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E- GOVERNANCE

DEFINITION-

According to the World Bank,-

" E-Governance is when government agencies use information and communication technologies to transform relations with citizens, businesses, and other government agencies. One of the prime objectives of the IT Act, 2000 is the promotion of electronic governance. In this article, we will talk about electronic records and e-governance."

According to the UNESCO -

"E-governance as governance refers to the exercise of political, economic and administrative authority in the management of a country's affairs, including citizens articulation of their interest and exerciseof their legal rights and obligations."

According to E-GOVERNANCE can be defined as the use of information and communication technology by governments to enhance the range and quality of information and service provided to citizen, businesses, civil society, organization and other government agencies in an efficient, cost effective and convenient manner, making government

processes more transparent and accountable and strengthening democracy.

E-governance is use of a range of modern information and communication technologies(ICTs) such as Internet, Local Area Network, Mobile etc., by government to improve the effectiveness, efficiency, service delivery and promote democracy.

Difference between e-governance and e-government-

- E-government is the use of the Information and Communication Technology in public but E-Government is a system whereas e-Governance is a functionality.
- Government means the application of ICT in government operations, as a tool to make better government. E-Governance, on the other hand, implies the use of ICT in transforming and supporting functions and structures of the system.
- It is a one-way protocol but e-Governance is a two-way protocol (government to citizen and vice versa)
- E-Governance is the part of e-Government. e-Governance never comes alone.

Provisions for e-governance under the IT Act, 2000

Legal Recognition of Electronic Records (Section 4)

A certain law requires a matter written, typewritten, or printed. Even in the case of such a law, the requirement is satisfied if the information is rendered or made available in an electronic form and also accessible for subsequent reference.

Legal recognition of digital signatures (Section 5)

The law requires a person's signature to authenticate some information or a document. Notwithstanding anything contained in such law, if the person authenticates it with a digital signature in a manner that the Central Government prescribes, then he satisfies the requirement of the law.

For the purpose of understanding this, signature means a person affixing his handwritten signature or a similar mark on the document.

Use of electronic records and electronic signatures to government and its agencies (Section 6)-

Aims to promote use of electronic records and digital signatures in Government and its agencies. It provides for filing documents online with governmental authorities, grant of licenses /approvals and receipt/payment of money.

Use of electronic records and digital signatures in Government and its agencies

(1) If any law provides fthe filing of a form, application, or any document with any Government-owned or controlled office, agency, body, or authority

a. the grant or issue of any license, sanction, permit or approval in a particular manner

b. also, the receipt or payment of money in a certain way

Then, not withstanding anything contained in any other law in force such as filing, grant, issue, payment, or receipt is satisfied even if the person does it in an electronic form. The person needs to ensure that he follows the Government-approved format.

(2) With respect to the sub-section (1), may prescribe:

a. the format and manner of filing, creating or issuing such electronic records

b. also, the manner and method of payment of any fees or charges for filing, creating or issuing any such records.

Retention of electronic records (Section 7)

The law requires the retention of certain electronic records into paper based records, documents or information for a specific period. In such cases, the requirement is also satisfied if the retention is in an electronic form, provided:

a. the information contained therein is accessible and also usable for a subsequent reference.

b. the format of the electronic record is the same as the one originally created, received or sent. Even if the format is changed, then it must accurately represent the original information.

c. the electronic record contains details to facilitate the identification of the origin, destination, and also the date and time of the dispatch or receipt of the record.

(2) Nothing in this section applies to any law which expressly provides for the retention of records, documents or information electronically.

Audit of documents,etc. in electronic form (section 7A)-where inany law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form.

Publication of rules, regulations, etc., in Electronic Gazette (Section8)-

law requires the publishing of official regulation, rule, by-law, notification or any other matter in the Official Gazette.

In such cases, the requirement is also satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette.

However, the date of publication of the rule, regulation, by-law, notification or any other matter is the date of the Gazette first published in any form – Official or Electronic.

Section 6,7 and 8 do not confer a right to insist document should be accepted in Electronic form (Section 9)

It is important to note that, nothing contained in Sections 6, 7, and 8 confer a right upon any person to insist either the acceptance, issuance, creation or also retention of any document or a monetary transaction in the electronic form from:

- Ministry or Department of the Central/State Government
- Also, any authority or body established under any law by the State/Central Government

Power to make rules by Central Government in respect of digital signature (Section 10)

The IT Act, 2000 empowers the Central Government to prescribe:

- Type of digital signature
- Also, the manner and format of affixing the digital signature
- Procedures which facilitate the identification of the person affixing the digital signature
- Control processes and procedures to ensure the integrity, security, and confidentiality of electronic payments or records
- Further, any other matter which is legally important for digital signatures.

Validity of contract-(section10A)-

Validity of contract formed through electronic means. Such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Penalties and offences

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. .

Section 43A - Data Protection

A body corporate which possesses, deals or handles any sensitive personal data or information in a computer resource which it owns, controls or operates, is certainly negligent in implementing and maintaining reasonable security practices and procedures leading to a wrongful loss or gain to a person.

In such cases, the body corporate is liable to pay damages by way of compensation. Further, these damages cannot exceed five crore rupees.

Further, the Government of India notified the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, under section 43A of the IT Act, 2000. These rules specifically pertain to sensitive personal information or data and are applicable to all body corporates within India.

Sections 44 –

in return thus look for the failure of data recovery, failure to retrieve the lost information, returns, etc.

Section 45-

contains the clause for such cyber crime. Some of such clauses are:

- Unauthorized accessing to a computer network or system.
- 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.
- Introduction of virus, malware, Trojans to any computer system or network.

- Damaging or causing loss of data, by deleting crucial files from hard disk.
- Denying or causing Denial of Access to any person on their own system.
- Charging extra services and tempering the computer network.

Section72- of the I.T. Act 2000: provides protection against breach of confidentiality and privacy of data. Person convicted shall be punished with imprisionment which may extent to years or with fine which may extent to one lakh rupees or both. Through this section we can see that, it is targated only towards the officials who are empowered to ollect 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 , or certifying authorities under the act.

Section 78- gives the power of investigation to the Police Officer under cyber crimes.

Section 79- deals with Hacking offences under network security providers.

Section 80- enables the police office to enter the search operations for such crimes.

Section 85- of this Act, charges the guilty for the conduct of business, company or some organizations. It also deems a director, manager if proved guilty falls under liability of punishment.

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 has 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, 173 and 173 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, 468, 470, 471 and 474 for forgery and fraudulent of affixing digital signatures.

Amendments To The Indian Evidence Act, 1872.

Under this important amendments are:

A. Section 34 and 34 that includes 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 provides 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.