



## OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

**International Conference On E-Business, E-Management,  
E-Education and E-Governance (ICE4-2020)**



Organised by

**Kamla Nehru Mahavidyalaya, Nagpur**

7th & 8th February-2020

# **State of Privacy and Data Protection in E-Government, Policy and Law in India: A Review**

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### **Abstract:**

Information and communication technology (ICT) is potent instrument for providing borderless, interconnected and de-territorialised delivery of services. Use of Information and Communication Technology (ICT) in government operations facilitates efficient, speedy and transparent process for providing services and for performing government administration. This enables e-governance which is an important part of e-government. Many developing countries are using it to achieve Sustainable Development Goals which are decided by UN. These 17 Sustainable Development Goals (SDG) are reflected in India's development plans through National Institution of Transformation (NITI) Ayog. Various ministries are given targets to provide missions, schemes and programs and Government of India launched several projects, missions to achieve these targets. For this, several ICT tools are developed and deployed, which have helped to enhance efficiency of government missions and projects. National Policies regarding Information Technology and Policy for data sharing are framed.

With the initiation of the national programs through ICT platforms and increased collection of citizen information by the Government, concerns have emerged on their impact on Privacy of persons. This information ranges from health, taxes, education, financial status, employment, disability, crime records etc. This research paper discusses state of ICT-enabled e-government scenario and recapitulates government's responsibility for achieving the secure and responsible governance through protection of privacy of data. To meet the challenges, while implementing e-Government, the government has enacted Right to Information Act, 2005 and Information Technology Act, 2000 and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. The research paper also analyses legal provisions in these laws regarding challenges of this ICT enabled services from the government.



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Key words- Information and Technology, e-governance, e-government, Information Technology Act, Right to Information Act.

### **Introduction:**

Computer and internet is rapidly changing interactions and relationship among citizens, businesses and government. E-government is generic term for web based services from local, state or federal government and their agencies. In this, the government uses Information and Communication Technology (ICT) to support government operations for provision of services. It concentrates on areas outside any government, public sector or private sector organisation at city, state, country or international also.

UNESCO defined e-government, “Use of Information and Communication Technology (ICTs) to promote more efficient and effective government and make it more accessible and accountable to citizens”<sup>1</sup>. E-government includes-

**E-administration**-processing of its functions by using Information Technology without paper work.

**E-services**-delivery of government services through electronic means to citizens, businesses and government employees. E.g. filling up application for licence.

**E-democracy** -citizen’s participation in public decisions is encouraged, improving transparency and democratic decision making. E.g. E-voting.

**E-governance**-development, deployment and enforcement of policies, law and regulations necessary for developing co-operation are provided. Citizen gets government services using Information Technology.

Therefore by and large, e-governance occupies the largest part in E-government. It refers to the exercise of political, economic and administrative authority in management of country’s affairs. Here the citizens also have interests and they exercise their legal rights and obligations.

E-government in broader perspective encompasses all the key factors of governance. It includes better delivery of government services to citizen (G2C), which facilitates

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<sup>1</sup>“E-Government Toolkit for developing countries” at <https://unesdoc.unesco.org/ark:/48223/pf0000139418>



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citizen's interaction with government which is primary goal of e-government, improved interaction with business and industry (G2B), and better and efficient interconnectivity amongst the governments (G2G) which is a backbone of e-government. It involves sharing of data and conducting electronic exchanges between various government agencies.

In 2015, Sustainable Development Goals (SDG) which are 17 in number were adopted by UN member states. Agenda for the Sustainable Development for all nations that adopts economic growth-(industry, infrastructure, removing poverty and hunger), social inclusion-(gender equality and reducing inequalities) and environmental protection-(life below water and life on earth are the some examples).<sup>2</sup>

These 17 Sustainable Development goals reflect substantially in Indian e-government program for development. Responsibility of implementation of these goals are given to National Institution for Transforming India (NITI Ayog) which carve policies for Indian government. These goals are given to various ministries for implementation program.

UN e-Government Survey 2018<sup>3</sup> published as implementation of 2030 agenda of Sustainable Development Goals (SDG) and states that governments have critical responsibility to pursue policies and measures. It also gives the responsibility to the governments to find ways to ensure good standards and safeguard in online public services. The government should take steps to ensure that no one is left behind in e-government set up.

The UN e-Government Development Index (EGDI)<sup>4</sup> asses e-Government development at national level which is derived from three indices –Online Service Index, Telecommunication Index, and Human Capital Index. These indices assess the national online presence of all 193 UN member states. According to it, it is reported that for the year 2018, India's rank has improved by 22places and occupies the 96<sup>th</sup> position in ranking.

### **Objective:**

This research paper discusses the policies made and implemented by Government of India moving in direction of e-government making the government Simple, Mobile, Responsive, Responsible, Accountable and Transparent (SMARRT) for achieving the Sustainable Development Goals. It also analyses the legal provisions for meeting the

<sup>2</sup><https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>

<sup>3</sup><https://publicadministration.un.org/en/Research/UN-e-Government-surveys>.

<sup>4</sup><https://publicadministration.un.org/en/Research/UN-e-Government-surveys>.



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challenges of privacy and data protection before the government for successfully implementing ICT tools for e-government.

### **Methodology:**

Secondary sources of information were used and information about e-governance, m-governance and g-governance and schemes from authentic dashboards, and news reports from Indian Government's websites like Open Government Data, Indian Development Gateway, NITI Ayog reports, Bhuvan portal's g-Governance dashboard and individual ministry portals were used to extract necessary information. For legal provisions, various books providing provisions of the Law were accessed and analysed.

### **Genesis of E-governance policy for e-Government in India:**

For the first time National Informatics Centre (NIC), was started in 1977. In 1987, NIC-NET, a premier ICT Organisation of Government was a first major step taken. Indian government had framed National e-Governance Plan (NeGP)<sup>5</sup> in 2006. It was initiated under Department of Electronics and Information Technology (Deity) and Department of Administrative Reforms and Public Grievances (DARPG). The motto is 'Public services closer home'. The vision for this plan was "Make all government services accessible to common man in his locality, through common service outlets and ensure efficient, transparent and reliability of such services at affordable costs to realise basic needs of common man." Under this plan, 27 Mission Mode Projects (MMPs) were initiated. In 2011, four more MMPs were started. They were called Mission mode because they had definite timetable, service levels, project implementation team and process reengineering plans. Each Mission Mode Project (MMP) is owned and spearhead by relevant ministry/agency of Central government or State government.

Various policy initiatives and projects were undertaken to develop core and support infrastructure like State Data Centre, State Wide Area Network (SWAN). Important support components like core policy and guidelines on security and also standards related to Metadata, Interoperability etc. are included. E-Praman is framework for authentication<sup>6</sup> is introduced. Government of India has provided Vikaspedia-the one stop access to information covering six key livelihood sectors and interactive platform to share views as well as information based services to know more on government schemes on the website.<sup>7</sup> It is multi-lingual, multi-sectorial online knowledge program.

In India, despite the implementation of many e-Governance projects across the country, e-Governance as a whole has not been able to make the desired impact and fulfil all of

<sup>5</sup>[https://webarchive.org/web/20140725161401. https://negp.gov.in/templets/pdf/compilation](https://webarchive.org/web/20140725161401.https://negp.gov.in/templets/pdf/compilation)

<sup>6</sup>[www.epramaan.gov.in](http://www.epramaan.gov.in)

<sup>7</sup><https://vikaspedia.in>



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its objectives. It was felt that some more push is needed to ensure e-Governance promote inclusive growth.

### **Digital Program in India:**

For transforming the entire scenario of public services through use of Information and Communication Technology, the Government of India had launched 'Digital India' program in 2015. The vision for this launch was to transform India into digitally empowered and knowledge society. Its vision includes digital infrastructure for government services to citizens electronically by improved online infrastructure and by increased internet connectivity. The services include Bharat broad band network, Centre for excellence for Internet of Things, Cloud services-GI cloud "MeghRaj", Digilocker, and many others.<sup>8</sup>

The e-government process is boosted by this plan in India. Majority of the government initiatives are in area of e-governance in recent times. Projects like Direct Benefit Transfers, Aadhar-unique identity number using biometric and demographic data, Digital India Program, My Government portal etc. are the examples.

The government of India has provided the public services on mobile devices as mobile phone subscribers have increased substantially (935 million in 2017). Ministry of Electronics and Information Technology has laid framework for mobile governance. The m-governance portal is started in 2013 and it is evident that delivery of government services has improved.<sup>9</sup> From 2017, Unified Mobile Application for New-age Governance (UMANG) is providing all in one single unified secure, multi-channel, multi-lingual, multi-platform freeware mobile app for accessing 1200 central or state government services under Digital India. It is developed by Ministry of Electronics and Information Technology (MeitY) and National e-Governance Division (NeGD).<sup>10</sup>

Different portals are started by various ministries of government which are 57 (in 2019) in number and wide variety of applications in the areas of agriculture, forest and ecology, water resources, land use, management of impact of natural disaster, energy sector, and addressing diseases and other health risks and mitigating climate change are also deployed. 'Bhuvan-Gateway to Indian Earth Observation' portal has facilitated the geospatial governance which renders near real-time data and information support towards management of natural disasters. This geospatial services are known as g-governance.<sup>11</sup>

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<sup>8</sup><https://digitalindia.gov.in>

<sup>9</sup><https://mgov.gov.in/>

<sup>10</sup>[www.web.umang.gov.in](http://www.web.umang.gov.in)

<sup>11</sup><https://bhuvan.nrse.gov.in>





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The e-governance, m-governance and g-governance have provided these applications government to citizen (G2C), government to business (G2B), government to Employee (G2E) and Government to Government (G2G) in very effective way and helping to achieve Sustainable Development Goals by e-government.

### **Policies relating to Information Technology:**

After deploying ICT tools for providing government services, the government felt need for policy regarding Information and Communication Technology and framed **National Policy of Information Technology 2012**.<sup>12</sup> Focus of this policy was application of technological enabled approaches to overcome development challenges and deployment in various fields, and to increase efficiency of all sectors. The policy aims at attaining these objectives through co-ordinated action on the part of both Central and State government.

For improving services, information of the stake holders are collected with the government departments /agencies of central and state governments. Government of India has enacted **National Data Sharing and Accessibility Policy in 2012**<sup>13</sup> which was prepared by Department of science and Technology. The objective is to make available the non-sensitive data for legitimate and registered users for developmental purpose and also placing non-strategic data in public domain. It provides that provisions of Right to Information Act, 2005 for empowering citizens to secure access to information under control of public authority. It was provided also that all data holding organisations will be re-classifying their data and prepare negative list of sensitive data.

USA has enacted E-Government Act, 2002 to develop and promote the e-Government services. UK has Digital Economy Act, 2017 in which there is a separate part on 'Digital Government'. India does not have such e-Government Act, but enacted policies to achieve e- government.

### **Meeting the challenges in e-Government:**

There are certain challenges while implementing policies for e-Government and making it secure, responsible and accountable. These challenges needed to be met for balancing the interests of citizens with interests of the state.

Main challenges before e-government are:

- i. Whether the information is accessible easily?

<sup>12</sup>[https://meity.gov.in/writereaddata/files/National\\_20IT\\_20policyt\\_20pdf](https://meity.gov.in/writereaddata/files/National_20IT_20policyt_20pdf).

<sup>13</sup><https://www.dst.gov.in>



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For achieving good results of e-Government, it is important to have easy access to information for services provided by Government. In many countries, citizens are able to hold governments transparent and accountable through Freedom of Information laws. In India, there is **Right to Information Act, 2005**. This Act promotes the transparency, contain corruption and hold the government accountable and promotes the reliability of the government and makes the e-Government and Digital India program a success.

The definition of 'Information' under S.2 (f) of the said Act, includes the information contained in any form digital or any other and stored in any digital device. The time bound action is provided in the said Act for provision of the information to the stakeholder. This Act establishes a responsibility of public bodies to disclose information, the right of citizen to request for information held by public authorities by public information officers. It makes the Central Information Commissioner responsible to hear complaint when information is denied.<sup>14</sup>

Duty is cast on public officer under S.4 (2) of Right to Information Act, 2005 that "Public authority shall take steps to provide information suo motu to public at regular intervals, through various means of communication, including internet, so that public have minimum resort to use of the Act to obtain information." S. 8 provides for certain information that are exempted from the public disclosure to protect privacy. In cases of dispute the Information Commissioner use the test of 'public interest' to decide the disclosure. So the balance between the privacy and transparency is achieved.

- ii. Another challenge is-how sensitive issues like privacy, threat of cyber terrorism, data protection and safety of biometrics are dealt with?

With the initiation of the national programs like Unique Identification number, provision of services through ICT platforms and increased collection of citizen information by the Government, concerns have emerged on their impact on Privacy of persons. This information ranges from health, taxes, education, financial status, employment, disability, crime records etc.

Data hosted on website of any organisation/government can actually be made available across the world. In this context, it is natural to expect that protection and preservation of this data becomes an important priority for organisations and nations. One of the main objectives of an effective legal protection and security mechanism are accorded to electronic data so that it becomes more and more difficult for data predators to access the data unauthorised. Government of India has enacted **The Information Technology act, 2000** and **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011** for providing

<sup>14</sup> Right to Information Act, 2005, S. 18



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the protection of such information or data. All transactions done using computer and Information and Communication Technology are governed by the Act.

S. 4 to 10 of the Act provides for e-governance. It provides legality to electronic records<sup>15</sup> and recognition to electronic signature<sup>16</sup>, authentication of e-records by electronic signature<sup>17</sup>. Use of electronic records, and electronic signatures in government and its agencies,<sup>18</sup> delivery of services through electronic means,<sup>19</sup> validates the contracts made through electronic means.<sup>20</sup> It provides for the security of electronic records by encryption<sup>21</sup> and electronic signatures. Text is encrypted with the use of public key and decrypted with private key.<sup>22</sup>

Threat to the Data privacy and security is dealt by IT Act, 2000 in two ways:

a. First, if the data base of the government site is hacked and misused by the third party,

- S. 43 protects against accessing the data from the computer, computer system or computer network without permission and s. 66 protects against damaging information contained in computer, computer data base etc. under the said Act. S. 66C provides for identity theft, S.66D provides for cheating by impersonation.
- S. 66F protects against cyber terrorism. Any person threatens the unity and sovereignty of India by denial of service, or penetrating the computer resource or introducing computer contaminant is guilty and punishable.
- S 72A provides for protection of personal information, if such personal information is accessed and disclosed by any person including intermediary who while providing services secures access to cause wrongful loss or gain to him.

b. Secondly, if the data security, confidentiality is breached by the 'body corporate' itself which handles, stores, owns, and controls the sensitive personal information or data.

S. 43A of Information Technology Act, 2000 (added after amendment in 2008) provides protection against negligent handling. The body corporate is liable to pay

<sup>15</sup> The Information Technology Act, 2000, S.4

<sup>16</sup> The Information Technology Act, 2000, S.5

<sup>17</sup> The Information Technology Act, 2000, S. 3A.

<sup>18</sup> The Information Technology Act, 2000, S. 6.

<sup>19</sup> The Information Technology Act, 2000, S. 6A.

<sup>20</sup> The Information Technology Act, 2000, S.10A.

<sup>21</sup> The Information Technology Act, 2000, S. 84A.

<sup>22</sup> The Information Technology Act, 2000, S.40





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damages by way of compensation. The definition of 'sensitive personal data or information' is provided under the Privacy Rules, 2011 which includes biometrics<sup>23</sup> among other things. The body corporate has to provide for reasonable security practices for privacy, security and confidentiality of the sensitive personal information or data it possesses or handles.

### **Conclusion:**

Today there is no overreaching policy for collection and dissemination of information. India has only the Information Technology Act, 2000 and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 for privacy and data protection. No other legislation is there for protecting the privacy, security and confidentiality of information or data. The government of India has proposed the Data Protection Bill, 2019 but it is not yet finalised and enacted as law. India has to provide for the privacy, security and confidentiality of information or data for achieving secure and responsible e-government.

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<sup>23</sup>Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, Rule 3.