

Legal Reforms Of E-Governance In Indian Administrative System

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Abstract

Over a decade the e-governance is evolving slowly in India. Computerisations of government agencies are very common in India. On the contrary, the plan of total computerisation is still in indistinct. At present, the digitalization and electronic governance is under rapid development and change. It has become the order of the day to regulate the e-governance system.

E-governance enhances the efficiency and capacity of the public administration. It improves the quality of the services provided by the government. Though the e-governance has many advantages, it has failed to create required impact in India. This has happened due to the lack of legal backup and the absence of policies and strategies as well to regulate the same. One of the prominent visions of the National E-Governance Plan as articulated in its vision statement as follows:

"To make all Government services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realize the basic needs of the common man"¹

The major objective of this paper is to elaborate the various benefits of the e-governance in the public administration and the legal frameworks of e-governance. The aim of this paper is to highlight the lacunas in the existing laws dealing with the e-governance and to render possible suggestions.

Introduction

The term 'e-governance' simply means, use of Information Communication Technology (ICT) as a tool to achieve enhanced governance. E-governance could deliver much convenient, customer-oriented and cost effective public service by sharing of information through electronic media. More specifically, e-Government harnesses the information and communication technologies (such as Wide Area Networks, the Internet, and mobile computing) to transform relations with citizens, businesses, and other arms of government.² Often e-governance and e-government are sounding similar, but in fact they are not. E-government is administration of government businesses by electronic means. It includes transformation of internal and external public sector relationship. E-governance is the development of the transferred information. It includes the development of the policies, laws,

¹<http://www.negp.gov.in/AboutUs.aspx> (Retrieved on 03-07-2016)

²http://www.ita.gov.om/ITAPortal/Info/FAQ_eGovernmen.aspx (Retrieved on 07-07-2016)

and regulations which is necessary to support the functions of the e-government. The following table explains the differences between the two words such as government and governance. In addition to the information, it further explains the differences between the e-governance and the e-government:³

GOVERNMENT	GOVERNANCE
Superstructure Processes Rules Rules Coordination Outputs	Functionality Decisions Goals Performance implementation Outcomes
e-Government	e-Governance
Electronic service Electronic Delivery Electronic workflow Electronic voting electronic productivity	Electronic consultation Electronic controllership Electronic engagement Networked societal guidance

ICT is one of the major resources employed in the e-governance system. ICT is nothing but the extended synonym of the Information Technology (IT). It includes internet, telecommunication etc. ICT is commonly used to store, access, transmit and manipulate information. Combined function of the ICT and governance is called as e-governance. E-governance is used in various phases of interaction it includes government to citizen, government to business, government to employees, government to government and citizen to government.

The major role of the government is to render proper effective public service to its citizens. Public administration is the top bureaucracy that plays a crucial role in creating the welfare state. Owing to the poor and ineffective governance that puts the country in trouble like poverty, starvation, diseases etc. There is a wide range of grounds for the cause of this ineffective governance leads to intricacy in administration, politics, corruption etc. There are three stages in the public administration. These three stages include: the framing the policy, execution and enforcement. All these stages should be taken care of to deliver an effective service to the citizens. Ever growing administrative system poses a big challenge to the public bureaucracy. Administrative governance in India has been continuously changing it is the high time to adopt new technologies for the effective administrative system.

The Interaction between the government and the people is the only way to construct the citizen's confidence. The distended gap, over a period between the government and the citizens developed enormous doubt on the accountability. Developing transparent access to the government document such as budget, plan etc. will increase the confidence towards the public administrative system. It is vital to note here that, the investments in various schemes to shrink this gap gone vain. In spite of these efforts, the gap is still widening. Hence, it is the need of the hour to implement some decisive reforms such as technological improvement.

³Riley, T.B. (2004) "E-Governance vs. E-Government. Information for Development"

History of E-Governance in India

The Prime Minister in his address to the National Development Council meeting held on the February 19, 1999 said: “people often perceive the bureaucracy as an agent of exploitation rather than a provider of service. Corruption has become a low risk and high reward activity. Frequent and arbitrary transfers combined with limited effect, are harming the work ethic and lowering the morale of the honest officers. While expecting discipline and diligence from the administration, the political executive should self critically review its own performance. Unless we do this, we may not regain credibility in the eyes of the people who have elected us to serve them.”⁴ In India e-governance originated in seventies. It started in some sectors such as defense, planning, economic monitoring etc, as an in-house application development. Then it is widely used in collecting data to facilitate election, taxation, census etc. The effort of connecting all the National Information Center with all the district headquarters is the one of the major milestone development in eighties. More emphasize was given for automation and computerization in nineties.

The 11th report of the Second Administrative Reforms Commission in 2008 widened the scope of e-governance plan. In accordance with the recommendations of the Administrative Reforms Commission, Department of Information Technology (DIT) and Department of Administrative Reforms & Public Grievances formulated the National E-governance Plan (NeGP). The program required the development of new applications to allow citizen access to government service through Common Service Centers; it aims to both reduce the government costs and make access to services easier.⁵

Advantages of E-Governance

Already electronics is ruling the world. India is one of the developing countries which need to adopt and implement the electronic system of administration to cope with the developed countries. Even a use of small gadget can change the entire activity of the day to day life. In the age of electronics it is the mandatory duty of the government to implement the electronic technology in possible bureaucracies. Public administrative system is the predominant bureaucracy that should be converted into electronics. This ensures the speed, transparent and accountable services in the administrative system. There are five key advantages in the e-governance. They are democratization, swiftness, transparency, accountability and cost reduction.

One of the real goals of the democracy is to ensure the people participation in the government. E-governance allows the public to contact the politicians and public offices at anytime. Even it gives the real-time direct interaction with the public servants. Moreover, general public can participate in the decision making process by influencing the people’s elected representatives. This will encourage the greater degree of democratization. All know

⁴Module on reform initiatives in administration, developed by v. Jwala narasimha rao additional director, on behalf of DR MCR HRD institute of AP Hyderabad under the ‘UNDP’ project for strengthening of state administrative training institutes p.62

⁵<http://www.indg.in/e-governance/e-governance/egov-plan> (Retrieved on 07-07-2016)

that a computer can do more jobs accurately and promptly than a human. It automatically reduces the working hours. The precise use of e-governance in multiple tasking is possible in a fraction of seconds. It is not difficult to communicate with the government agencies throughout the day i.e. 24x7 in developed countries. Though it is somewhat difficult to imagine in the developing countries but still it is not impossible. The e-governance allows the general public to access the data online. It facilitates the citizens to access the data at their convenience and it provides ease of access. It results in at most transparency. On the contrary, the current administrative process leaves many possibilities to conceal the information from the public. Once the government process made transparent then they are accountable to the public. When a government shows accountability only it could be a responsible government. There are people still live below poverty line therefore, it is imperative that the pertinent goals of the government to achieve these things in a cost effective manner. E-governance is one among the many administrative reforms to reduce the cost of the public to access the government information.

E-governance not only advantageous to the public it is also useful to the administrator. It reduces the efforts of the administrators with the aid of electronic gadgets. The planning and policy making process becomes very easier with electronic tools.

Dire Need For Legal Framework

First of all one has to know the dire need for the legal framework. The success of the e-governance initiation depends on the strong legal framework. The common problem in devolving countries is to identify the legal issues. There are some essential questions which are not answered yet. For example what is the legal safeguard to be given to the aggrieved person? Entry level problems like computerisation are not yet solved to adapt the legal framework. It is apparent that the e-governance is in a pilot stage. Without the legal sanction, it affects the legitimacy of the action taken by the government. Since it affects the enforceability, it is necessary to provide legitimacy to the act by legislative measures. This legal framework should not be a mere black and white but it should be in a way to address legal obstacles and it should eradicate the same. The legitimacy should be proportionate to the action which is taken. Otherwise it will dilute the accountability of the users.

The next reason for the need of legal framework is the security. It is the one of the most principal issues that the legislature should take care. It is the duty of the technicians as well as the users of the e-governance to ensure their own security to a certain level. If there is no self-responsibility, it becomes burden to the enforcing authority. Fair access to the public information should be ensured by the legislation. Fair access maintains the privacy of a person. At the initial stage itself the dividing line between the personal and public should be drawn. Furthermore, it is the duty to ensure the complete privacy of the public employee. Additionally no one guarantees that the e-governance is much secured. Even a technical geek cannot guarantee that, hence the redressal mechanism should be strengthened to tackle these security and privacy issues. This will ensure the public confidence in the e-governance in the administrative system.

E-Governance and Legal Issues

The most unfortunate obsession is that there is no legal framework to mandate e-governance. Only the national e-governance plan lays some policies and regulations to initiate the e-governance in India. It covers all the aspects of e-governance right from the data collection to delivery. What is more alarming is that no Act, policy or regulation mandates the e-governance in India. Although the Information Technology Act 2000 contains some provisions related to the e-governance, there is no provision to mandate the e-governance. Thus, it is now essential to implement the National E-governance Plan to its fullest extent to achieve the desired goal.

It is indispensable to look into the National E-governance Plan in detail. Already there are many structural and institutional issues have arisen while implementing the National E-governance Plan. This plan was first acquired its form in the year 2006. The said plan was approved by the union government on May 2006 comprising of 27 mission mode projects and 8 components on May 18, 2006. The main objective is to start a pilot operation in the e-governance. Unfortunately with no statute in place to necessitate implementation for the further development however, it is still in a pilot stage. The main vision of this plan as mentioned in the vision statement is, "To make all Public Services accessible to the common man in his locality, through common service delivery outlets and ensure efficiency, transparency and reliability of such services at affordable costs to realize the basic needs of the common man."⁶ Even though the e-governance is the only resolution to achieve this vision, government has failed inadequately to implement the same.

The commencement legal development started in the year 1998. The Department of Electronics in July 1998 drafted a bill. However, this bill was introduced after one and half years on December 1999. The following commerce ministry substantially altered the bill to harmonize with the UNCIRAL model recommended by the general assembly of the United Nations by a resolution.⁷ Then the Ministry of Law and Ministry of Company Affairs scrutinized this draft jointly to make it more viable with the World Trade Organisation obligations. The Bill was referred to the 42 member Parliamentary Standing Committee. This Standing Committee made several useful suggestions. All those amendments were approved by the Ministry of Information Technology. After a prolonged debate, the Union Cabinet approved the Bill on May 13, 2000. The Act was finally passed on May 17, 2000. The President assent was granted in third week of June 2000. This Act is known as Information Technology Act 2000.

The third chapter of this Act contains provisions related to e-governance. This chapter contains seven sections related to e-governance. Nothing in this Act provides mandatory compilation of e-governance. It merely deals with the legal recognition of electronic records, legal recognition of digital signature, use of those e-records and e-signatures in government and its agencies, retention of electronic records and publication of rule, regulation etc. in electronic gazette. Power to amend and make rules vested with the central government in respect of the digital signature. These are the provisions related to the e-governance in

⁶<http://www.indg.in/e-governance/e-governance/egov-plan> (Retrieved on 08-07-2017)

⁷dated 30 Jan 1997

Information Technology Act 2000. There are some other provisions like, the chapter ten deals with the Cyber Regulations Appellate Tribunal also applicable to the e-governance. In furtherance of the Information Technology (Amendment) Act 2008 there were many changes brought into the e-governance system.

There are two reasons for the failure of these provisions as such: One core reason is that this Act has not mandated the e-governance in administrative system. The second one is that, the infrastructure for the implementation of the same is not yet fulfilled. To overcome these lacunas and also to mandate the government to deliver its services electronically The Electronic Delivery of Services Bill was introduced in the Lok Sabha on Dec 27, 2011. Some of the salient features of this Bill are as follows:

The Bill provides that the central government, the state government and public authorities shall deliver all public services through electronic modes, except those that cannot be delivered electronically. The government may also notify within 180 days that the other services which will not be delivered electronically. Other than this, if the public authority, in consultation with the Commissions, decides not to deliver electronically it may not deliver it. Services that can be delivered through electronic means include the receipt of forms and applications, the issue of licenses and permits, receipt and payment of money among others. Public authorities are required to deliver services through electronic means within five years of the enactment of the Bill, which may be extended by a further three years. The Bill has provisions to establish Central and State Electronic Service Delivery Commissions to monitor compliance of government departments, and hear representations. Public authorities have to establish a mechanism to redress complaints. Complaints may be for: (a) non-delivery of services in an electronic form; or (b) deficiency in the electronic service provided. In the first case, a representation may be made against the mechanism's orders before the Commission.

Though there are provisions relating to the implementation of the e-governance there are two major drawbacks: 1) Though the proposed Bill mandated the e-governance, it gives a period of eight years to implement the same. It destroys the purpose of the Bill. 2) This Bill is government centric it neglected the digital empowerment of Indian citizens.

Further this Bill has following issues:

- The information should be stored electronically but there is no provision to safeguard the stored data.
- The Bill establishes the appellate mechanism for the redressal of complains. The redressal can be provided for the non-availability of electronic services but it is not available for the deficiency in service.
- The grievances redressal mechanism under this Bill may overlap with the grievance redressal mechanism under the Citizens Charter Bill, 2011. Additionally, some states have enacted their own laws on electronic delivery of services.

Suggestions and Conclusion

There are many disadvantages originated concerning the e-governance system. Some of the disadvantages are as follows: Lack of equality in public access to the internet, reliability of the information on the web and some hidden agenda of political groups that could influence

and bias the public opinions in certain cases. This is not the only barrier while implementing the e-governance in administrative system; it is also the lack of mandatory legislation. The law is always lacking behind the technology. This issue should be taken care of by the parliament. It is the responsibility of the parliament that it should promulgate new laws and amend the same in accordance with the changing pace. The e-governance is not only a national phenomenon it is also an international affair. Consequently the laws should keep phase with the international standard.

The replacement of the current technical modules on a national scale will pave way to the effective implementation of the e-governance. The e-governance should be adopted in all levels to make it more cost efficient also to avoid contradictions. To retain the trustworthiness of the e-governance it should be error free. The broad access to the government information should be given to the general public as well. The grievances redressal mechanism should be more effective and it should be equipped with all the latest technologies to handle the complicated technical issues. In view of the fact that all the National e-governance plans are in pilot stage, the trial should be monitored more closely and the errors should be recorded in a time pace manner to avoid future complications as well.

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