UNIT 12 ISSUES CONCERNING DEMOCRACY, NATIONAL SOVEREIGNTY, PERSONAL FREEDOM

Structure

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.

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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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Let us now summarize the points covered in this unit.

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.

12.10 REFERENCES AND SUGGESTED READINGS

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