

## **UNDERSTANDING OF INFORMATION TECHNOLOGY ACT FOR E-GOVERNANCE IN INDIA**

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### **Abstract**

Information Technology Act has introduced E-Governance by facilitating electronic filing of data and documents. Chapter III of Information Technology Act, 2000 has defined the emergence and existence of E-Governance. This paper presents a brief to understand the defined structure of E-Governance provided in IT Act 2000 with respect to different sections falling under IT Act.

### **E-Governance**

Chapter III of IT Act 2000, has introduced the foundation of legal recognition of paper-based documents and concepts into recognised and acceptable electronic form under Government policy. E-Governance is such a government which works with aid of electronic media. This type of government makes their policies flexible, accessible to general public in terms of effective service delivery by making massive use of Information Communication Technology (ICT) and its related web-based services. This kind of government aims to fulfill needs of layman in fastest mode of time. It involves e-filing of documents, namely uploading, downloading legal assets, digital certificates, digital signatures and other vital documents over internet. All ongoing transactional activities take place under secured environment that includes cryptography, ensuring user end security with one time passwords. It eases functionality of public sector with use of ICT, encourages citizen participation in decision making process and improves service delivery. This makes the Government more reliable, accountable and fast.

Indian Government is also updating its policies and changing its spectrum to E-governance. This is implemented at many places and states. Food and Drug Administration, Government of Maharashtra has adopted E-Governance by issuing drugs and cosmetics licenses at various

manufacturing and food industry levels online under Drugs and Cosmetics Act. Income Tax Department, Government of India has initiated issuing Income Tax Certificates by following procedures of e-verification of return using Adhaar OTP, Demat Accounts and Net Banking. The linked PAN and Adhaar details help to retrieve the Cibil score of the tax payers to banks and ombudsman authorities. Some of the Indian states like Tamil Nadu, Himachal Pradesh, Jharkhand, Maharashtra, Delhi, Madhya Pradesh, and Haryana have started the initiatives of filling a police complaint online, namely the E-FIR. This measure is very useful for deprived social groups of the society i.e. women, minorities and economically backward classes. In field of education our Government has launched education portals and MOOCS; also Universities across India are provided the guidelines to implement digitization of admission formalities. Indira Gandhi National Open University (IGNOU) has already implemented online admission mode of learning, where a student can go to their portal, have a look at various available courses and can enrolling them online.

Such an E-Government fastens the work; it integrates the nation and thus binds the citizens to work in collaboration towards Nation Development.

### **Functional Equivalence Approach**

Defined under Chapter III, this approach serves the purpose to replace the paper-based requirements with that of those functions which could be fulfilled through electronic medium of trade techniques. For instance, if a contract is signed digitally using digital signatures and sent over electronic medium by issuing a digital certificate, it would be considered as a valid document. And this document will have the same weightage as that of a paper based contract document. This digital contract function is the same in terms of readability, traceability with legal sanctions as a paper-based contract. Section 2(R) serves the same purpose with reference to information generated, sent, retrieved, accessed over a magnetic, micro-chip, memory or any similar devices. Section 4<sup>4</sup> of this Act provides fulfilment of any document to be typewritten or printed in electronic format. Section 5<sup>5</sup> is based on recognition of digital signatures. This states that any information or matter shall be authenticated by affixing digital signatures. These digital signatures and certificates must be issued by authorized legal firms.

## **Adjudication**

The IT Act, Chapter IX provides the details of adjudications for such E-Government. It provides detailed mechanisms and procedures to appoint concerned adjudicating officers. It also provides controller under various provisions that constitutes a Cyber Regulations Appellate Tribunal (CRAT).

Section 46 has enlisted the powers, functions and appointment procedures for an adjudicating officer. The requirement criteria for appointment is given under sub-section (1) which defines that Central Government should appoint any officer holding rank of Director at Government of India or under some State Government adjudicating bodies.

## **Cyber Regulations Appellate Tribunal**

The Central Government, under Chapter X of IT Act, by notification, establishes one more tribunal known as Cyber Regulations Appellate Tribunal (CRAT). This tribunal has one presiding officer. The person holding the rank of a Judge of High Court, who held a post as Grade 1 officer under Indian Legal Service for minimum of three years can only be appointed as a 'presiding officer'. Section 57 gives the jurisdiction rights and controlling authorities to them. Section 58 provides a special right which states that CRAT is not bound by any procedures under any code of Civil Procedure, 1908. Section 62 provides the CRAT the right to question the appeal of high court. Therefore, the order of CRAT becomes quite wide.

## **Penalties and offences**

Chapter IX and XII deal exclusively with the matter of cyber crimes, which fall under E-Governance. These chapters enumerate various penalties, offences and civil consequences.

## **Penalties**

Section 43 defines the penalties pertaining to loss or damage of data related to computer system. This deals with person who is involved in data damage over a computer network or a system. Sections 44 in return thus looks for the failure of data recovery, failure to retrieve the lost

information, returns, etc. Section 45 contains the clause for such cyber crime. Some such clauses are:

- A. Unauthorized accessing to a computer network or system.
- B. Copying, extracting or downloading of any data from computer information system, network system and database. This includes removal of important data leading to data theft. This also includes infringement of Copyright Act like downloading of an unreleased movie or music.
- C. Introduction of virus, malware, Trojans to any computer system or network.
- D. Damaging or causing loss of data, by deleting crucial files from hard disk.
- E. Denying or causing Denial of Access to any person on their own system.
- F. Charging extra services and tempering the computer network.

### **Offences**

Chapter XII makes provision of punishment of fine, imprisonment or both for enumerated various cyber crimes and penalties. Section 85 of this Act, charges the guilty for the conduct of business, company or some organizations. It also deems that a director, manager, if proved guilty, falls under liability of punishment. Section 79 deals with Hacking offences under network security providers. Section 78 gives the power of investigation to the Police Officer under cyber crimes. Section 80 enables the police officer to enter the search operations for such crimes.

### **Amendments to Indian penal code (IPC)**

Thus with emergence of E-Governance, its statuaries and impact of cyber crimes, many amendments have taken place in Indian Penal Code (IPC).Section 91 of IPC has been amended to include 'electronic records'. It has made provision to move from paper-based to paper-less, so as to minimize the cases of forgery. IPC, 1860 has amendment in section 29A by section 2(1)(t) of IT Act to introduce definition of 'electronic record'. In purview of above some of amendments are:

- A. **Offences to public servants** – This was taken care in Section 167, which enables the punishment for the offence in case of framing or translating an electronic record by a public servant with intention of damage and injuries.
- B. **Offences to contempt of the lawful authority of public servants**– sections 172<sup>3</sup>, 173<sup>4</sup> and 173<sup>5</sup> have been amended for electronic records. It deals with contempt of the lawful authority to enforce obedience.
- C. **Offences relating to evidences** – Section 463 makes provision for forgery by electronic record. Section 464 is amended for making of false document and affixing digital signatures to it. Section 2(1)(d) of IT Act has been amended with same effects in IPC for sections 466<sup>8</sup>, 468<sup>9</sup>, 470<sup>10</sup>, 471<sup>11</sup> and 474<sup>12</sup> for forgery and fraudulent of affixing digital signatures.

Section 92 provides amendments to the Indian Evidence Act, 1872. Under this important amendments are:

- A. Section 34<sup>13</sup> and 34<sup>15</sup> that include preserving of electronic documents as evidence.
- B. Section 47A has been inserted with respect to issue of Digital Signature Certificate by relevant Certifying Authorities.
- C. Sections 65A and 65B provide the bases for contents of electronic records.
- D. Section 67A and 73A are related to verification of digital signatures.
- E. Section 90A allowed keeping the electronic records to be five years old.

## **Conclusion**

In this paper we have tried to understand the objects and reasons for the IT Act, the applicability of IT Act in forming a powerful, possessive and in form, the E-Government. We have seen how it deals with legal recognition of electronic records, digital signatures and digital certificates as an alternative to paper-based documents and records. We also discussed the penalties and offences, and related amendments made in Indian Penal Code wherever required. The purpose of these amendments is to redefine various offences under this digital and technically sound era.

The adjudicatory mechanisms are a powerful medium in controlling the regulatory authorities to an E-Government.

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Section 4.– IT Act, Legal Recognition of Electronic Record

Section 172. (Indian Penal Code) – Absconding Services

Section 173. (Indian Penal Code) – Preventing Services

Section 175. (Indian Penal Code) – Omission to produce documents

Section 466.(Indian Penal Code) – Forgery of record of public register.

Section 470. (Indian Penal Code) – Forged document.

Section 131 to Section 134. (Evidence Act)

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