question.

Self Assessment Question 3

Spend 3 Min.

State whether the following statements are true or false:

- a) In Australia, government has mandated blocking of access to content deemed unsuitable for adults.
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- b) In Korea, the government has no system of Internet content grading.
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- c) Australian Broadcasting Authority and Singapore Broadcasting Authority are the only two regulatory agencies in the meeting of International Network of Experts (Feb, 1999).
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Let us now summarize the points covered in this unit.

10.13 SUMMARY

- There has been rapid increase in use of internet for various types of commercial transactions and consumer services.
- For the safe carriage and conduct of Cyberspace, regulation ought to be identified as appropriate and necessary.
- The necessity arises due to the expansion of economic and creative interaction which in term led to disputes involving acquisition, use, possession, processing and communication of information.
- The use of internet for obscene, indecent and pornographic content, rumor mongering, viruses, cyber crime, possibility of invasion of privacy of individuals, all this emphasized the need for cyberspace regulation.
- Legal policies in various countries like USA, UK, European Union, and New Zealand show that in the context of regulation of Cyberspace more emphasis is on self regulation through use of filtering/blocking technologies.
- There is need for coordinated international guidelines and principles to regulate cyberspace.
- International organizations such as OECD and UNESCO can play an important role in framing international regulatory framework for internet.

10.14 TERMINAL QUESTIONS

- 1) Discuss the need for Cyberspace Regulation.
- 2) What are government policies and laws regarding Cyberspace Regulation in USA, India and UK?
- 3) “Internet design precludes central control by government rather an attempt has been made for industry self regulation.” Comment.

10.15 ANSWERS AND HINTS

Self Assessment Questions

- 1) Yes, there is a need for regulation of cyberspace. The use of internet for distribution of obscene, indecent and pornographic content, and child pornography; increasing numbers of business transactions through internet and issue of intellectual property rights; issues of privacy and emerging cyber crimes are major areas of concern today that point towards the need to regulate cyberspace.
- 2) ‘Filters’ are software tools used to block access to unwanted material. Examples are E-mail Filters, Site Blocking Filters.
- 3) (a) True, (b) False & (c) False

Terminal Questions

- 1) Refer to section 10.3.
- 2) Refer to section 10.7, 10.10 & 10.11 of the unit.
- 3) Refer to section 0.5 – 10.12 of the unit.

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UNIT 11 E-GOVERNANCE

Structure

- 11.1 Introduction
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- 11.4 Components of E-governance
- 11.5 Rationale for E-governance
- 11.6 Benefits of E-governance
- 11.7 E-governance Initiatives in India
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11.1 INTRODUCTION

This is perhaps one of the most interesting times when we are undergoing such significant changes in the way we live and operate as a society. We have witnessed phenomenal changes in societies around the world in a very short period, and the source of agents of some of these changes is new technologies and the Internet. In the past decade and a half we have seen every aspect of the lives of individuals and organizations go through many transformation evolutions. Large, medium and small corporations alike have discovered the need to adapt to the new technologies, or sink in the emerging global knowledge economy. There is no facet of life in the industrialized and developing world that has not undergone some form of alteration. The resultant new information economy has brought with it different approaches to work. There has been a surge in tele-workers, entrepreneurs and home-run businesses. Corporations have downsized, and knowledge workers migrate from company to company, open to the highest bidder and the organization with the best deal. The highly proficient, intelligent and innovative knowledge worker is in demand. Knowledge itself seems to have become a commodity in the marketplace of ideas. We now live in an intensely information driven society.

Nowhere has this been more evident than with government, who constantly have to cope with the persistently emerging new technologies and new demands from citizens. In today's wired world, the interactive citizen is one of the fundamental cornerstones of change. Governments can no longer simply be dispensers of information. New technologies are being used not only to deliver services to the public but also to enhance government administration and facilitate businesses. Information sharing is of particular relevance to developing countries. The application of IT to government processes, E-governance in short, can have a profound impact – on the efficiency, responsiveness and accountability of government; thereby, on the quality of life and productivity of citizens, especially the poor and ultimately, on the economic output and growth of the country as a whole.

11.2 OBJECTIVES

After studying this unit, you should be able to:

- explain the concept of E-governance, and its various components;
- know the rationale for E-governance;
- list the benefits of E-governance;
- describe E-governance initiatives in India and its objectives;
- know the legal framework for E-governance in India; and
- describe what are the challenges in implementation of E-governance.

11.3 CONCEPT OF E-GOVERNANCE

E-governance is the short form of 'electronic governance'. Governance includes those processes and systems by which an organization or a society operates. Within the context of any institution or society, governance describes the mechanism through which decisions are made and implemented in order to conduct the affairs of that organization or society. Governance may be defined as the way society works and is organized.

If governance is done through the use of Information and Communication Technology (ICT) it is said to be E-governance. Thus in general E-governance denotes use of ICT in any organization i.e. governing through electronic mode. But the term is now used with a particular meaning and in a particular context. Increasingly E-governance is used to refer performance of governmental function through the application of ICT, the most well known part of which is 'internet'. The term E-governance refers to governance processes in which Information and Communications Technology (ICT) play a significant role. The role played by ICT could be wide-ranging: from delivery of governance services, to how people access such services, and the participation of people in the sphere of governance. E-governance uses ICT to induce changes in the delivery and standards of governance services and more importantly, in the way citizens interact and participate in governance. The meaning and use of the term E-governance is with reference to the functions which are being performed by the Government of any country. In common parlance there are two terms which are quite often used interchangeably: E-government and E-governance.

However the scope of the later term is broader than that of the former. E-government is the use of ICT to provide access to and delivery of government services to benefit the general public. E-government thus provides citizens the ability to obtain government services through electronic means, enabling access to government information and completion of government transactions on an anywhere, anytime basis. The idea is simply to create the capability for providing the citizens access to government departments through electronic networks. In fact through E-government the following objectives are achieved:

- i) Achieving visibility i.e. the general public comes to know about that organ of Government. Most of the sites maintained by State provide certain basic information and profile of that state.
- ii) On-line access to information in public domain. Knowledge of laws, rules and regulation reports of various commissions etc. are being provided by Government on-line now.
- iii) Completing transaction on-line like filing of tax returns, driving-licences, passport etc.

Thus through E-government, the broader objective of paper-free and hassle-free government offices is achieved.

With the implementation of E-governance, though many of the citizen's worries can be solved, the ultimate goal is to achieve 'good-governance'; a government in which people have active participation, a government which is transparent, responsive, effective and result-oriented. It is the ICT internet in particular, with its capacity to break the barriers of time and distance and to bring together a wealth of information from a virtually unlimited number of sources, that has the potential to transform traditional governance and to achieve good-governance. Thus comes the concept of E-governance, i.e. use of ICT to ensure the citizen's participation in governance and allowing him/her to communicate with the government. The E-governance will truly allow citizens to participate in the government at decision and policy-making process, reflect their true needs and welfare by utilising E-government as a tool. In simple words, E-governance is the use of ICT by Government to deliver information and services, to encourage citizen's participation, to redress public grievances and to make its machinery more responsive, accountable and effective. In fact, through E-governance, the aim of SMART governance is to be achieved:

Simple – Because there are no elaborate procedures, no paper work and no need for frequenting government offices.

Moral – The system is cleaned up of corruption and other unethical practices.

Accountable – Since all the information is in public domain, government's accountability enhances.

Responsiveness – Through the use of ICT; Government can be in regular touch with the masses and get their feedback.

Transparency – The information which was shrouded in secrecy within dark file chambers will become available to all on the click of a mouse.

Please answer the following Self Assessment Question.

Self Assessment Question 1	<i>Spend 3 Min.</i>
'E-governance is the application of ICT to governmental processes'. Do you agree?	
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11.4 COMPONENTS OF E-GOVERNANCE

In order to make E-governance effectual ICT is to be applied not only between government and citizens and within various levels of government, but also between different interest groups like business, NGOs etc and the Government. Following are the main components of E-governance:-

1) Government-Citizen Interface

This is the primacy component of E-governance since the citizens are mostly a harassed lot in their dealings with the Government. One of the most promising aspects of the E-governance is its ability to bring citizens closer to their governments: both as voters and stakeholders or as customers who consume public services.

As voters and stakeholders in a democratic country like ours, citizens can be given access to the information relating to government policies, programmes etc. run for their welfare. The citizens can give their feedback on-line and they can also suggest measures to enhance effectiveness of government policies and programmes.

Citizens are also consumers of a number of Government services. E-governance initiatives can attempt to make transactions such as renewing licences and certifications, paying taxes etc. less time consuming and easier to carry out.

2) Government – Government Interface

Government itself is a very complex structure and it is divided into various ministries and departments. In addition to central government there are also state governments and local governments. There communication gaps and lack of proper coordination can result in ineffective administration, delays etc. Government to government interface via internet will ensure speedier flow of information, instructions, and compliance reports hence ensuring smooth functioning at all levels of government.

3) Government – Business Interface

The use of ICT will cause business and government to come closer. In a country like India where there is a mixed economy, the role of Government is to give directions for economic development. It sets policy guidelines and targets (in terms of GDP etc.) which both the public and private sectors strive to achieve. With the smooth flow of

information and instructions to and for there would be better understanding and coordination between business and government.

4) **Government – Employee Interface**

This is yet another important aspect of governance because employees working in government departments form the backbone of the whole system of Governance. Be it a military personnel or a clerk in a government department, each has got its own role to play and hence there is the need for communication between the Government and its employees.

5) **Government – Society Interface**

In any society there are various interest groups such as trade unions, political parties and now more importantly NGOs. NGOs have, over a period built for themselves a special role in our democratic setup. They are now entrusted with a range of tasks in the welfare of society right from poverty alleviation to health care, environment protection etc. With the use of ICT, Government can maintain regular communication with society.

11.5 RATIONALE FOR E-GOVERNANCE

ICT is an effective tool for bringing revolutionary changes in governance. E-governance ensures that citizens can avail of governmental services easily and can participate in governmental policy making processes. The citizens are no longer merely passive recipients of government services. They have a say about the types and standards of government services they want and the governance structures which can best deliver them. The modern state is a welfare state and the emphasis is on good-governance. The rationale of E-governance is its capacity to provide good-governance. The Government has to be responsive, transparent, allowing participation of citizens, consensus oriented, effective, efficient and accountable. Now the question is how the same can be ensured? How can government become more responsive and accessible? How can it improve services, health care and education? These questions can be adequately answered through the adoption of E-governance. E-governance has been widely accepted as a methodology to improve transparency, administrative efficiency, and public services, to provide citizens new governmental services and bring new sections of society under the governance sphere, like the differently abled. Let us examine in some detail the role of E-governance in the promotion of democracy & citizen's participation.

E-governance & Democracy

The first important role which E-governance can play in promoting democracy is that of building government accountability and transparency in decision making so that there is increased citizen's trust in government. E-governance makes governance more representative, more individual based and pro-active. It does not require an individual to come to the government for services. It leads to closer contact of individuals with decision-makers and hence greater access and control over governance thus leading to more transparent, accountable and efficient governance. To effectively involve various stakeholders like political parties, interest groups, NGOs, business, and interested citizens in the governmental process, is another big challenge which can be met through E-governance. For this purpose, online consultation portals can be developed. The Governments of United Kingdom, Canada, and New Zealand have special portals to promote open consultations across their governments.

E-governance and Information Sharing

Information Sharing is a democratic tool. It has been said that access to information is power. Those who have access to information can use it selectively to create hierarchical structures in the society resulting in unequal distribution of power. Limiting access to information to a few will open up possibilities for manipulation of information for private gains. Hence it is necessary that there is equitable distribution of information and information sharing is an essential activity for governments in E-governance. Information sharing will become an essential part of the democratic process as governments become more open and accountable. ICT has created new expectations and citizens are now beginning to demand accountability and better access to government information. Sharing information with public will bring more accountability as well as other benefits to the public.

E-governance and Greater Citizen Participation

Governments can ensure increased citizen participation through E-governance. This can be done by making more information available online, seeking input from people on government programmes & issues online and encouraging online discussion groups on important national issues, providing grants to organizations seeking online democratic activities etc. While doing this, care is to be taken of the special needs and local community requirements. Thus developing easy-to-use websites to facilitate seamless access by citizens is necessary in villages. Effort should be made to develop information policies embracing all levels of society.

From the above discussion it is clear that E-governance can go a long way in promoting greater citizen participation and in strengthening democracy. This provides the rationale for investing in E-governance.

11.6 BENEFITS OF E-GOVERNANCE

In this part we attempt to examine the reforms which can be made in the administrative process through E-governance. This will spell out the benefits of E-governance. The reforms in the administrative process have focused on restructuring the systems and processes to enhance service delivery capacity. ICT can be used to give further impetus to this process. ICT can help in the following manner:-

- 1) **Automation of Administrative Processes:** Till now the administrative process has been largely manual and involves a large bureaucratic structure. ICT can be used to make this system automatic. There are various tasks in government offices which are repetitive in nature for instance, filing of forms, periodic information reporting etc. These tasks can be automated to save time and effort.
- 2) **Workforce Reduction:** The present governmental structure is a behemoth. The government employs a large work force for its various functions. Truly e-governed system would require minimal work force and would be system driven. The resultant spare work force can be engaged in more productive tasks.
- 3) **Better Service Delivery:** E-governance would integrate various departments to provide a single point of delivery of services to citizens. Service delivery at the click of a button is possible. Also there would be quality control because the delivery of services will be open to public scrutiny and criticism. This type of constant monitoring may enhance the quality of services. ICT reduces the costs involved in the production and delivery of services making them cheaper.

- 4) **Technical & Supportive Role:** ICT can be used to create a paper free or a least paper office. It is possible to store the entire information of the whole office in the hard disc of a computer. This support to the office work will be of immense importance since now there is no need to physically carry the files or to search for them. E-mails can be used for communication between different locations almost instantaneously and record of which is also available.
- 5) **Transparency:** E-governance aims at providing information to all without discrimination. ICT makes it possible to quickly disseminate information through the use of websites and portals. This makes the systems transparent too, which subsequently enhances accountability and ensures a corruption free government.
- 6) **Economic Development:** E-governance can bring economic development to the remote areas of the country. For example, most of the rural areas suffer on account of lack of right information regarding the markets, products, agriculture, health, education, weather, etc. and if all this could be accessed through connectivity and IT, this would bring in more opportunities and thereby prosperity to these areas.
- 7) **Social Development:** E-governance brings all-round changes not only in the governance but also in society. As a result of economic growth, there is improvement in the living standard of people. Better access to information empowers the citizens. As the government becomes more citizen oriented and there is also greater participation the concerns of society are voiced, which can be accommodated in programme formulation, implementation, monitoring and finally service delivery.
- 8) **Innovative Role:** E-governance can be used to initiate new governance services or new mechanisms for improved service delivery. For instance, online checking of the status of an application (from remote and beyond office hours); providing instant access to the same information to all individuals through e-mails and website etc.
- 9) **Change in the Administrative Culture:** E-governance will change the administrative culture by making it more open, transparent, accountable and responsive and citizen oriented. With E-governance, actions of public functionaries come under public scrutiny and this would certainly induce accountability and change in the administrative culture.

Given below is a brief comparison of the two models:

Conventional Governance vs E-governance

Basis	Conventional Governance	E-governance
Nature	Secretive	Transparent
Power Structure	Hierarchical	Horizontal/Networked
Response	Passive and Slow	Pro-active and Quick
Communication	One Way	Direct / Immediate
Emphasis	Compliance	Achieving Targets

The above table gives us an idea of the advantages of E-governance over the traditional system. Now we can say that E-governance is a far better system than the present system. Due to this reason the governments world over are switching to E-governance. We shall now examine the position of E-governance in India.

Please answer the following Self Assessment Question.

Self Assessment Question 2	<i>Spend 3 Min.</i>
Do you think that E-governance is better than the conventional system?	
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11.7 E-GOVERNANCE INITIATIVES IN INDIA

The E-governance initiatives in India are of recent origin. ICT's application to the governments' functioning aims to bring about the system of governance that works better costs less and is capable of fulfilling the citizen's needs effectively. For India, ICT provides an opportunity to overcome obstacles of vast size, population and resource crunch to become a developed nation. The E-governance initiatives in India aim at achieving the following objectives:

- 1) Efficient delivery of government services to citizens and business;
- 2) Better dissemination of government information;
- 3) Improved revenue collection and budgetary controls;
- 4) Providing access to government services through a single window;
- 5) Speeding up transactions;
- 6) Transparent functioning and zero corruption;
- 7) Reduction in the procedural and postal delays involved in the system.

11.7.1 National E-governance Action Plan

In order to implement E-governance Government of India has approved a policy framework in the form of the National E-governance Action Plan. The plan seeks to provide policy guidelines to create the mechanisms for E-governance. A number of projects has been envisaged under the plan in order to create citizen friendly governance. States are to be encouraged to adopt E-governance. Under the plan common service centers has been envisaged for the delivery of services. Emphasis has been laid on quality and speed of implementation of the plan and connectivity is to be extended up to block level. The plan seeks to cover major areas of governance like taxes, passport,

land records, agriculture markets and the like. The plan envisages creation of right environments to implement G2G, G2B, G2E and G2C services.

11.7.2 E-governance Initiatives at National Level

In the recent past Government of India has taken a number of initiatives to implement E-governance. The Government has set up National Informatics Centre (NIC) under the Department of Information Technology as the specialized body to provide the network backbone and E-governance support to Central Government, State Governments, UT Administrations, Districts and other Government bodies. Almost all the Government departments now maintain web presence. Following is the list of certain projects undertaken at central level:

- 1) India Image (Government of India Portal)
- 2) Agricultural Marketing Information Network (AGMARKNET)
- 3) Central Passport System
- 4) Community Information Centres (CICs)
- 5) Computerised Rural Information Systems Project (CRISP)
- 6) Court Information System (COURTIS)
- 7) Department of Agriculture Network (DACNET)
- 8) Examination Results Portal
- 9) Land Records Information System (LRIS)
- 10) National Hazardous Waste Information System (NHWIS)
- 11) Public Grievance Redress and Monitoring System (PGRAMS)

11.7.3 E-courts: ICT in Judiciary

The administration of justice is another field where ICT can be of much help in solving many problems. Most of the bottlenecks related to delays, arrears and backlog can be partly overcome if ICT is used for case & docket management. First National Judicial Pay Commission (popularly known as Shetty Commission) has recommended the following areas where IT will be useful:

- a) Legal information databases
- b) On line query system for precedents, citations, codes, statutes etc.
- c) Generation of cause list and online statistical reports
- d) Online caveat matching
- e) Online updating of data, monitoring and “flagging” of events
- f) Pooling of orders and judgments
- g) Daily list generation with historical data of each case
- h) Word processing with standard templates including generation of notices/processes
- i) Access to international databases

j) Feed back reports for use at various levels.

With the help of the National Informatics Division much of the above mentioned information is available now on the net.

11.7.4 E-governance Initiatives at the State Level

The state governments have also realised the importance of E-governance in improving the performance of the system. Various initiatives have been taken by them. These initiatives aim at improving the quality of life in the backward areas of the country, better dispensation of services, and collection of inputs from the public for taking policy decisions. A list of some of these initiatives have been given in **Appendix-A**. The services which have been made available range from online revenue record, payments of bills, applications to departments, online information concerning rural and urban population etc. The state of Kerala has from the very beginning taken steps in this regard. The FRIENDS project of Kerala allows people to make a number of transactions online. The GYANDOOT project of Madhya Pradesh caters to the needs of rural population. However a survey of these initiatives reveals that most of them are clustered in few states. Especially the states in the south have taken more such steps as compared to others. This trend may create regional disparities of a new kind and may widen the overall developmental gap between the states.

Please answer the following Self Assessment Question.

Self Assessment Question 3	<i>Spend 4 Min.</i>
What are the E-governance initiatives at the national level?	
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11.8 LEGAL FRAMEWORK FOR E-GOVERNANCE

The Information Technology Act, 2000 provides the necessary legal framework for E-governance. Though the Act deals with a variety of issues related to cyber world, one of its objectives is to promote E-governance by providing legal recognition to transactions with the government online. With the coming in to force of IT Act 2000 where any law provides for submission of information in writing or in the typewritten or printed form, from now onwards it will be sufficient compliance of law, if the same is sent in an electronic form. Further, if any law provides for signature on any document, the same can be done by means of digital signature.

Similarly, the filing of any form, application or any other document with the Government Authorities and issue or grant of any licence, permit, sanction and any receipt acknowledging payment can be done by the Government offices by means of electronic form. Now it is possible to maintain records in Govt. offices in the form of electronic records.

Chapter III of the Act deals with E-governance (Sec. 4 to 10). Sec 4 provides for legal recognition of electronic records of any matter or information which is by law required to be in written, typewritten or printed form. Sec 5 removes the major hindrance of authentication of any document by authorizing the use of digital signatures for such purposes. Now, wherever it is required by law that a person shall affix his/her signature to any document, such requirement is satisfied by affixing digital signature in the prescribed manner in the case of electronic records.

Sec 6 of the Act provides for the use of electronic records and digital signatures in Government and its agencies. Now the filing of any form, application or any other document with any Government authority or office can be effected by means of electronic form. Further the issue of any license permit, sanction or approval can also be done through electronic means. Even the receipt or payment of money can also be made on line as per Sec 6.

Hence it is now possible to file tax-returns applications for grant of licence, permit etc. online instead of going to the offices and queuing up. Further it is no more necessary to maintain loads of files and office records because Sec 7 of the Act provides for retention of electronic records and if any law provides that documents, records or information be retained then that can be retained in the electronic form.

Sec 8 takes a decisive step towards E-governance in the country by allowing publication of rules, regulations, order, bye-laws etc. in electronic gazette. Now it is no more necessary to go to the Collectorate for a copy of the gazette as the same can be accessed online in any internet kiosk.

Please answer the following Self Assessment Question.

Self Assessment Question 4	<i>Spend 3 Min.</i>
Which section of the IT Act provides for use of digital signatures in government and its agencies?	
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11.9 OBSTACLES IN IMPLEMENTING E-GOVERNANCE

E-governance is of immense benefit to citizens. But there are many obstacles to be overcome before the benefits can actually reach the people. There is the problem of infrastructure, capital, trained manpower etc. Certain obstacles are noted here:

- i) **Lack of Resources:** The major obstacle in implementation of E-governance is the resource crunch. ICT is capital intensive since most of the hardware has to be imported and software needs to be developed. The cost involved in running the system is also there. Most of the installation is delicate and there is the need for trained personnel to handle it.
- ii) **Lack of Infrastructure:** E-governance is based on the telecommunication and electricity services. Infrastructure of these services is first necessary in order to provide the end-user the E-governance services effectively. India has a relatively low tele-density of 3 per cent for landlines and the target for 2008 is to get the number 20 per thousand. However there has been substantial increase in cellular phone subscribers. Still the available infrastructure is quite inadequate for the purpose of fully affecting E-governance.
- iii) **Digital Divide:** According to an AzimPremji Foundation study, the number of personal computers, installed in the country is 7.5 million of which the four metros viz. Delhi, Mumbai, Chennai, and Kolkata accounted for 53 per cent. At present there are approximately 10 million users of the Internet facility in the country of more than 1000 million. But more than 75 per cent of these users are in urban India and rural and poor people are deprived of ICT.
- iv) **Lack of Relevant Information in Local Languages:** The information available on the net is mostly of academic nature or entertainment purposes. It is difficult to find information which is useful. The content of the information should be such that it should be purposive and useful to the people. For this purpose the local conditions as well as the needs of a particular community have to be taken in to account. Here it is also worth mentioning that currently the language used for E-governance is English and the databases are also in English. In order to provide the benefits of E-governance to maximum people it is necessary to develop interface and database in local languages.
- v) **Building E-governance Capacity :** For the effectiveness and success of E-governance services it is necessary that there is a well equipped and efficient ICT organization manned by trained manpower to handle the system. But there is a lack of trained manpower in comparison to the requirement for implementing E-governance. There is a need to open many more technical institutes to educate people to build a pool of human resource.
- vi) **Security Issues in Cyberspace:** The major issue in digitization of the database and completion of transactions through internet is the security of the transactions. Data protection and data reliability are the major issues concerning all internet transactions and E-governance. Cyberspace is owned by none and it is virtually uncontrollable. It spreads across all nations without any sovereign control. This makes the challenge of monitoring cyberspace even more difficult. The government needs to enact appropriate laws. Information & Technology Act, 2000 is a step in this direction.
- vii) **Restructuring Bureaucracy:** The most important step in implementing E-governance is to restructure the existing bureaucratic structure since it is very slow to adopt any new features. This system is hierarchical involving multi level clearance, too much documentation and the procedures followed are colonial. E-governance requires a realisation on the part of the bureaucracy that it is basically the service provider and not the ruling class. ICT can help only when the service provider is

willing to adopt it. The bureaucracy has to be more open, responsive and willing to change. ICT has enabled people to involve themselves in the democratic process in new and unique ways. Governments at all levels and international organizations accordingly will increasingly be impacted by these changes. Thus, there is also a need for awareness-building within governments and international organizations of the changes that are occurring. This can be accomplished through educational and training programmes.

Let us now summarize the points covered in this unit.

11.10 SUMMARY

- E-governance primarily refers to use of ICT in the discharge of governmental functions. However it is not only limited to delivery of the governmental services. The aim of E-governance is to ensure greater citizen participation in governance.
- The components of E-governance are:
 - Government–Citizen Interface
 - Government – Government Interface
 - Government – Business Interface
 - Government – Employee Interface
 - Government – Society Interface
- The rationale for E-governance is its capacity to provide a government which is efficient, responsive, and corruption-free. It strengthens democracy by increasing the citizen’s role in policy making and information sharing.
- The benefits of E-governance are:
 - Automation of Administrative Processes
 - Workforce Reduction
 - Better Service Delivery
 - Technical and Supportive Role
 - Transparency
 - Economic and Social Development
 - Change in the Administrative Culture
- The ICT has been accepted by the Indian Government as a catalyst to bring rapid institutional reforms in the governmental structure and as an effective tool to reach out to hitherto deprived masses. The central government has framed National E-governance Action Plan for the proper implementation of E-governance. Various states have also started programmes related to E-governance.
- The challenges faced in implementing E-governance are:
 - Lack of Resources
 - Lack of Infrastructure

- Digital Divide
- Lack of Relevant Information in Local Languages
- Building E-governance Capacity
- Security Issues in Cyberspace
- Reluctant Bureaucracy

11.11 TERMINAL QUESTIONS

- 1) Explain the concept of E-governance. How it is different from E-government?
- 2) Is E-governance concerned only with citizens? What are the various components of E-governance?
- 3) How will you justify E-governance for a developing country keeping in mind the heavy cost involved in it?
- 4) What are the legal provisions related to E-governance?
- 5) What steps would you suggest to remedy the problems in the implementation of E-governance?

11.12 ANSWERS AND HINTS

Self Assessment Questions

- 1) E-governance is the application of ICT to the governmental process. This statement is partially true since E-governance is not limited to the computerisation of the governmental process. Its true scope encompasses citizen's participation in the policy making and the governance of the country.
- 2) E-governance has got certain merits which makes it better than the conventional system. It provides a government which is responsive, quick and allows increased access to information. The other benefits of E-governance are automation, work force reduction, facilities to citizens etc.
- 3) At the national level, central government has taken a number of initiatives for implementing E-governance. India Image is the government portal which gives a lot of information. National Informatics Centre is the agency entrusted with the task of creating and maintaining web portals.
- 4) Sec 6 of the Act provides for the use of electronic records and digital signatures in Government and its agencies.

Terminal Questions

- 1) Refer to section 11.3 of the unit.
- 2) Refer to section 11.4 of the unit.
- 3) Refer to section 11.5 & 11.6 of the unit.
- 4) Refer to section 11.8 of the unit.
- 5) Refer to section 11.9 of the unit.

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E-GOVERNANCE INITIATIVES AT STATE LEVEL

Bhoomi

The Department of Revenue in Karnataka State has computerised 20 million records of land ownership of 6.7 million farmers in the State. Record of Rights, Tenancy and Crops (RTC) for a fee of Rs. 15, a printed copy of the RTC can be obtained online at computerised land record kiosks (Bhoomi centers) in 177 taluk offices.

e-Seva (electronic Seva)

Electronic Seva (e-Seva) is the improved version of the TWINS project launched in 1999, in the twin cities of Hyderabad and Secunderabad in Andhra Pradesh. e-Seva centres offer 118 different services like payment of utility bills/taxes, registration of births/deaths, registration of applications for passports, issue of births/deaths certificates, filing of Sales Tax returns, Trade licences of MCH, B2C services.

CARD

The Computer-aided Administration of Registration Department – CARD in Andhra Pradesh. CARD was initiated to meet objectives to demystify the registration process, bring speed, efficiency, consistency and reliability, and substantially improve the citizen interface. CARD project has great benefit for the rural farming community.

FRIENDS

Fast, Reliable, Instant, Efficient Network for the Disbursement of Services is part of the Kerala State IT Mission, FRIENDS counters handle 1,000 types of payment bills originating out of various PSUs. The payments that citizens can make include utility payments for electricity and water, revenue taxes, licence fees, motor vehicle taxes, university fees, etc.

Gyandoot

The Gyandoot project was initiated in January 2000 in the Dhar district of Madhya Pradesh. Gyandoot is a low cost, self-sustainable, and community-owned rural Intranet system (Soochnalaya) that caters to the specific needs of village communities in the district. Thirty-five such (centres) have been established since January 2000 and are managed by rural youth selected and trained from amongst the unemployed educated youth of the village. They run the Soochanalayas (organized as Kiosks) as entrepreneurs (Soochaks); user charges are levied for a wide range of services that include agricultural information, market information, health, education, women's issues, and applications for services delivered by the district administration related to land ownership, affirmative action, and poverty alleviation.

Vidya Vahini

This portal provides the opportunity for schools, teachers and students all across the nation, to express and share their creative and academic potential via the internet. The portal aims at creating such an environment by providing facilities for Content Development, Content Deployment and collaboration.

Lok Mitra (Integrated Citizen Service Centre / e-Kiosks ICSC)

Lok Mitra is the first of its own kind of Electronic service in the state of Rajasthan. It aims to deploy Information Technology for the benefit of the masses.

It is an e-governance project in which the computer server is linked to different Departmental servers through Dedicated Leased Line & Dial-up Network with multiple e-counters, which can handle all services. It has facility of making payments through Internet using Credit Card.

SETU- A bridge for facilitation between Citizen & Government

The facility aims at providing following services

- Single window clearance of 83 important certificates (includes renewal of leases, permits & licences)
- Quick redressal of public grievances
- Common registry of letters, petitions for all sections of the office
- On line pendency monitoring of all above
- To provide services after office hours & on holidays also in order to save Time, Money & Energy of the public.

Jan Mitra

Jan Mitra is an Integrated e-platform through which rural population of Rajasthan can get desired information and avail services related to various government departments at kiosks near their doorsteps.

It offers following services:

- Public Grievance Redressal System, Online Submission of Application forms and Land & Revenue Records.
- Public Distribution System, BPL List, Electricity Priority Connection List, Drinking Water Resources, Village Schemes, Citizen Charters and Immovable Property rates.
- Health Information, Agriculture Information, Education Information and Animal Husbandry Information.
- Agriculture Mandi rates daily Mandi rates and Weekly / Monthly Mandi rates.

Drishtee-Connecting India Village by Village

Drishtee is an organization platform for developing IT enabled services to rural and semi-urban populations through the usage of state-of-the-art software. Using a tiered franchise and partnership model, Drishtee is capable of enabling the creation of approximately 50,000 Information Kiosks all over India within a span of six years. These kiosks would potentially serve a market of 500 million people, with aggregate discretionary purchasing power of Rs. 100 billion (Rs. 10,000 crores). In less than two years, Drishtee has successfully demonstrated its concept in over 90 kiosks across five Indian states.

States where Implemented: Haryana, Punjab, Madhya Pradesh, Gujarat, Orissa.

Aarakshi

Aarakshi is an Intranet based system that has been developed and implemented for Jaipur City Police. This innovative system enables the city police officers to carry out on-line sharing of crime & criminal data bases, carry out communication and perform monitoring activities.

FAST – Transport Department Automated

The ‘Fully Automated Services of Transport’ is another e-governance project implemented in the cities of Andhra Pradesh. The objective of FAST is to make the transport department citizen friendly in its functioning and provide SMART services to the public. Covering all gamut of services of Transport Department like Issue of Driving Licences, Registration of Motor Vehicles, Issue Permits, Collection of Motor Vehicle Taxes, etc.

VOICE (Vijayawada Online Information Centre)

The project to delivers municipal services such as building approvals, and birth and death certificates, to the people of Vijayawada. It also handles the collection of property, water and sewerage taxes.

MUDRA (Municipal Corporation towards Digital Revenue Administration)

The system will be useful for the Holding owners, Tax collectors, officials at headquarter levels and Circles levels. They will have total picture of tax collection that will help the decision makers to take suitable decision for further improvement. It is designed to computerise the over all functions of tax collection system of Patna Municipals Corporation.

KHAJANE (Online Treasury System)

The online treasury project, KHAJANE, implemented in computerises all the 216 treasury offices in Karnataka and is connected to a central server at the state Secretariat through VSAT (Very Small Aperture Terminal). KHAJANE aims to bring about a more transparent and accountable system of financial transactions and also discipline in operations and management, resulting in efficiency and cost savings for the government.

e-Cops (e-Computerised Operations in Andhra Pradesh for Police Services)

Launched on the 17th of July 2002, as part of the VISION 2020, the state’s focus on modernisation of police administration takes the shape of eCOPS. It will help police stations reduce paperwork and automate the maintenance of registers, report generation, data analysis, planning and co-ordination, enable the speedy detection of crime and monitor prosecutions. For citizens, the project will lead to online interaction with the police department over the Internet.

TARahaat – Achieving Connectivity for the Poor Case Study

This project, named “TARahaat” after the all-purpose haat (meaning a village bazaar), comprises a commercially viable model for bringing relevant information, products and services via the Internet to the unserved rural market of India from which an estimated 50% of the national income is derived.

Lok Mitra

The Lok Mitra project was formally dedicated to the people of Hamirpur in Himachal Pradesh as a pilot phase on the 8th of May 2001. The services offered include information about vacancies, tenders, market rates, matrimonial services, village e-mail. An interesting feature is that citizens can use the IT enabled system as a grievance redress system.

Mahiti Shakti

Launched in 2001, in Gujarat the portal <http://www.mahitishakti.net/> operates like a single window through which the citizens can access information related to all aspects of the government's functioning, various benefit schemes and services ranging from obtaining ration cards to getting sanction for old age pension.

Warana Wired Villages

The key objective of the project has been to utilize IT to increase the efficiency and productivity of the existing sugar cane cooperative enterprises by setting up of a state-of-the-art computer communications network. This provides agricultural, medical, and educational information in the local language to villages around Warana Nagar in the Kolhapur and Sangli Districts of Maharashtra.

Community Information Centre

On 22 August 2002, the Prime Minister dedicated to the people of the eight North-Eastern states a new structure of localized governance called Community Information Centres. Basic services to be provided by CICs include Internet access and e-mail, printing, data entry and word processing and training for the local populace. Most CICs charge nominal amounts from users for services, which helps them to meet day-to-day running expenses.

Community Learning Centre Project

Set up between March and July 2001, the Community Learning Centre (CLC) is a joint initiative between the Azim Premji Foundation (APF) and the State government of Karnataka. Each CLC is housed in a separate room in the school and is equipped with five to eight computers. The CLCs are used to enhance classroom learning during school hours.

Dairy Information Services Kiosk

The project consists of two basic components — an application running at the rural milk collection society that could be provided Internet connectivity and a portal at the district level serving transactional and information needs of all members. DISK has helped in the automation of the milk buying process at 2,500 rural milk collection societies.

State where Implemented: Gujarat

GramSampark

'Gramsampark' is a flagship ICT product of the state of Madhya Pradesh. A complete database of available resources, basic amenities, beneficiaries of government programmes and public grievances in all the 51,000 villages of Madhya Pradesh can be obtained by accessing the website, Gramsampark has three sections- Gram Paridrashya (village scenario), Samasya Nivaran (grievance redress) and Gram Prahari (village sentinel).

Akshaya

As part of Kerala's ambitious e-literacy campaign, Akshaya e-Centers are being set up throughout Kerala. These centers will initially provide e-literacy to one member from every household and act as ICT dissemination nodes and ITeS delivery points in every village.

Headstart

Headstart provides computer-enabled education and basic computer skills for all students in 6000 Jan Shiksha Kendras of Madhya Pradesh. Madhya Pradesh has 6500 Jan Shiksha Kendras (cluster resource centres) located in Middle School premises in 48 districts. Headstart will equip every Jan Shiksha Kendra in the state with computer hardware and multimedia software.

E-chaupal

Started by ITC's international Business Division as a cost-effective alternative supply chain system to deal directly with the farmer to buy products for exports is getting transformed into a meta market for rural India. The tobacco giant has already set up over 700 choupals covering 3,800 villages in four states — which include Madhya Pradesh, Uttar Pradesh, Karnataka and Andhra Pradesh — dealing with products ranging from soya bean, coffee, aquaculture and wheat.

UNIT 12 ISSUES CONCERNING DEMOCRACY, NATIONAL SOVEREIGNTY, PERSONAL FREEDOM

Structure

- 12.1 Introduction
- 12.2 Objectives
- 12.3 Cyberspace and National Sovereignty
 - 12.3.1 Threats Posed by Cyberspace
- 12.4 Democracy and Cyberspace
 - 12.4.1 Cyber Democracy
 - 12.4.2 How Cyber Democracy Contributes to Effectiveness of Democracy?
- 12.5 Personal Freedom
 - 12.5.1 Freedom of Speech, Thought and Expression
 - 12.5.2 Limitation on Freedom of Speech
- 12.6 Cyberspace and its Impact on Specific Rights and Freedoms
- 12.7 Summary
- 12.8 Terminal Questions
- 12.9 Answers and Hints
- 12.10 References and Suggested Readings

12.1 INTRODUCTION

The architecture and growing use of internet demands the fundamental re-examination of the institutional structure within which rule making takes place. Traditionally, justice is administered by law which binds together the community and enforce some rules to prevent conflict of people within the community. This law contemplates first a community and secondly some authority which can enforce the rules intended to prevent these conflicts, and it is this community or organizations with rules to regulate the conduct of the members of the community that we usually term as state. This state has four elements (1) population – ‘i.e., citizens (members of states) (2) territory which is definite (3) government – an instrument through which sovereign will of the state finds concrete expression, (4) sovereignty = a body having internal supremacy and external independence i.e., legally independent of the control of any other state.

In the context of cyberspace, which is very technological in nature, it can be said that its very nature has affected the cultural practices of various communities in cyberspace. John Perry Barlow in his Article, “Thinking Globally, Acting Locally”, has described cyberspace as offering the promise of a new social space, global and anti sovereign, within which anybody, anywhere can express to the rest of humanity whatever he or she believes without fear. There is in these new media a foreshadowing of the intellectual and economic liberty that might undo all the authoritarian power on earth.

Today, in addition to nations of the world having their respective geographical territories, the new domain that coexists is the domain of Cyberspace transcending national boundaries and therefore the challenge before us is to determine what customary mores it will acquire, how the concept of morality and principle of law can be enacted while dealing with it, whether it should be subject to its own law in consideration with the notion that it is outside the territory of the individual nation or whether it is more appropriate to be concerned with individual morality reflected within the framework of individual nations and their laws.

12.2 OBJECTIVES

After studying this unit, you should be able to:

- discuss the threats that are being posed to law and sovereignty by cyberspace;
- explain the concept of cyber democracy, and whether it can make the democratic process more open and participatory;
- describe the concept of freedom of speech and expression and limitations on it; and
- discuss impact of cyberspace on specific rights and freedom.

12.3 CYBERSPACE AND NATIONAL SOVEREIGNTY

The idea of sovereignty is associated with the state as the supreme power of law making, having complete legal authority over all individuals and groups that compose it. The sovereign state is free from external control of any other state.

In a country, the rule of law is based to a large extent on the notion of territoriality and jurisdiction. Just as the jurisdictions of national courts are based upon the domestic laws of individual countries, the legislative jurisdiction of the state is limited to its territory. The existing international laws are also predicated on the existence of the sovereign state.

12.3.1 Threats Posed by Cyberspace

To have sovereignty a state must have a defined territory, a government and have the capacity to enter into diplomatic relations. Now the question is whether cyberspace challenges this traditional notion of jurisdiction, traditional political institutions and perhaps even the very concept of sovereignty itself, as it creates the issue of identifying legal subjects in cyberspace. In every country there are determined legal subjects whom we call citizens of a nation, however in cyberspace it is difficult to ascertain the exact legal identity of a person, nationality etc.

The internet is an interconnected electronic communications network having no physical existence and controlling body, though there are large numbers of individuals networking with each other through a common language but different operating systems. So cyberspace exists in the virtual world rather than the world and therefore there is a tendency that it can cause changes in the concept of sovereignty, the state, jurisdiction and laws. Now, it is not possible for the nation state to be the sole or prime regulator of legal norms for conducting trade and business. This may be because global computer based communication cuts across the territorial border creating a new area of human activity and undermining the feasibility and legitimacy of applying national laws based on geographic boundaries. Further traditional international legal rules for regulation are

not effective in the context of cyberspace regulation. To deal with the borderless nature of cyberspace, nations need to act in coordination making uniform laws across jurisdictions. Further, when we talk of sovereignty, it is considered as supreme power to legislate, it can be said that as a threat to sovereign authority, Internet may create new opportunities for international cooperation in surveillance and authority or for increase in public participation in government.

12.4 DEMOCRACY AND CYBERSPACE

In the era of globalisation, Internet can be seen as democratic *renaissance*, through which millions of people can raise their voice. In comparison to mass media or any other medium of communication more powerful ideas are discussed online. Talking about, popular activism, Richard K. Moore pointed out that the internet might turn out to be a sleeping political giant – coordinate protests, facilitating strategy discussions, mobilizing massive voter turnouts, distributing reports, suppressed in the mass media etc. This activist empowerment potential of Internet is something that many elements of society find threatening; they may take it as the threat of “excess democracy”. The countries such as Iran, China, and Malaysia have actually taken this threat seriously and have formed various kinds of restrictive Internet policies.

The term “Democracy” means government by the people i.e. the power is vested in people, they have right to vote and choose their representative. But in today’s scenario it is seen that elite groups can influence this political process in many ways through money power. Further, globalisation and privatisation, free trade policies, all point towards that now ownership is dominated by modern TNC (Trans National Cooperation) showing shift of global power from democratic institutions to elite institutions with growing potential of cyberspace to connect people seeming of next concern.

12.4.1 Cyber Democracy

In recent years there has been a growing global trend towards cyber democracy. When we use the term ‘Cyber democracy’ it means the use of information and communication technologies to support governance. We can also use the term electronic democracy but this term is much wider in scope and cannot be given any definite definition. It may be used to refer to everything, be it community networking, online discussion of issue, or e-mail of elected representatives.

According to the report on Cyber Democracy 2001: A global scan, cyber democracy consists of the following components:

- 1) **Cyber Administration** – Or E-government. The use of the Internet and other information and communications technology (ICT) to enhance government services. The Internet is helping to expedite a wide range of such services.
- 2) **Cyber Voting** – Internet voting for candidates as well as for policies via initiatives and referenda.
- 3) **Cyber Participation** – ICT-enhanced citizen interaction and input on policy issues or policy development apart from voting. This would include petitioning legislatures, electronic town meetings, polling and electronically mediated policy dialogues.

- 4) **Cyber Infrastructure** – In addition to connectivity, more specific cyber tools used to enhance participation, deliberation, and community building. These tools include groupware and online community development tools, games and simulations, as well as polling and surveys.
- 5) **Cyber Agenda-Setting** – The use of the Internet and other ICTs to enhance or redirect the political or policy agenda by established groups such as political parties and non-governmental organizations (NGOs).

However this cyber democracy can be a two edged sword; the information technology can either spark a renewal of democracy and civil society leading to popular sovereignty or it can lead to populist manipulation. As the connectivity increases, more privacy violations will occur may be by its governments, corporations or terrorists, there can be increase in employment discrimination, loss of civic rituals and communities, causing isolation into one's own potential community.

12.4.2 How Cyber Democracy Contributes to Effectiveness of Democracy?

Traditionally democracy can be said to include the following values.

- 1) Freedom – ie. freedom from government interferers or it may be freedom to exercise certain rights.
- 2) Equality – which may be defined to mean equal opportunity or actual quality in life conditions or equality of results.
- 3) Democracy requires stability which in term requires rules and regulations to be applied consistently.
- 4) Majority rule while continuing protection of minority view points.
- 5) Participation by the citizens of the nation.

Cyber democracy describes the democratic activities which are enhanced by Internet and other information and communication technologies (ICT's). Let us now discuss the promises and threats posed by cyber democracy.

It can be said that

- 1) Cyber democracy may give citizens the opportunity to understand various current and future issues, problems and opportunities, it will build community generate learning by citizens and can ensure consistency between policy-making and informed decision of citizens but the success of cyber democracy can be determined by the ability of new ICTs to expand and enhance qualities of good political participation and creation of new public policies reflecting the shared aspirations and visions of citizens.
- 2) Elections give citizens the chance to shape the political landscape by selecting their government representatives. Cyber voting can be said to have the potential to facilitate the democratic process but it is argued by some scholars like the Prof. of Political Science, Rick Valelly, that this will erode the civic ritual of standing side by side Rich/Poor / Young / or Old standing side by side in line at the polling place. There is the prospect of a greater loss of community. However success of cyber

voting can be judged by whether it makes the electoral process more *responsive*, and helps to increase turn out or not.

- 3) Citizen feedback to elected officials has always been a cornerstone of representative democracy: The widespread use of internet has created a platform by cyber policy participation with application of ICTs, thereby enhancing and creating new channels of communication between the public and office holders. These changes are expected to create new political communities based on shared vision and aspirations thereby broadening the role of the citizen in a society. One thing which can be raised here is that enhancing democratic participation is a social challenge rather than technological one; Can the social changes of greater involvement can be overcome and if they can be overcome for a project, can they have lasting impact on communities where they occur.

Thus it can be said that cyber democracy is a two edged sword. It has the potential to enhance qualities of good political participation, stimulate the creation of public policies reflecting the supporting collective intelligence and imagination of humanity. However there is also the possibility of harm therefore as according to report on cyber democracy, to achieve a proper degree of foresight, it is important to concentrate specifically on the following:

- 1) The opportunity for cyber democracy developments to eliminate disparities within communities, nations and globally.
- 2) The option for protecting privacy, securing devices from unauthorized use and freedom as cyber democracy advances.
- 3) Trying to set a particular direction for developing shared vision across countries and also ensuring subsequent action.
- 4) Role that cyber democracy can play in dealing with issues of new training and employment opportunities and ability to use such services in an interactive ways by citizens as ICTs affect the nature of work.

Please answer the following Self Assessment Question.

Self Assessment Question 1

Spend 4 Min.

What do you mean by electronic democracy? Can it enhance democratic process in a nation?

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12.5 PERSONAL FREEDOM

Every human being in the world has certain rights, which are inherent and inalienable. These rights are fundamental rights giving personal freedom to individuals and are incorporated in the constitution of every nation. The democracy presupposes and also supports the concept of liberty of expression and communication amongst citizens and between them and the state. However certain restrictions can be imposed by parliament, administrative or judicial arms of government curtailing one freedom; for e.g. freedom of speech can be limited for public good, morality, decency etc.

The emergence of internet as a tool of expression, it has opened new possibilities for achieving freedom of speech using methods that do not depend upon legal measures. Anonymity and data havens (such as free net) allow free speech, as the technology guarantees that content cannot be censored.

12.5.1 Freedom of Speech, Thought and Expression

Freedom of speech and expression is an essential component of a free society; an individual is free to speak and to determine where, when to whom and how much to speak. It is a fundamental human right, closely connected to freedom of thought and is the precondition for individual self expression and self fulfilment; One has the freedom to have ones own views on living, way of life, the world and politics and when this thought is expressed outwardly it becomes freedom of press and publication, guarantying free delivery in media; An author has the right to determine whether his/her words will be published or not, and where they will be published. Thus intellectual property rights and free expression coexist. Freedom of speech and expression is a fundamental right of every citizen of India under article 19(1)(a) of the Indian Constitution. In the USA, amendment [1791] to the constitution guarantees freedom of speech. According to it Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redressal of grievances. This right to freedom of expression is provided for in the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the American Convention on Human Rights (Article 13), The African Charter on Human and Peoples Rights (Article 9), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10). However Internet challenges the right to freedom of expression safeguarded in the international human rights treaties. On the one hand, Internet empowers freedom of expression by providing individuals with new means of imparting and seeking information. On the other hand, the free flow of information has raised the call for content regulation.

12.5.2 Limitation on Freedom of Speech

Freedom of speech and expression however can be limited under some conditions to protect public value. Article 18 & 19 of the international covenant on civil, political rights lays down that freedom of thought and expression can be limited for protection of people's rights and freedoms, protection of national security, public order, public health and morality. Universal declaration of human rights, (Article 29(2)) provides, that in the exercise of his/her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just

requirements of morality, public order and general welfare in a democratic society. In India, this right is not absolute and can be subjected to reasonable restrictions which may be imposed in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states public order, decency and morality or in relation to contempt of court, defamation or an incitement to an offence. This freedom of speech and expression includes freedom of the press, implying freedom of circulation of newspapers and even precensorship on newspapers and thus banning the views of editors or correspondents on a current topic is also considered as violative of the freedom of the press. In mass media and press publication however the access to public is controlled by those who own it. The potential of the internet to link individuals from all corners of the world has make it a global common; anyone can publish on the net, it is a useful resource for free discussion and information exchange. However freedom provided by the internet is open to abuse as there is no editor in internet; it is almost impossible to pre censor cyberspace thereby greatly reducing the ability of the state to exercise disciplinary power. With telecom, print or mass media, the protection of freedom of expression is subject to state-regulation through media or telecom law. For instance, almost all countries have established systems for regulating the broadcast media. Issues in relation to these systems include the fairness of licensing procedures and the independence of regulatory bodies from government and commercial pressures (Article 19, "The Virtual Freedom of Expression Handbook" on broadcast and print regulation). States around the world also regulate the print media and other printed works in a variety of ways, including rights of reply, the impartiality of subsidy systems, and the independence of any regulatory bodies (Ibid). Regarding telecom regulation, this typically includes the protection of non-discriminatory access for citizens to telecommunication lines. In this sense mass media, print media, and telecom are government-supervised, and governments even have some rights to supervise content as a results. In the context of cyberspace we have already studied in previous units that as far as regulation of cyberspace is concerned, emphasis is on self regulating policies with least or no government interference, but if we shift focus from the negative obligation on governments not to interfere, to the positive obligation to protect, we might argue that states increasingly need to secure that freedom of expression is protected in cyberspace. This provides for Internet the same level of protection which is provided for the physical public sphere.

Please answer the following Self Assessment Question.

Self Assessment Question 2

Spend 3 Min.

Write whether the following statements are true or false.

- a) Freedom of expression includes freedom of thought.

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- b) Intellectual property rights and free expression coexist.

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- c) Freedom of expression is absolute.

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12.6 CYBERSPACE AND ITS IMPACT ON SPECIFIC RIGHTS AND FREEDOMS

The precepts on which the conventional discussions of liberties are based are now shaken as cyberspace threatens the traditional notion of jurisdiction giving new shape to specific rights and freedom.

Cyberspace has enabled building of many new patterns of human communication breaking down the geographical boundaries; it brings freedom, but with that comes some responsibilities also on the user. It should not give rise to unlawful or irresponsible use of that freedom and there should be some self restraint and self regulation. Now the demand for new information rights is emerging. In the words of Roger Clarke, the rights relating to information are becoming unenforceable by national jurisdiction and therefore freedom of speech and expression, freedom to access and intellectual property rights are becoming dependent on factors other than legislation, the court and the law enforcement agency. Therefore certain scholars are demanding for a separate electronic rights and responsibilities to govern cyberspace. These electronic rights and responsibilities are thought to be the basis of ethical standards with which one has to the policies of State Corporation with regard to the internet and related multicast communication networks. Another term 'cyber ethics' is also now emerging which refers to a code of safe and responsible behaviour for the internet community. Accordingly practising good cyber ethics involves understanding the risk of harmful and illegal behaviour online and learning how to protect ourselves and other internet users from such behaviour; It also involves teaching young people who may not realise the potential for harm to themselves and others, how to use the internet safely and responsibly. However, Internet should not merely be perceived as a new media, comparable to mass media, but must rather be seen as a new communicative sphere encompassing both system and the world and there is a need for positive state obligations in order to protect individuals' right to express themselves and to seek information free from interference by third parties.

For the last years, states have turned to self-regulation as the preferred path when dealing with potentially harmful content on Internet. However, self-regulation regulates communication according to commercial system codes and the protection of freedom of expression nor human dignity can be left to only private parties to regulate. As Internet is both a commercial sphere (system) and a public communicative sphere therefore it must be governed by Law of State to ensure transparency, accountability and democracy.

Please answer the following Self Assessment Question.

Self Assessment Question 3

Spend 2 Min.

What do you mean by the term cyber ethics?

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12.7 SUMMARY

- The growth in the use of internet is affecting the cultural practices of various communities, challenging the traditional notion of sovereignty and democracy.
- In a country, law making is considered as the sovereign function of the state and it is largely based on the notion of territoriality and jurisdiction.
- The growth in the use of Internet and Cyberspace has developed from science fiction into a socially constructed reality, thereby causing changes in the traditional concepts of sovereignty, state, jurisdiction and laws.
- Due to the borderless nature of cyberspace the law of a nation based on geographical boundaries cannot be applied to cyberspace as in the real world.
- Today Internet can be seen as one of the means to enhance the democratic process. It can be used as a medium where information and communication technologies can be used to support governance. For example, online discussions on various issues can take place, internet voting to elect people representative of a nation can also be held.
- However this cyber democracy at the same time can also lead to various types of violations of the laws of the nation.
- Every human being has certain fundamental and inherent rights which are inalienable and is the basis of democracy. This democracy presupposes that every citizen has freedom of speech, thought and expression.
- In the real world the freedom of speech and expression though is fundamental and is provided in every constitution of the world to its citizens but it is not absolute and certain restrictions can be imposed on it for maintaining public good, morality, law and order, decency etc.
- Internet provides more freedom of speech and expression to its users and there is a need to impose certain restrictions on it as freedom given by it is more open to abuse as it is difficult to pre-censor communication that takes place on internet.
- So far as internet is concerned, the legal policies and initiatives taken in various countries lay more emphasis on self regulation but the government's role as protector cannot be ignored totally, certain scholars are also demanding separate electronic rights and responsibilities to govern cyberspace.

12.8 TERMINAL QUESTIONS

- 1) Discuss the threats posed by cyberspace to the concepts of law and sovereignty of a nation.
- 2) Discuss the role of Cyber Democracy in a nation.
- 3) Explain the concepts of freedom of speech and expression vis-à-vis Cyberspace.

12.9 ANSWERS AND HINTS

Self Assessment Questions

- 1) Cyber democracy means the use of information and communication technologies to support governance: it describes the democratic activities which are enhanced by Internet and other information and communication technologies (ICTs).

However cyber democracy can be a two edged sword; the information technology can either spark a renewal of democracy and civil society leading to popular sovereignty or it can lead to populist manipulation. As the connectivity increases, more privacy violations can be committed by governments, corporations or terrorists. There can be increase in employment discrimination, loss of civic rituals and communities, causing isolation into one's own potential community.

- 2) a) True
b) True
c) False
- 3) Cyber ethics is a code for ensuring safe and responsible behaviour of the internet community.

Terminal questions

- 1) Refer to section 12.3 of the unit.
- 2) Refer to section 12.4 of the unit.
- 3) Refer to section 12.5 of the unit.

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