

ISSN 1991-8976

RAJSHAHI UNIVERSITY LAW JOURNAL



FACULTY OF LAW
RAJSHAHI UNIVERSITY
DECEMBER 2005

ARTICLES

Women's rights in the Nikahnama in Bangladesh : A critical study

An Application of Islamic Law in Bangladesh with Special Reference to Women

Real Estate-Its Defense System in Bangladesh: A Study

Internet Exposes a New Dimension in International Space: A Challenge to the Traditional Concept of Sovereignty

The International Criminal Court: A Remarkable Achievement Striving Against Global Political Setbacks

The Impact of Section 7 of the Muslim Family Laws Ordinance on the Validity of Talaq: A Legal Analysis

Muslim wives' right to maintenance in Bangladesh: the role of N.G.O's in Rajshahi District

Prevention of Crime in Islamic Criminal Law: Perspective Bangladesh

যৌতুক : একটি সামাজিক ব্যাধি

সড়ক দুর্ঘটনা ও ট্রাফিক আইন : প্রেক্ষিত বাংলাদেশ

আদালত অবমাননা, সাংবাদিকতা-প্রকাশনা ও তথ্যের অধিকার : পরিপ্রেক্ষিত বাংলাদেশ

বাংলাদেশের রাজনীতিতে পঞ্চম জাতীয় সংসদের কার্যকারিতা : একটি পর্যালোচনা

Abstract on the Project Changing Pattern of Trade Union in Bangladesh

Abstract on the Project Protection of Human Rights in Criminal Justice: Bangladesh Perspective

ISSN 1991-8976

Rajshahi University Law Journal

FACULTY OF LAW
RAJSHAHI UNIVERSITY

December 2005

Published by:

Dean

Faculty of Law
Rajshahi University
Rajshahi- 6205
Bangladesh

© Reserved by the Publisher

Cover Design & Printed by:

B T S Commercial Institute
Benodpur Bazar, Rajshahi

Printed at:

Barendra Printing Press & Packaging

Supora, Biman Bandar Road, Rajshahi. Mob.: 01715-361984

Subscription Rates

For Individuals: **Tk. 100.00 US\$ 20** (without postage)

For Organisation: **Tk. 150.00 US\$ 30** (without postage)

[Published in December 2006]

Rajshahi University Law Journal 2005

Editorial Board

Editor	Professor Dr. Begum Asma Siddiqua Dean, Faculty of Law, RU
Member	Professor Dr. A B Siddique Department of Law & Justice, RU
	Professor A F M Mohsin Department of Law & Justice, RU
	Professor Dr. M Rabiul Hossain Department of Law & Justice, RU
	Dr. Mohammad Abdul Hannan Department of Law & Justice, RU
	Sayeeda Anju Department of Law & Justice, RU

Rajshahi University Law Journal 2005

<u>Authors' Name</u>	<u>Article</u>	<u>Page</u>
Dr. Begum Asma Siddiqua	Women's rights in the Nikahnama in Bangladesh : A critical study	1-10
Dr. Gazi Omar Faruque	An Application of Islamic Law in Bangladesh with Special Reference to Women	11-20
Dr. Md. Abdul Karim Khan	Real Estate-Its Defense System in Bangladesh: A Study	21-30
Md. Morshed Mahmud Khan Mohammad Osiur Rahman Mohammad Mahabubur Rahman	Internet Exposes a New Dimension in International Space: A Challenge to the Traditional Concept of Sovereignty	31-52
Dr. Mohammad Abdul Hannan	The International Criminal Court: A Remarkable Achievement Striving Against Global Political Setbacks	53-68
Muhammad Ekramul Haque	The Impact of Section 7 of the Muslim Family Laws Ordinance on the Validity of Talaq: A Legal Analysis	69-86
Sayeeda Anju	Muslim wives' right to maintenance in Bangladesh: the role of N.G.O's in Rajshahi District	87-96
Dr. Mohammad Abdul Hannan M Sahal Uddin	Prevention of Crime in Islamic Criminal Law: Perspective Bangladesh	97-110
জোবাইদা সুলতানা	যৌতুকঃ একটি সামাজিক ব্যাধি	111-128
মোঃ আব্দুর রহিম মিয়া	সড়ক দুর্ঘটনা ও ট্রাফিক আইনঃ প্রেক্ষিত বাংলাদেশ	129-154
মুস্তাক আহমেদ মো: সাহাল উদ্দীন	আদালত অবমাননা, সাংবাদিকতা-প্রকাশনা ও তথ্যের অধিকার: পরিপ্রেক্ষিত বাংলাদেশ	155-170
ড. রাকিবা ইয়াসমিন	বাংলাদেশের রাজনীতিতে পঞ্চম জাতীয় সংসদের কার্যকারিতা : একটি পর্যালোচনা	171-200
A F M Mohsin	Abstract on the Project Changing Pattern of Trade Union in Bangladesh	201
Muhammad Faiz-ud-Din M Abdul Hannan	Abstract on the Project Protection of Human Rights in Criminal Justice: Bangladesh Perspective	202

Internet Exposes a New Dimension in International Space: A Challenge to the Traditional Concept of Sovereignty

Md. Morshed Mahmud Khan^{*}
Mohammad Osiur Rahman^{**}
Mohammad Mahabubur Rahman^{***}

1. Introduction

The connotation 'Sovereignty' varies from man to man, time to time and state to state. But it has a core meaning, which signifies supreme authority within a territory.¹ It is a modern notion of political authority. Sovereignty of state comprises of two-fold capacity; such as. *imperium* and *dominium* covering almost all functions of a state. *Imperium* indicates state authority over the state territory and *dominium* upholds the unlimited state control over the persons, institutions and events within its territory. Cyberspace crosses the border. So it is difficult for a state to apply territorial authority on it. A state cannot achieve physical control over cyber activities, because, these activities are not confined within the territory. These go outside the territory, and very often enter into the territory of any state without any physical restriction. This is really a problem for the state habituated to the territory-based sovereignty. The underlying causes of the problem are:- (1) the peculiar structure of the internet; (2) non-physical character of the cyber activities; and (3) everywhere and nowhere location of cyberspace. External aspects of sovereignty indicate a state's freedom from outside influence upon its basic prerogatives. But the omnipresence character of internet made it accessible from anywhere in the world that deriding international principles—territorial integrity, political independence and domestic affairs. A final ingredient of sovereignty is territoriality.² It specifies a geographic

^{*} Associate Professor, Department of Law, University of Chittagong, Bangladesh.

^{**} Assistant Professor, Department of Computer Science and Engineering, University of Chittagong, Bangladesh

^{***} Lecturer, Department of Law, Premier University Chittagong, Bangladesh

¹ Cary Nederman, "Sovereignty, War, and the Corporation: Hegel on the Medieval Foundations of the Modern State", *Journal of Politics* 49, no. 2, (May 1987), pp. 505-6.

² J. N Figgis, *From Gerson to Grotius (1414-1625.)* 2nd ed. 1907, Reprint. Cambridge, UK: Cambridge University Press. 1916

territory wherein modern sovereigns are supreme and authoritative. Territoriality is now deeply taken for granted matter. It is a feature of authority all across the globe. The fundamentals of sovereignty have historically been territory-based. Internet subverts the traditional notion of sovereignty. Cyberspace may be interpreted as a "space" apart from geography. The location of information in cyberspace can be viewed as a location of its own, between two or more communicating computers. Although actions taking place in cyberspace may have effects in the locations of both the sender and receiver of information, the actions may take place in a third "space," neither the location of the sender nor the location of the receiver.³ This conception is inconsistent with the traditional basis of sovereignty. However, still now, national border is the basis for creation and administration of laws. The current system of legal governance is based on the geography of national borders. The states make laws governing citizens, institutions and conducts taking place and having effect, within the defined territory. Although the people who use internet are at all times governed by their real-space sovereign, the sovereignty, or control of internet itself and actions taking place within it remain up in the air that expose a significant problem for the states habituated with territorial implications, to go on with internet and cyber activities that occur in internet. The aims and the objectives of this article are:

- a) to expatiate the territorial nature of sovereignty;
- b) to explain how the cyber territory is remaining outside the purview of the territory-based sovereign authority for its peculiar type of structure;
- c) to show how cyberspace curtails the territorial monopoly of legal sovereigns;
- d) to examine the effect of joint sovereigns over internet as against the single hierarchy entailed by the traditional monistic theory of sovereignty; and
- e) to examine the feasibility of cyberspace to be recognized as a new international space in the line of existing international space like Antarctica, Outer Space, and the High Seas.

³ This conception was briefly introduced by M. Ethan Katsh in his book *Law in a Digital World*, p. 124.

2. Sovereignty: A Territorial Attribute of State

It is a general proposition that state is an institution consisting of population, defined territory, government and sovereignty. Although there is diversity among the jurists regarding the elementary factors of state, most of the jurists consented to these four elements of a state. Of these four elements, sovereignty has been the most abstract, controversial and debated issue over last few centuries. By virtue of the sovereignty, a state is attributed to certain capacities, which are unique, practically or in essence, comparing with other institutions residing within state or outside the state.⁴ Whatever

⁴ Normally a state is deemed to possess independence and sovereignty over its subject and its affairs, and within its territorial limits. Sovereignty has a much more restricted meaning today than in the eighteenth and nineteenth century when, with the emergence of highly powerful nationalized states, few limits on the state sovereignty were acknowledged. At the present time there is hardly a state, which, in the interests of the international community, has not accepted restrictions on its liberty of action. Thus most states are members of the United Nations and the International Labour Organization, in relation to which they have undertaken obligations limiting their unfettered discretion in matters of international policy. After all these restrictions, the following essential attributes are associated with state's sovereignty (a) the exclusive power to control its own domestic affairs; (b) the power to admit and expel aliens; (c) the privileges of its diplomatic envoys in other countries; (d) the sole jurisdiction over crimes committed within its territory; (e) freedom from external pressure whether from other states or international organizations in case of legislation, policymaking; (f) possession of actual power in the administration; (g) the power to prescribe rule or law making power; (h) the power to enforce rule; (i) the power to enter into the treaty with other states or with international organization; (j) the power to attain the privileges of the principle of *Par Un Parem Non-Habet Imperium* i.e. equal over equals does not have any authority; see also A James, 1999. "The Practice of Sovereign Statehood in Contemporary International Society", *Political Studies* 47(3), (1999), pp. 460-2; J.G. Starke, *introduction to International law*. New Delhi, Aditya Books Private Ltd. (1994) p 100; S.k Kapoor, *International Law*, Allahabad Central Law Agency, (1998) pp. 333-34; The Vienna Convention on Diplomatic Relations, 1961 and The Vienna Convention on Consular Relations, 1963; *Island of Palmas Arbitration* 22 AJIL (1928) 875 Frederick O. Bonkowsky, *International Norms and National Policy* (Grand Rapids, Mich.: William B. Eerdmans, 1980), p. 89; see also pp. 81-102; M. R Fowler, and J. M. Bunck, *Law, Power, and the Sovereign State*, University Park, PA: Penn State Press. 1995; Art .1 Of The Monte Video Convention, 1933; *the wimbledon case* pubPCIJ (1923) Series A NO 1; *Russia Ship Case*,

attributes are imposed upon the statehood, these all are exercised inside the territory or in relation to territory. Historically, sovereignty controlled territory because of divine or historic authority.⁵ Sovereignty was based primarily on geographical borders. The entrance of a political power into the territory of another sovereign without permission could be considered as a violation of territorial sovereignty.⁶ The state is not a new institution. The state system was present in the ancient Greece, even though those states were not like the states of modern times.⁷ The Greek were confined to the territory of a city-state. They denied the citizenship of the persons residing outside the boundaries of the city-state. Their legislative and administrative functions exposed territoriality of the state authority. Actually the juristic works and expediency of the rulers show that their ideology regarding state authority and reign, run ahead granting the state as a territorial entity.⁸ Even modern

1948. A ship of the former USSR was set free by the USA as Soviet Consular contented it was state property of the USSR the quoted by Mizanur Rahman, *International Law in a changing word* (Bengali) Dhaka, Pallal prakashani 2003 p-64; Harun ur Rashid. *Legal meaning of sovereignty*, available at www.thedailystar.net/law, in law and our rights page.

⁵ W. Michael Reisman, "Sovereignty and Human rights in Contemporary International Law", 84 *Am. J. Int'l L.* (Oct. 1990) 866, 867; See also Richard R. Beeman, "Self-Evident Fictions: Divine Right, Popular Sovereignty, and the Myth of the Constituent Power in the Anglo-American World", 67 *Tex. L. Rev.* (June, 1989), 1569, 1570-71

⁶ W. Michael Reisman, *supra* note 5, 867.

⁷ Bruce D. Porter, *War and the Rise of the State: The Military Foundations of Modern Politics*, 1994, New York: Free Press.

⁸ Sophist philosophers like Gorgias (483-376B.C.), Protagoras (490-420B.C.), Thrasyimachus (459-400B.C.), Hippias (460-400B.C.), Prodicus (450B.C.) etc. felt the necessity of highest authority within the state territory for providing law to be obeyed by the people of the Seven Sages, Thales (624 -547B.C.) and Solon (638-559 B.C.) expressed their support in favour of state authority for national solidarity and unity. Their views reaffirmed that the controlling capacity of state was exercised within the confines of state border for achieving solidarity. Hereclitus (530B.C.) and Democritus (460-370 B.C.) are the pre-platonic philosophers. They bear much positive view about the authority of the state having border-centric propensity. Socrates Plato (427-347 B.C.) Xenophon, Isocrates Epicurus (341-270B.C.) Zeno (342-270 B.C.) Polibius (204-122 B.C.) and Cicero (106-43B.C.) and Seneca (65A.D.). St. Ambrose (340-397A.D.) St. Augustine (354 A.D-) Gregory (504 -604 A.D.) John of Salisbury (1110-1180

international treaties, conventions and agreements establishing international organizations did ignore the territorial significance of statehood. The principle of territorial integrity enunciated in the UN Charter affirms that state has been settled as a territorial institution exercising sovereign power within the fixed geographical confinement.⁹

3. Cyberspace: Non-physical Architecture Placed it Outside the Sovereign Control

Internet is a very much new phenomenon bearing a long heritage of gradual development that took it outside the control of state entailing territorial monopoly. Internet is an interconnected system of networks that connects computers around the world via the TCP/IP protocol and provides a non-physical working place for the users. This place is known as cyberspace. The term "cyberspace" is sometimes treated as a synonym for internet, but is really a broader concept. The term *cyberspace* emphasizes that it can be treated as a place. The United States Supreme Court's first opinion about internet contains language that can be determined as acceptance of the legal

A.D.), Alighieri Dante (1265-1321 A.D), St. Thomas Aquinas (1227-1274 A.D), William of Occam (1280/85 -1337/49) Nicholus of Cusa (1401-1464 A.D), Marsilio of Padua (1270 -1340 A.D) Machiavelli (1469-1527 A.D), Beaumanoir, Bodin (1530-1596 A.D.) and Hobbes (1588-1679 A.D) expressed their views for state authority within a fixed territory of their state of contemporary history reveals that this period is enriched with huge good works on political thought. Central Asian philosophers Mohammad Al Farabi (870-950A.D.) of Turkmenistan, Abu Ali Husain Ibn Sina of Bukhara of Uzbekistan (980-1037 A.D.) mentioned sovereign ruler to rule specified. Abul Waleed Muhammad Ibn Rushd (1126-1198 A.D.) known as *Averroes* of Kordova of Spain said for state authority within the territory of the state. Ibn khaldun (1332-1406A.D.) of Tunisia propagated his theory of *Asabiya* in the sense of the corporate mind of a group of people in geographic border. Contemporary pundits often cite the *Peace Treaty of Westphalia* as the political big bang that created the modern system of sovereign states. *The Treaty of Westphalia* of 1648 gave approval of nation-states with centralized national governments and under this Treaty the defining characteristic of sovereignty has always been the state's capacity to make authoritative decisions regarding the people and resources within the territory, see also Muhammad Ayesuddin, *Rastrachinta Parichiti* (Bengali) Rajshahi: Begum Ayesha Nargis (2002), p263.

⁹ Article 2 of the UN Charter.

metaphor of cyberspace as a place outside national boundaries. The expression of the court was significantly distinctive when it states that a unique medium consisting of certain tools located in no particular geographical location but available to anyone, anywhere in the world, with access to internet that is known to its users as 'cyberspace.'¹⁰

3.1 Real Space and Cyberspace: Simplified Differential Overview

We very repeatedly ask or are asked, 'where is your home? Where is Cox's Bazar? i.e. The location is one of the most significant concepts in geography. There are two ways to represent the location of an object. First, we can use a coordinate system to record the location of some phenomena or objects in our real world. The location implies the geometrical meanings. Plane coordinate system (X, Y) is the easiest and most popular system. Polar coordinate system is used to calculate the point of fall of cannon balls or the orbit of planets. Cartographers use some specific coordinate systems and projection methods to represent the world on maps. Different coordinate systems could lead to different meanings of the world. There is another way to describe the location of an object. That is the "mailing address" or we can call it "relative location". Different from the coordinate system, mailing address system shows the meaning of relationships between each area or region instead of the geometrical relationship. As at the address "I/A O.R Nizam Road, Prabartak Circle, Chittagong", we can see the relationship among O.R Nizam Road, Prabartak Circle and Chittagong. Our mails will be sent to their addresses by their addresses instead of the values of their coordinates. Cyberspace also has its specific coordinate system. The cyberspace uses IP (Internet Protocol) address¹¹ and DNS (Domain Name Systems)¹² to locate the tremendous computer sites. Both methods use hierarchy structure to distinguish each different location and subject of machines. An IP address has four levels to consist a complete address name such as 128.130.170.14. Each level can use 0 to 255 value (1 byte). So, the total maximum machines used in internet can be 4,294,967,296 units, which at present time is still adequate to accommodate a great number of sites. The IP address implies the topology and the connection of networks. Local

¹⁰ *Reno v. ACLU*, 117 S.Ct. 2329, 2334-35 (1997).

¹¹ Douglas E. Comer, *op.cit.*, pp 64, 95

¹² *Supra* note 6, pp 395, 461

networks usually define a "mask" to filter some unnecessary signals from outside networks by using "bridge" or "router" (some devices used in networks). DNS is similar to the "mailing address" in our real world. It also has tree structure and is more flexible and memorable than the IP addresses. DNS can imply the hierarchy relationship in the local network. The level of hierarchy is unlimited. The total number of a Domain Name Address could be 256 characters. It has been the most popular address system in cyberspace. E-mail system or WWW uses domain name as their "mailing address" in networks. The difference between the real world and the cyberspace is that the coordinate system in cyberspace does not reflect the quantitative relationship between each other. For example, we can calculate the distance between two points by their coordinates, but we cannot calculate the network length between two IP addresses. What we can measure is the transmission speed and the intermediate sites between two IP addresses. The transmission speed and the intermediate sites are the major factors of influence on transmitting information. Although a domain name, when initially assigned to a given machine, may be associated with a particular address corresponding to the territory within which the machine is physically located (e.g., a ".uk" domain name extension). The machine may move in physical space without any movement in the logical domain name space of the Net. Or, alternatively, the owner of the domain name might request that the name became associated with an entirely different machine, in a different physical location.¹³ Thus, a server with a ".uk" domain name may not necessarily be located in the United Kingdom, a server with a ".corn" domain name may be anywhere, and users, generally speaking, are not even aware of the location of the server that stores the content that they read. Physical borders no longer can function as signposts informing individuals of the obligations assumed by entering into a new legally significant place, because individuals are unaware of the existence of those borders as they move through virtual space.

¹³ Bush, Carpenter, & Postel, *Delegation of International Top Level Domains*, Internet-Draft ymbk-itld-admin-00, available at <http://www.internic.net>; RFC 882, *Domain Names—Concepts and Facilities*, available at <ftp://ds.internic.net/rfc/rfc882.txt>; RFC 883, *Domain Names—Implementation and Specifications*, available online at <ftp://ds.internic.net/rfc/rfc883.txt>.

3.2. Physical Architectural Analysis of Cyberspace: A Study of Internet Tools

Internet links millions of computers world wide, and any body with a personal computer (PC) and basic communication tools can become a part of it. The ever-expanding Net is becoming a vital resource for business, education, and entertainment. The huge multi-media database of the World Wide Web (WWW), which is one of the aspects of Net, is so sophisticated that the users can meet in a virtual world. As the Net evolves, so new ways of computing are made possible. Network computing is one possible development, which promises greater compatibility and efficiency than the personal computer. At present, the Net consists mainly of PCs with large amount of processing power and disk space (called "fat client computers") connected to servers (other computer that distributes data). The idea behind the network computing is to replace the PC, or fat client, with a network computer (NC), or *thin client*. A *thin client* computer has a processor like a PC with less memory and no disk shortage, and so cheaper. Instead of storing application programs and data on a local hard disk (as a PC does), an NC simply downloads programs and data from a server into its RAM as needed. Network computing promises economies of scale and centralization, since all the data are stored on a few servers, and any software development that need to be made apply to these servers only.

3.2.1 Thin Computer: A Sign of Technological Dynamism

A thin client NC is a halfway between a PC and a dumb terminal, used on mainframe computers. A dumb terminal consists only of keyboard and a monitor—all processing and data storage is carried out centrally by the mainframe. Like dumb terminals, NCs have no local disk storage, but like PCs, they do have a processor. In addition to being smaller and cheaper than PCs, NCs should be more reliable, since they do not have complex peripherals with moving parts, such as disk drives.

3.3. Virtual World of the Net: Pouring a Citizenship Outside the State Purview

The World Wide Web has brought multi-media-graphics, animations, sounds and hyperlinkings to the internet. The Virtual World Wide Web (VWWW), with virtual environments, is a further development, where users can interact graphically with each other. Typical VWWW environments are spread across sites on the Net and on a CD-ROM. The basic program runs from the CD, but

interactions between the users occur at VWWW sites. When a user logs on to a virtual world, he or she chooses a graphical identity; this is how they will appear on the other users' screens around the world. These virtual people called as *Netizen* stroll around and meet in the virtual streets, although the real users might be thousands of miles apart.

3.4. World Wide Web; A Universal Document Devoid of Physical Location

Since 1993, the World Wide Web has become one of the fastest growing communication systems in history. Consisting of an expanding pool of pages created by computers, associations, and individuals, it is accessible to any one connected to internet. Two features of the web make it appealing. The first is the non-linear method of presenting information known as *hypertext*. This enables users to jump between documents to subject-related material at the click of mouse. The second is the multimedia format of web pages, which can be designed using sophisticated graphics, sound and animation, and displayed on-screen by program called a *graphical browser*. Since the development of the browser, the web has become more sophisticated and easier to use, and interest in the WWW has exploded.

3.5. Universal Accessibility of Virtual Tools Crosses the Border

Access to internet is available to users through a wide variety of communication and information retrieval methods. Popular virtual tools like e-mail, mail exploders, newsgroups, chatrooms and the World Wide Web easily transgress national border inconsistent with territorial control of sovereign states. The mechanism, process and technique as used in internet cause the extraterritorial effects.

3.5.1. Navigating the Web: A Virtual World for All

Unlike real-world-document, web, website and webpage are significantly different on the basis of territorial or physical criteria. There are millions of pages available on the web and graphical browsers; such as Netscape Navigator, which provides a window in the computer screen on which these pages are displayed in fine detail. Key word searches can be performed using facility called a search engine; particularly topics can be explored using directories called *subject trees*; and specific pages can be accessed by typing the exact address, or (URL) Universal Resource Locator. Other browser tools

include history list, hot list and bookmarks. A URL is used by browsers¹⁴ to locate an item on internet. A URL can refer a web site, a sound file, a graphic image, or a web page. URLs consist of five elements. The first element is the protocol to use to access the internet site. The second element is the web server's name. The third element is the path to locate the item on the web server. A path can consist of one or more slash separated directory names. The fourth element is the file name. The fifth element is the anchor name. Anchor names are used to refer a specific location within a long web page.

3.5.2. E-mail: Rapid Communication Bearing no Physical Barrier

Via e-mail, users without being bothered by the hazards time and space can send an electronic message to another user or to a group of users.¹⁵ Upon receipt of the e-mail message, the message is stored electronically in the user's mailbox to be read immediately or at a later time. Sending e-mail on internet requires a different addressing format from URL. E-mail addresses contain four elements.¹⁶ The typical address, however, consists of three elements. The first is the user's internet account name. The second is the host or domain name (whereby, the host name is the name of the computer that contains the internet account and the domain name is the name of the network to which the host computer is connected). The third is the top-level domain. International e-mail contains a fourth element, the abbreviation of the country in place of or in addition to the top-level domain name.

3.5. 3. Mail Explorer

A mail exploder is like e-mail group where subscribers can send messages to a common e-mail address. The messages are then forwarded to each of the

¹⁴ Heidi Steele, *How to Use the Internet*, Ziff-Davis Press (1996). A browser is a program used to access pages stored on Web servers. A Web server is a very fast computer that is always connected to the internet.

¹⁵ Janet Reno, *Attorney General of the United States et al. v. American Civil Liberties Union*, Supreme Court No. 96-511, 20 n.3 (Jun. 26, 1997). <http://www.ciec.org/SC_appeal/opinion.html> (visited Aug 10, 1997)

¹⁶ Supra note 14. A network is where several computers are connected using cables, telephone lines, satellite or high-speed data lines in order to share information and resources.

group's subscribers.¹⁷

3.5.4. Newsgroup

A newsgroup can be seen as an online discussion group where there are tens of thousands of discussion areas each focusing on a specific topic. Newsgroups are arranged into hierarchies such as comp (computers), soc (social issues), or sci (science). Each hierarchy is divided into branches and sometimes into sub-branches.¹⁸

3.5.5. Chatrooms

Chatrooms are common areas in cyberspace where users can engage in real time dialogue by sending E-mail messages that can be read by anyone in the chatroom or on a one-on-one basis.¹⁹ Recent technical developments enable users to move beyond the limitations of chatrooms to include real-time voice communication between users anywhere in the world via internet.

All of these methods can be used to transmit text. Most of these methods can also transmit pictures, sound and video images. In aggregate, these methods create a unique medium known as cyberspace available for everyone from anywhere in the world.

3.6. Internet and the Web: Unveiling a Wrong

The World Wide Web ("WWW") has been defined as a vast collection of documents stored on internet computers.²⁰ Sites can be linked up to each other using hyperlinks. Actually, the web is only a part of the internet, but its name has become so popular that many new users believe that the web is the internet.²¹ Tim Burners-Lee, the physics research who first conceived the web in 1989, compared the internet and web to differentiate between brain and mind; where internet is the physical method of communication and web is the information itself.

Actually, web is only a part of the internet, but its name has become so

¹⁷ Supra note 15,

¹⁸ Supra note 14.

¹⁹ Supra note 15.

²⁰ Supra note 14.

²¹ Thomas Boutell and Boutell, Com, Inc., World Wide Web FAQ, 1997.
<<http://www.boutell.com.faq>> (visited Aug.22, 1997)

popular that many new users believe that web is the internet.²² From a technical standpoint, web is an information presentation system.²³ The web was begun by Tim Berners-Lee while working at CERN (European Center for Nuclear Research), the European Laboratory for Particle Physics, He started the WWW project with the purpose of building a distributed hypermedia system. Berners-Lee has continued his work with the W3 Consortium at the Massachusetts Institute of Technology.²⁴ web site consists of one or more web pages created by an individual or an organization residing on a web server.²⁵ A web page can either restrict users to viewing a web page or it can be interactive and allow users to read and/or update fields on the web page.²⁶ Two examples of an interactive web page are a questionnaire or an order form.

Web documents or web pages have two important characteristics. First, they contain icons or links (consisting of either blue or underlined text) that can be clicked on to access other web pages.²⁷ These links can point to other portions of the same web page, to other pages on the same web server or to pages on a computer located anywhere in the world. Second, they can contain sound, graphics, animation, and/or other multimedia elements.²⁸

3.7. Universal Access Paths to Cyberspace Undermines Territorial Confines

Access to internet is available to users through a wide variety of communication and information retrieval methods. Popular access methods like e-mail, mail exploders, newsgroups, chatrooms and the World Wide Web. A person can enter into the world of Net just clicking on the PC having internet connection bearing some specified software. Internet users can enter into the visual world from anywhere in the world. A Bangladeshi user can enjoy the charms of being in the land of America or other countries. It is definitely sneering at the territoriality of the state. Now the activities of

²² Supra note 14.

²³ Supra note 21.

²⁴ *id.*

²⁵ *id.*

²⁶ Supra note 14.

²⁷ *id.*

²⁸ *id.*

human personalities in the capacity of their citizenship or nationality are not grasped by the territorial monopoly.²⁹ A significant portion of his time are passed in Net world causing some effects of civil, political, economic, social and cultural nature³⁰ bearing the monetary value not less than the value claimed by the territorial activities of human being.

4. Cyberspace Curtails the Territorial Monopoly of Legal Sovereign

One of the aspects of sovereignty is that its holder makes law for the subjects within the territory. The state itself is a territorial institution. So the legislative activities are centered towards the territorial manifestation. But the Cyberspace is such a territory, for which any kind of legislation is impossible in the same way as it could be done for a fixed territory. Law is defined as a set of rules, which can be enacted or adopted more or less in modern perspective by a legislature. It is applied and developed by the courts of law. Both these institutions are organs of state. And since states are territorial in nature, the law is conceived and spoken of as territorial. The enforcement of law is undoubtedly territorial in the same way as the state is territorial; and so the state power is in time of peace exercised only within the territory of the state or on its public ship and aircraft and on vessels and aircraft registered under its law on the basis of objective territorial principle.³¹ The territoriality of law in this meaning flows from the political division of the world. No state allows other state as a general rule to exercise powers of government within it.³² Therefore the enforcement of law is confined to the geographically territorial boundaries of the state enforcing it. It is easy to understand how the enforcement of law can be regarded as territorial, for force is a physical affair and is manifested in physical space. The proposition that a system of law belongs to a defined territory, means that it applies to all persons, things, acts and events within that territory and

²⁹ *id.*

³⁰ Stephen Levy, *Cyberpunks*, Wired 1.2, May-June 1993. The area of encryption technology is still in flux. see *Bernstein v. United States Dept. of State*, 945 F. Supp. 1279 (N.D. Cal. 1997) (striking down encryption controls on First Amendment grounds).

³¹ P.J. Fitzgerald. *Salmond's Salmond on law* 12th edition .p75

³² Stanford Encyclopedia of Philosophy available at www.plato.stanford.edu/entries/sovereignty.

does not apply to persons, things, acts and events elsewhere. This proposition is not self-evident truth; it is merely a generalization from the practice of states. Perhaps it is a very rough and imperfect generalization. But physical borders are not simply arbitrary creations. They are based on historical necessity, cultural diversity, geographical proximity, religious consideration and financial cause etc. Whatever reason lies behind the border set-up for the purpose of demarcation of the state territory, the law made for the state territory is obviously of territorial nature. Control over physical space, the people and things located in that space, is a defining attribute of sovereignty and statehood.³³ Law making requires some mechanism for law enforcement, which in turn depends to a large extent on the ability to exercise physical control over, and to impose coercive sanctions on law-violators. The correspondence between physical boundaries and boundaries in "law space" also reflects a deeply rooted relationship between physical proximity³⁴ and the effects of any particular behaviour. We generally accept the notion that the persons within a geographically defined border are the ultimate source of law-making authority for activities within that border.³⁵ The "consent of the governed" implies that, those subject to a set of laws, must have a role in their formulation. The persons subject to a sovereign's laws are most deeply affected by those laws enacted for any particular physical space. Similarly, allocation of responsibility among levels of government proceeds on the assumption that, for many legal problems, physical proximity between the responsible authority and those most directly affected by the law, will improve the quality of decision making.³⁶ Physical boundaries are also appropriate for the delineation of "law space" in the physical world because they can give notice that the rules are changed when

³³ David R. Johnson and David Post, "Law and Borders-The Rise of Law in Cyberspace," 48 *Stanford L.Rev.* (May 1996) 1357, 1367.

³⁴ *id.*

³⁵ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 35th Sess. (1970); Declaration of the Inadmissibility of Intervention into the Domestic Affairs of States, G.A. Res. 2131, 30th Sess. (1965).

³⁶ William S. Byassee, "Jurisdiction of Cyberspace: Applying Real World Precedent to the Virtual Community," 30 *Wake Forest L. Rev.* n.5.(1995), 197, 198.

the boundaries are crossed. Proper boundaries have signposts that provide warning that we will be required, after crossing, to abide by different rules, and physical boundaries are generally well-equipped to serve this signpost function. Universal access paths to cyberspace destroyed territorial confines.³⁷ Cyberspace has no territory-based boundaries. The process and speed of information transmission on the Net is almost entirely independent of physical location; such messages can be transmitted from any physical location to any other location without degradation, decay, or substantial delay, and without any physical cues or barriers that might otherwise keep certain geographically remote places and people separate from one another.³⁸ The Net enables transactions between/among people who do not know, and in many cases cannot know, the physical location of the other party. There is no necessary connection between an internet address and a physical location. The power to control activity in cyberspace has very tenuous connections to physical location. Many governments first respond to electronic communications crossing their territorial borders by trying to stop or regulate that flow of information as it crosses their borders.³⁹ In particular, resistance to "Transborder Data Flow" (TDF) reflects the concerns of sovereign nations that the development and use of TDF's will undermine their "informational sovereignty," will negatively influence on the privacy of local citizens,⁴⁰ and will upset private property interests in information.⁴¹ Even local governments in the United States have expressed concern about their loss of control over information and transactions flowing across their

³⁷ Henry H. Perritt Jr., *Self-governing Electronic Communities*, (Apr. 1995) (on file with the *Stanford Law Review*), pp.36-49, 59-60.

³⁸ M. Ethan Katsh, *The Electronic Media and the Transformation of Law* 92-94 (1989), 92-94; M. Ethan Katsh, *Law in a Digital World* (1995) 57-59, 218.

³⁹ John Auerbach, *Fences in Cyberspace; Governments Move to Limit Free Flow of the Internet*, Feb. 1, 1996, at 1, *Boston Globe*, (surveying "digital Balkanization" of the Internet through government censorship and filtration);

⁴⁰ Anthony Paul Miller, "Teleinformatics, Transborder Data Flows and the Emerging Struggle for Information: An Introduction to the Arrival of the New Information Age," 20 *Colum. J. L. & Soc. Probs.* (1986) 89, 107-08, 127-32 (exploring the willingness of some national governments to forego the benefits of unregulated TDF's so as to protect their political, social, and cultural interests).

⁴¹ *id.*

borders.⁴² But efforts to control the flow of electronic information across physical borders are likely to prove futile, at least in countries that hope to participate in global commerce.⁴³ Individual electrons can easily, and without any realistic prospect of detection, "enter" any sovereign's territory. The volume of electronic communications crossing territorial boundaries is vast in relation to the resources available to government authorities to permit meaningful control. This lack includes non-existence of law and legal institution. But the law applicable to the cyberspace would be quite different from territory-based law because of the peculiarity of cyber-world bearing virtual character of visual nature. It should be considered that the events or activities ensued in cyber-world causing legal consequences are not less than those in the real world are.⁴⁴ Accordingly a distinct set of laws and legal principles has become inevitable to be adopted with same mission holding spirit of punishment or remedy. The financial damage sustained by the individual or by corporate body or by governmental organs is claiming billions of dollars, which sometimes surpass traditional territory-based damage.⁴⁵

5. Joint Sovereign or Less Sovereign Proposition: Two-fold Test for Cyberspace Regulation

The nature and location that is exposed from the above discussion show that cyberspace can be regulated by all states interconnected by internet or it would remain sovereignless to be governed by a distinct set of law independent of the domestic law of any particular state. The joint regulation by more than one state posits that these states will exercise sovereign power over the cyberspace jointly. This type of authority is not rare in the international legal and political arena. As we have discussed earlier in modern times, there have been revolutionary changes in respect of the

⁴² Gregory Spears, *Cops and Robbers on the Net*, Kiplinger's Pers. Fin. Mag., Feb. 1995, at 56 (surveying responses to online investment scams).

⁴³ Walter B. Wriston, *The Twilight of Sovereignty*, (1992) (examining the challenges to sovereignty posed by the information revolution).

⁴⁴ Stewart Biegel, "The Emerging and Specialized Law of the Digital Revolution", *Los Angeles Daily Journal*, Jan. 25, 1996, at 1.

⁴⁵ Mark Kravitz, "Sum & Substance: A Virtual Presence," *The Connecticut Law Tribune*, Apr. 21, 1997, at 1. <<http://www.courtTV.com/news/422f.html>>

theory of sovereignty of states.⁴⁶ In present times it is not proper to say that the span of activities over which the sovereign authority is exercised is not remaining exclusively of any particular state. It is almost a settled view that over one and the same there can be only one sovereign. But international political factors disgorge in practice, several exceptions; such as:-

- a) The first and probably the only real exception is the condominium which exists between two or more states exercising sovereignty jointly over a territory, e.g., condominium of Austria and Prussia over Schleswig Holstein Lunenburg from 1864 till 1866, condominium of Great Britain and Egypt over Sudan from 1898 to 1955 and condominium of Great Britain and France over the New Hebrides (now the independent state of Vanuatu). These types of authority were exercised on the basis bi-lateral negotiation, even though they could not avoid the conflict on some vital issues.
- b) One state exercising sovereignty, which is, in law vested elsewhere, i.e., where a territory is administered by a foreign power with the consent of the owner state. For example. Great Britain exercised sovereignty over Turkish Island from 1878 to 1914. But that is not a substantial example in modern perspective, because at that time many states did not exercise actual control over the parts of their own territory for administrative and financial hazards. The real conflict regarding diverse issues arising out of joint sovereign was not tested.
- c) The third exception is that of giving territory on lease or pledge by the owner state to a foreign power. For example, in 1998 China leased the district of Kiaochow to Germany, Wei-hai-wei and the land opposite to the island of Hongkong to Great Britain, Kuang Chouwan to France and port Author to Russia. It is noteworthy that the relation between the lessee and the lessor state is regulated exclusively by the stipulation of the bi-lateral agreement. So all the possible controversial issues are previously resolved and accordingly joint sovereign can go with their own significance.
- d) Where the use, occupation and control of the territory are granted in perpetuity by the grantor state to the other state. For example, in 1903 the republic of Panama transferred to the USA a ten miles territory for

⁴⁶ M. R Fowler, and J. M. Bunck, *supra* note 4.

construction, administration and defense of Panama Canal.

- e) The last exception is that of a mandated or trust territory. The state, which is given a mandate or a trust territory, exercises sovereignty over it although the territory is not its own. In the international perspective we find the mandate system under the League of Nations and mandate system under trust territory under the supervision of the United Nations. In both cases the controlling state is responsible to both international organizations.⁴⁷

Test of joint sovereignty is not possible in case of cyberspace because joint authority of two or three or few states over a physical territory is not similar to the joint sovereign authority of almost all states over non-physical cyberspace consisting of much more complicated issues. Multi-dimensional conflicts regarding cyberspace are likely to arise; such as jurisdictional confusion,⁴⁸ extradition dilemma, conflict of domestic laws of different countries, conflict of common law approach and civil law approach etc. So we can testify the theory of international space proposition in the light of sovereignless quality.

6. Sovereign-less Character of International Space Can be a Better Solution

There exists in international law a type of territory, which is called *international space*. At present there are three international spaces as such Antarctica, Outer-space, and the High Seas. The significance of international space is that no state will exercise sovereignty over the international space. It is a recognized norm of the international law. The history of international spaces begins at sea. Modern admiralty law and the law of the High Seas began in large part with Grotius⁴⁹ in the 17th Century.⁵⁰ The Law of the Sea

⁴⁷ A.S. Muller, *International Organizations and their Host States: Aspects of their Legal Relationship*, 1995, Kluwer Law International, 69.

⁴⁸ William Byassee, *Jurisdiction of Cyberspace: Applying Real World Precedent to the Virtual Community*, supra note 36 (arguing that current legal structures are inapplicable to cases arising in Cyberspace, and calling for the creation of separate jurisdictions defined by "virtual communities" in order, for example, to define "community standards" for the purposes of pornography law).

⁴⁹ This famous work by Grotius is perhaps the seminal work in modern international law: Hugo Grotius, *De Iure Belli ac Pacis [On the Law of War and Peace]*

remains the dominating voice in the discussion of international spaces, and the oceans have long been the most important of the international spaces. Antarctica⁵¹ was not discovered until about 1820, and it did not become subject of serious international attention until the 1950s, especially during International Geophysical Year (1957-58). Although visible since time immemorial, Outer Space remained similarly unexplored until 1957, when *Sputnik* introduced men to a new international space. Some American cases and state practices posit the sovereignless character of international spaces. The finding of the case of *Smith v. United States*⁵² is typical one in this regard. Antarctica is just one of three vast sovereignless places where the negligence of federal agents causing death or physical injury will remain outside the purview of the sovereign authority of the state. In this case the court side by side opined about the jurisdiction of the Outer Space that negligence or any other violations in Outer Space are staying beyond the confines of the sovereignty. The court also observed that the jurisprudential approach towards the High Seas disposes its sovereignless nature. The similar view was shown in subsequent cases. Even the principles enunciated by this case were strictly followed in many cases. The *Hughes Aircraft* is one of the most glaring cases.⁵³ In this case the U.S. Court of Federal Claims relying on the decision of *Smith v. United States* declaring the non-application of the Federal Tort Claims Act to claims arising in Antarctica held that US patent law did not apply to foreign spacecraft in Outer Space. The

(1631).

⁵⁰ The Roman *mare nostrum* "our sea" for the Mediterranean was the result of two centuries of no real conflicts of law, the *Pax Romans*. The idea of international law being a law between equal powers simply has no grounding in Roman history. Modern international law really begins with the Peace of Westphalia (1648) which endorsed a theory (a *de facto* result of the Thirty Years' War) that the equal sovereign states are the building blocks of the political world. Today, the notion of sovereignty and ultimately nationality is so ingrained that we imagine that every individual has a nationality just as he or she has a gender. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 14 (1983).

⁵¹ Henry Glass, "Marine International Law," *XI Proceedings of the U.S. Naval Institute*, (1885), 526-7.

⁵² *Smith v. United States*, 507 U.S. 197, 122 L.Ed. 2d. 548 (1993).

⁵³ *Hughes Aircraft v. United States*, 29 Fed. Cl. 197, 231 (1993).

governing international treaties are also similar in their conception and design showing the essence of international customary law in this behalf.⁵⁴

6.1. Previous International Spaces Can Usher Way for New One

The fundamental document in Outer Space law is the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space (Outer Space Treaty).⁵⁵ The treaty was adopted pursuant to a United Nations General Resolution which contains verbatim much of the text of the treaty.⁵⁶ The resolution and the treaty explicitly state that states have jurisdiction over objects bearing their registry. Remarkably, this resolution of the General Assembly was unanimous.⁵⁷ There is also no doubt that the Outer Space Treaty was based on the Antarctic Treaty. Hearings held before the Senate Committee on Foreign Relations of the USA in 1967 actually include a copy of the Antarctic Treaty.⁵⁸ In the hearings, the committee noted that the Outer Space Treaty was specifically based on the Antarctic Treaty.⁵⁹ The treaty states that Outer Space, including the moon, is not subject to claims of sovereignty.⁶⁰ Therefore, no territorial jurisdiction is possible. The treaty also provides that all activities shall be in accordance with international law.⁶¹ So it is evident that the previous international space has remarkably influenced the subsequent ones for birth, growth and progressive development in modern perspectives. Such kind of analogical endeavours can be applied for the cyberspace to be recognized as a new international space within the purview of international law. Cyberspace emerged during the 1970s and 1980s as the apparatus of internet took root, but it was not

⁵⁴ Jacques Maritain, "The Concept of Sovereignty," *American Political Science Review* 44, no. 2 (June 1950), pp. 345-47.

⁵⁵ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, October 10, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 (hereinafter Outer Space Treaty).

⁵⁶ *Ibid.* at 2411.

⁵⁷ Aside from being extremely rare, this unanimous resolution represents a new multinational approach to new worlds. It is a significant improvement over the Treaty of Tordesillas 1494, in which the Pope divided the whole unclaimed world between the Spanish and the Portuguese.

⁵⁸ Hearings before Senate Committee on Foreign Relations 90th Cong. 80 (1967)

⁵⁹ *Ibid.*

⁶⁰ Outer Space Treaty, art. II.

⁶¹ Outer Space Treaty, art. II.

until the early 1990s that an explosion in users and uses, including commercial uses, introduced a worldwide virtual community to another international space.⁶² The theoretical and conceptual impediment is physicality. These three physical spaces are not like cyberspace, which is a non-physical space. The physical and non-physical distinction is only one of so many distinctions that can be made among these spaces. What makes them analogous, as international space is not any physical similarity, but their international, sovereignless quality. As a fourth international space, cyberspace should be governed by default rules to be proposed and adopted in future that resemble the rules governing the other three international spaces. It would be better solution vis-a-vis joint sovereign. Because reformation of existing international law will be more easy than facing the conflict of sovereign states regarding many issues.

7. Concluding Remarks

Our brief experience with cyberspace indicates clearly that the computer-with-internet-connection is a space machine, negating physical distance and creating new spaces in which novel relationships and activities can occur. It has created a new environment in our relationship covering almost every direction of our life.⁶³ Even we have moved quite far from those cultures where activities were guided solely by the rise and fall of the sun every day. Cyberspace is moving us to a place of virtual light, indeed a place that has no night. These new relationships, dynamism and spirit have the potential to touch sovereignty in many levels, particularly the territoriality of sovereignty and territorial monopoly of legal sovereign.⁶⁴ New relationships are formed, new entities and institutions are established, new patterns of behaviour emerged, and the sovereign authority ultimately has become bound to recognize the changes in their legal, civil, political, economic, social, cultural and other similar implications. New communications and technologies have

⁶² Future generations may yet view the experience of "absolute" national sovereignty running from about 1650 through 2000 as a brief aberration in the political history of the earth. This kind of perspective is often lacking in discussions of the future of international law.

⁶³ W. Michael Reisman, "In Defense of World Public Order," *American Journal of International Law* 95, no. 4 (October 2001).

⁶⁴ Harun ur Rashid, *supra* note 4.

engaged us in change at many levels rendering considerable problems that are likely to arise in this new environment or space, such as high levels of conflict resulting from information transactions and information relationships. As the form of information changed from something tangible to something electronic, changes will occur in legal institutions and processes that have been oriented with particular physical spaces, and in legal concepts and doctrines that have depended upon a relationship with a particular space. The law might be said to have a "sense of place" that there are informational places that are central to the process and operation of law. For example, law libraries are obviously legal information places. For such physical information places the new technologies facilitate access or create new relationships with information by overcoming physical limits associated with the walls of the library, the binding of a book, and even the margins of a page. The invasion of legal spaces by cyberspace goes beyond the law's physical places and objects. For example, the law describes and defines many issues and concepts in territorial terms. Thus, privacy not only involves individual control over certain kinds of information but also employs territorial terms to describe its nature; such as zones of privacy. Jurisdiction is an area of law that is directly linked to control over people and spaces etc. The structure and nature shows that cyberspace cannot be controlled properly by the domestic law, as they are, in most cases, outcome of command, and acquiescence of sovereign authority of territorial character. If the cyberspace is left open to be controlled by all the states, then it will come within the purview of legal system of every state resulting in numerous complications. In that case the recognition and acceptance of it as a new international space will absolve lots of debates. International law is not merely a terrestrial phenomenon, but includes all non-sovereign spaces, whether on this earth or beyond it. So existing principles of international law can remarkably contribute to govern the cyberspace with few substantial changes. It is also not deniable that huge procedural changes have to be drawn up due to the cyber-architectural-peculiarity.