

Law and E-Governance

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The Net, is an oracle, fostering an unprecedented
dialog between a human being and the sum total
of human knowledge
- Terence Mckenna

Abstract

The World Bank defines e-governance as the use of information and communication technologies by government agencies to transform relations with citizens, business and other arms of the government. It is the information technology that has added a new dimension of governance. E-governance is a kind of 'window of opportunity' facilitating a much faster, convenient, transparent and dynamic interaction between the government and its people.

Dichotomy Exists

When we look into the system of governance, we find it static, hierarchical, regulated and fixed, whereas Web is dynamic, flat and unregulated. Basically government's function just like a mammoth corporation, where the right hand does not know what the left hand is doing. Governments by nature of its own system of governance could not be called ambidextrous.

There exists an inherent dichotomy between the two. One on hand the government system is regulated, hierarchical and static, whereas on the other technology is creative, non-hierarchical and dynamic. The question is how to collate the governance with technology. It seems that e-governance has been able to redefine the old structure of governance by meshing it with the new structure of the web.

Detailed Paper

Law is one of the most important arms that facilitate governance. And as the system of governance is changing, it is time that the system of law should also keep pace with the changing times.

The new dispensation of e-governance requires new set of laws. Physical laws have limitations in the sense that they are uni-dimensional in application. They are meant to govern the physical world, which is static, defined and incremental, whereas e-governance represents new form of governance, which is dynamic, and exponential. It needs dynamic laws, keeping pace with the technological advancement.

Information Technology (IT) Law governs the processing and dissemination of information electronically. These are 'paper laws' for 'paperless environment'. These are

technology intensive laws to control and safeguard electronic transactions in the electronic medium.

IT Act, 2000 has given legal recognition to electronic records (like: data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche), subject to the requirements that the information remains accessible so as to be usable for a subsequent reference.

Use in Government and Its Agencies

Use of electronic records and digital signatures in government and its agencies for filing, issue, grant, receipt or payment of money is now an acceptable mode [S.6].

Electronic records or information, whenever retained, as required by law must be retained in the format in which it was originally generated, sent or received [S.7].

Electronic Gazette

Rule, regulation, order, bye-law, notification or any other matter could now also be published in the Electronic Gazette apart from the Official Gazette. The date of publication shall be deemed to be that date on which the Gazette was first published in any form [S.8].

Limited E-Governance Rights

Electronic governance as envisaged in the IT Act *does not* confer a right upon any person to insist that any Ministry or Department of the Central or State government (or any authority or body) to accept, issue, create, retain or preserve any document in the form of electronic records or to participate in any monetary transaction in the electronic form [S.9].

The IT Act provides limited e-governance rights. The idea is to adopt technology uniformly across the length and breadth of the government (*read*: country) rather than have selective adaptation. That is, e-governance not at the cost of the digital divide.

Watch Out for One Act Syndrome

Moreover, it is time to amend the old Acts to bring them at par with the new technological developments. There could not be one Act to deal with all the questions of e-governance. The digitized developing countries have to go beyond one- Act syndrome for greater effectiveness.

A law reflects experience. The number of legislative enactments on a subject shows the degree of its importance and acceptability in the society. Law making is a long drawn and continuous process. It evolves over a period of time.

For example, as many as 16 different Acts (not including various Regulations) have been enacted by the UK's Parliament in a span of twelve years dealing with computers, computer systems or computer networks.

Although the IT Act, 2000 defines data, computer data, information etc. but it is silent about ways and means to protect data and information. Without a proper privacy and data protection laws the effectiveness of e-governance may remain a point of concern.

E-Governance and Privacy Issues

It is difficult to view 'privacy' in isolation-it has to be seen in the context of dynamic technologies of today. Privacy issues, which are relevant today, could not be judged from yesterday's perspective.

To a government, violation of privacy of individual is a serious issue. Governments have been trying to establish the primacy of privacy by addressing issues both at macro and micro levels. At *macro* level, the individual privacy is not an issue. It is expendable in the national interest. Whereas, at *micro* level safeguarding individual's privacy is a systematic and continuous process.

Privacy is a very personal issue. It's about you and your personal space. You're the final authority to decide accuracy, access, security and control of your personal information as well as its use and whether it could be passed on to third parties.

E-Governance and Data Protection

One of the most important tasks in any e-governance model is to protect and provide the security to the individual's data. When we talk about the security aspects, we are looking into both policing and preventive measures.

Virtual world is a place with its own dark corners and alleys. What you share, in good faith, can be exploited against you. The more you open up to share, the more vulnerable you make yourself. What you touch electronically touches you back.

We need a regulatory mechanism to protect and provide the security to the individual's data. Success of an e-governance model would depend upon the perception of an individual about its effectiveness in securing his personal information. And without statutory enactments there are no guarantees as such.

UK's Data Protection Act, 1998, is one such enactment. It is built around eight data protection principles that apply to all personal data processed by Data Controllers (it includes companies, businesses, organizations - employers, local and central governments). Data Controllers determine the purposes for which and the manner in which any personal data is (or is to be) processed.

Personal Data

Personal data relates to a living individual who can be identified:

- from the data
- from the data & other information in the possession of, or likely to come into the possession of, data controller

- any expression of opinion about the individual

Sensitive Personal Data

- racial or ethnic origin
- political opinions
- religious beliefs or other beliefs of similar nature
- membership of a trade union
- physical or mental health condition
- sex life
- criminal offences
- criminal proceedings and convictions

Personal Data : Eight Principles

Personal data shall :

- be obtained & processed fairly and lawfully
- be held only for lawful purposes, which are described in the register entry
- be used or disclosed only for lawful or compatible purposes
- be adequate, relevant and not excessive in relation to the purpose for which they are held
- be accurate and, where necessary, kept up to date
- be held no longer than is necessary for the purpose for which they are held
- be accessible to individuals it concerns, who may, where appropriate, correct or erase it
- be surrounded by proper security

For effective e-governance, proper attention and care has to be given to the privacy and security of personal (*read*: user's) information.

E-Governance: Extending Rule of Law in Cyberspace

E-governance is also about extending rule of law in the cyberspace. Crimes of 'physical space' have found a virtual extension in cyberspace. The weapons of crime are sophisticated technological tools, which are not easy to detect. Every day, technology is adding new weapons in the virtual arsenal. It's going to get worse before it gets better.

Technology is a great leveler. It has created a very piquant situation where the criminals and the law enforcement agencies are *at par* with one another with respect to technical know-how. In fact, both of them are on the learning curve, upgrading their skill sets by each passing day. The question is who will win this game? Stakes are very high....winner takes all.

It is imperative that the Governments should recognize that the future is imperfect and while developing e-governance models they should also look into security and safety measures.

Future is Imperfect

- Wireless applications (Personal Digital Assistants, PDAs, mobile phones) will be the new territory for cyber criminals to move-in. In fact, virus writers have already created the PalmOS/Phage virus, which recently hit the Palm OS PDA operating system.
- Cyber- terrorists and Hackers will become more organized and visible. Cyber-terrorists and hackers are too on a *learning curve*. They are mastering the technology and upgrading their critical infrastructure to conduct successful attacks.
- Virus mutations and transmission / delivery mechanisms will increase.
- Virus attacks will be more vicious and cut across all kinds of technological platforms (both wired and wireless).
- Disgruntled employees will cause havoc. More and more senior level executives will get involved in disrupting the cyber-functioning of their organization. Also, employees with access to critical data (source code / programme code) will become security risks.
- Hackers will join the mainstream companies and government organizations. They will wait for an opportunity and the right price to strike.
- Like it or not, the future presents some interesting problems in the area of recruiting people with computer skills.

The e-governance models must take into account such threat perceptions. More so, when technology has made possible the phenomenon of global jurisdiction. Both digitized developed and developing countries have been enacting laws that go beyond their geographical boundaries.

Cyberspace is a huge melting pot of different cultures. It has the capacity to give space to every thought, every idea and every expression. Cyberspace represents a new culture and an open resource...growing exponentially, every minute! What we are witnessing is the emergence of a new system of 'community governance'. It is one cyberspace ...one technology.....one law....and a netizen! It is not a cyber(ut)opia.....it is a reality that is bound to happen.

Reference(s):

Sharma Vakul (2002), **Handbook of Cyber Laws**, Macmillan (India)

Website: www.netizens-cyberlaws.com

About the Author

Vakul Sharma has more than ten years of corporate experience as a management representative, advisor, trainer and corporate lawyer.

He has been involved over the years in diverse work areas like international marketing, corporate communications, management and law. He advises companies on cyber crimes, security, intellectual property and privacy issues

He is a visiting professor of Cyber Laws programmes at various prestigious management and law schools in India and also credited with first ever interactive multimedia CD on the Indian Information Technology Act, 2000 in association with the Ministry of Information Technology.

He is also the best selling author of the book entitled, “ Handbook of Cyber laws”, published by Macmillan India Ltd.