

Course Name- B.A.LL.B 4th sem/ LL.B 2nd sem

Subject- Cyber Law

Teacher- Mrs. Aakanksha

Concept – E- Governance

1. Concept of E-Governance

There are various benefits provided by the technology whether it is at an individual level, or development of the Country as a whole. It's a tool which makes a platform for the growth and development of the Country and is therefore important. The use by government agencies of the information technologies (IT) to improve and transform relations with the citizens, businesses and other arms of the government for availing services to its citizens, and providing them an efficient way of complying with the norms/rules/regulations set by the government, is known as e-governance. This kind of technological use is been introduced for the welfare of the marginalized sections of the society also, and is therefore an initiative for helping them join the mainstream of the society. It's only that the information needs to be spread among all the sections of the society to avail the services of the e-governance. Government through the use of IT based technology has now become facilitator of its services to different segments of people at all levels.

The use of IT by the government to facilitate services like filling the forms online, payment of bills (electricity, water supply etc.), distant education for its citizens, filing the tax returns, registration of land records and birth and death rates in India, and tele-medicines , and the services like e-chaupal have lead to an efficient, and easy to use of system for the citizens irrespective of any disparity among them. Government can provide services and information electronically to its citizens and business enterprises. Business transactions with the government can be done by Government to Business Transactions (G2B) where the information is delivered and transactions are made electronically with the businesses. It even helps in government to government transactions, or inter-departmental transactions within the government, and with government employees called, Inter Government Administration, (G2G). Through e-governance the transactions would be more efficient, effective and transparent. E-governance can also help increasing the exports and tourism and raise foreign trade of the country through G2X Transactions.

1.1. Advantages Offered By E-Governance.

E-governance is a scheme to connect the citizens, businesses and other arms of the government and help them interact in a better way to improve the economy of the country as a whole. Not only this, it also helps in the empowerment of the citizens, as all the new government policies, rules etc. would be put on the forefront through e-governance. This would facilitate right to information to the citizens enshrined under Article 19 of the Constitution, and empower them to avail of their rights in better way, as before it was hard to keep themselves updated with policies and rules adopted by the government. So the system has not only made the administration better but also helped citizens get updated with the new policies, processes and the help-lines been offered by the government at all levels.

The e-governance has made the system more transparent, by cutting down the practice of red-tapism, corruption by the officials, as now the government can reach the citizens directly. E-governance in a long run would surely bring the benefit of improving the revenue collections,

and therefore would help the government to gain higher revenue for enhancing the welfare of citizens. Not only this it would also at the same time reduce the cost of running the government as every service offered by the government would be governed through the technology, at the same time there wouldn't be un-employment as the employees previously employed would be transferred to alternative jobs for their livelihood.

At present, India is providing E-governance services in the field of Agriculture, education and power and is yet to provide the same for income tax returns and revenue collections also. Other Countries like Singapore, Canada have already introduced the most commonly used services online for the efficiency of the citizens by 2005, and improved the same by now with increased citizen's satisfaction. And in case of United States, citizens can access the services offered by the government within three clicks, why should India be left behind? It's delightful to note that, the national action plan has been approved for the implementation in the year 2003-2007, with 10 components and 25 mission mode projects, like Banking, Income tax, passport visa and immigration projects, National citizen database, Central excise, pensions, land records, property registration, municipalities, commercial taxes etc. This can be said to be the way of re-engineering the government services according to the changing needs of time, by providing integrated services as one stop shop for all services of the government. Other important advantage being, accountability of the government as the payment made is stored into the data of the computer system with the receipt of the payment. This would help in citizens' welfare, and the national economic growth.

1.3. Initiation of The Process

Institutional arrangements have been reached by the government: Central level Apex Committee under the Cabinet Secretary has been created to look after the implementation of the system at the Central level, which has managed to implement the services like DGFT, Railways, customs, and Income tax. The State structure headed by Cabinet Secretary (CS), who would have a substantial authority over the state run e-governance system, and services provided by it so far are Land records, registration, transport and treasuries etc. Initiatives have also been taken for the introduction of services at district level. But there remains a lot to be done in this regard; therefore there is a need for speeding up the introduction of the Information and Communication Technology (ICT) in the country as compared to the facilities provided by the other federal countries like Canada etc.

As said, Central Government has analyzed the creation of separate e-governance department headed by Secretary to look after e-governance system in India; it has been increasingly receiving the support from World Bank, ADB and United Nations. There is a strong need of public private participation model (PPP) for the achievement of long term sustainability. The system of e-governance doesn't only provide services to the citizens, but also at the same time simplifies the work load of the government in keeping the accounts.

2. How Far Has India Gone?

The first e-governance project on Land records computerization was BHOOMI in the state of Karnataka, and then we also have Rural Access to Services through internet (RASI) in the state of Tamil Nadu. Andhra Pradesh has introduced a project called e-Seva, for services like payment of bills, certificates, permits/licenses, reservation of tickets etc., and has also

introduced a system for registration for the registration of all the services. There are also many other states also which have introduced the e-governance services, and lot more to join.

Meghalaya has now been providing services like social welfare, food civil supplies and consumer affairs, housing transport etc through the use of websites. We also have online complaint management system in Mumbai, which is called as SETU. Even Indian Government has taken an initiative to provide for the e-governance services through the means of internet, the same has been provided on <http://egov.mit.gov.in/> and in addition to this there is also an e-governance framework been prepared by the National Informatics Centre (NIC) at <http://Home.nic.in>.

Most of the IT based technologies have been helping the government to enable the services through Common Service Centers (CSC) though it would require good deal of investment but at the same time would also bring long term benefits and reduce routine governance or financial problems faced by the government in raising the number of officials at work. FINO has even come up with a provision for the use of smart cards (which would contain the details of the holder, with the fingerprints of all his fingers, and his digital signature and photograph) to be used and verified by the central server.

Other important area where the system has turned out to be a blessing is the check posts at Gujarat Highways. This has resulted in huge increase in the revenue collection on transit of the trucks carrying overweighed products. The legal penalty for overload is Rs. 2000 per tonne. The collections previously were prone to the corruptions practices by the check-posts officers.

3. Challenges Faced And Solutions Suggested.

- There is a serious lack of awareness among the lower classes of society about the technological growth in the area of e-governance, which might not result in the actual benefits expected out of it to provide an overall welfare of the citizens of India. There is a need for NGO's to take up the cause of spreading the knowledge regarding e-governance services in the villages to give e-governance its overall benefits to the society at large.
- There is resistance been posed to the introduction of the new system of e-governance, as the sudden change is never trusted. According to me, if there is proper administration of it then we can come up with an equally efficient system like that of the other federal countries like Canada, and Singapore etc. If the system is working well for the several countries then will as might as well work for India.
- Lack of Programme management skills have to be overcome by choosing good qualified administration to manage the entire network of e-governance efficiently, and the other argument raised against the e-governance is the huge investment required for the project. Through it would induce huge investment for the project but the fact mustn't be ignored that the same would also attract long term benefits, and therefore the government mustn't hesitate to initiate the process as it would produce long term benefits and would also help in better collection of revenue for the governmental activities.
- There is a need for proper legislation to smoothen up the establishment and implementation of the projects. There is a need for involvement by different bodies for the purpose of designing efficient standards for e-governance. Five groups have been formed and an apex committee has also been formed at the Department of the Information Technology.

- Committees must be constituted to look into the issues of concern after e-governance would be adopted like storage of information, and security of the information. Data protection would be of main concern later point of time therefore for the system to be legally canalized there is a need for Law to look into the issue of protection of the Data under e-governance and provide penalty and provisions for better administration. Though safety measures can now be curbed by the system of Unicoding, passwords to the system (to prevent the access to the main information of the computer about all its customers), but still remains a need for proper law to administer e-governance. Its hard to come up with a devices with a huge storage capacity at a large scale in such a time frame, due to the large population of India its hard to keep a track of the identity of all the individuals for huge number of services provided under the e-governance.
- The other challenge likely to be faced is the existing regional languages in India. Being multi-linguistic Country, introducing computers with multi-linguistic approach can help the situation.
- There is no integration of services offered by the State and Central Government. The information residing with one department is usually not transmitted to the other department. This results in uncertainty as to the payments been made by the individual and makes the service untrustworthy. Therefore proper integration for the services is required by the Government at all levels.
- Like the tax structure in Mauritius where citizens can file the returns and pay taxes from one site dealing with payments of taxes, and get an electronic confirmation for the filing of tax returns. This can be helpful for any future reference or disputes if any arises on the fact of filing the tax returns on time. The same system is required to be adopted in India for making the system work in smooth way.

These solutions can pave a way to exponentially greater benefits to the common man, and help in the success to various governments.

4. E-Governance And Law

The prevalent laws in India related to the right to information and privacy, which are the main components related to e-governance. And if the existing laws are efficient in dealing with the rights of the citizens, or there's a need for new law dealing with the e-governance. We can see how we can also place a comparison between Indian Law and the Laws existing in the other developed countries.

4.1. Right To Information Act,2005

Though Constitution of India mandates right to information under Article 19 since the time it came to existence, it's sad on the part of the Legislature to come up with an Act on the Right to Information recently in 2005, called Right to Information Act,2005 (RTI Act). This Act ensures the transparency in the functioning of the government by placing an obligation on the Central and State Governments to provide citizens with the information about the policies, rules and regulations passed by them; and the penalties are been provided in case the government fails to provide them the information.

Act has better framework than the U.S Freedom to Information Act,1966 (which mandates citizens to access the federal courts in case the information is denied to them) and also the UK Law (which provides cumbersome procedure for the citizens for Redressal mechanism). RTI Act is in parallel lines to the Canadian Law which provides direct access to the Central

information Commission in case the information is denied to the citizens. This avoids delays in the procedures to grant the citizens their basic right to information and to go through the hardships of the courts to enforce their basic rights.

Department of Information Technology is spreading the use of technology to help the government provide the citizens with the information regarding it through the system of e-governance, and Central Information Commission has also set a website, www.cic.gov.in to display the information related to it. For the Act to be more effective, there need to be better information flow among people at the village level who are unaware of their rights. Cause needs to be taken up by the States and NGO's to create awareness at the level where it's needed the most. But still the RTI Act doesn't totally take up the responsibility of its proper implementation due to lack of enforceability procedures.

4.2. Information Technology Act, 2000

Now where the Government is given all the information by the citizens regarding their identities to access the network of e-governance, it would also raise issues on confidentiality. What if the information provided by the citizens is leaked, or used for some other purposes? The only legislation which talks about this issue is Information Technology Act, 2000. Examining the important provisions under the Act which deals with the data protection aspect would be worthwhile in this regard.

Section 72 of the I.T Act 2000 : Provides protection against breach of confidentiality and privacy of the data. Person convicted shall be punished with imprisonment which may extend to two years or with fine which may extend to one lakh rupees or both. Through this section we can see that, it is targeted only towards the officials who are empowered to collect the data under the Act, but the problem is that the scope only extends to the Adjudicating officers, members of the Cyber Regulations Appellate Tribunal (CRAT), or certifying Authorities under the Act.

Section 43 of the IT Act 2000 This section provides protection against unauthorized access of the computer system by imposing heavy penalty up to one crore. Though we have systems like cryptography, passwords etc. to ensure the security of the document, but this still pose threat to the Government due to other measures adopted by hackers. In furtherance to Article 21: "which provides for right to life, and liberty cannot be taken away without the authority of Law". Though the ways of unauthorized access to the system are covered by the section but still later on the Act doesn't provide for a good enforceability mechanism for the same to be implemented.

Section 69 was incorporated under the I.T Act 2000 which says that the right to privacy can only be taken away by the provisions established by the Law, but the provisions under the Section is not enough to curb the crime according to the procedure established by Law. In the Case of PUCL vs. UOI it was held that the procedure is inadequate as the Controller has been given discretionary power, and there is no mention of consultation with the accused before punishing him. Therefore proper guidelines needs to be provided in this regard for maintaining the balance between the right to privacy of the citizens and the provision of the search and seizure under the Act, as the same shall not be unfair.

Other countries like UK have Data Protection Act 1998, which put restrictions on collection of data. Personal data can be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or purposes. US have chosen to adopt the sectoral approach that relies of mix of legislation, regulation, and self regulation. In U.S, data are grouped into several classes on the basis of their utility and importance. Thereafter, accordingly a different degree of protection is awarded to the different classes of data. They have privacy Act 1974, Electronic Communications Privacy Act, Children's Online Privacy Protection Act 1998 etc.

Recently upon the footprints of the foreign laws, this bill has been introduced in the Rajya Sabha on December 8th 2006. Provisions contained in this Act are relating to nature of data to be obtained for the specific purpose and the quantum of data to be obtained for that purpose. Data controllers have been proposed to be appointed to look upon the matters relating to violation of the proposed Act.

Andhra Pradesh has already adopted the changes in the Information technology by providing the same under Criminal Procedure of Andhra Pradesh, and the accused can be brought to the Judge through the video conferencing. This would bring efficiency in the system. The other Legislations prevalent in India for regulating e-governance are Electronic Commerce Act 1998 (being insufficient), and the Convergence Bill (which has not come into force till now).

5. Conclusion & Suggestions.

It can be seen from the discussions made so far, that there is no Data Protection Act in India, the only provisions which talks about data protection is Section 72 and Section 43 of Information Technology Act 2000, those too doesn't provide complete protection to e-governance but talks about the same vaguely. Either there must be amendment in the law to regulate e-governance, or an efficient Legislation to deal with the situation for the effective implementation to reach the purpose and the objects for which e-governance came into existence.

The discussions on these legislations make it evident that India lacks a proper legislation to regulate e-governance. Having too many legislation on the subject and not dealing with the subject efficiently, but vaguely mentioning it would not suffice. It's pertinent to take it into account that the legislation mustn't be over regulative so that it stifles the growth of the technology. Therefore at the time of drafting the Bill the Legislature must take into account the regulations to be provided for better administration of e-governance, and at the same time also keep the possible growth of technology in their mind to maintain the balance between the two, so that overall benefit is observed by the nation in all spheres, and at all levels.