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From Paper to Portal: Constitutional Validity of Digital Government Approvals in India

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***Abstract*: India's quick transformation towards digital governance has completely revolutionized the way of working of governance processes as they move from the Older-paper-based approach to more sophisticated, faster, and efficient processes through technology. The use of digital means in making decisions related to governance by using government approvals for licenses, permits, certificates, among others, is crucial for e-governance. While this approach is associated with many advantages, there are important constitutional issues that need to be addressed here. The aim of this research paper is to test the constitutionality of electronic systems of government approvals in India, more particularly the compliance of such systems with the Articles 14 and 21 of the Indian Constitution. This article provides for equal protection under the law and non-arbitrary state action and can be applied in the case of digital technologies and algorithms. Despite claims about objectivity and neutrality associated with technology, its opacity along with unequal distribution of technology access might lead to discrimination and arbitrary treatment by the system. Thus, the neutrality of technology does not always imply equality of rights of rights, at least not in the context of the socio-economic situations in India. Moreover, Article 21 is analyzed in this paper, which includes the right to life and personal liberty along with rights to privacy and procedural justice. In th light of the case law established in K.S Puttaswamy V. Union of India, in which privacy was declared to be a fundamental right in India, the paper evaluates the consequences of massive collection, processing, and storage of information through digital governance tools. The paper raises several concerns associated with surveillance and data security, in the light of new technological advancements and centralized data collection system. Furthermore, the paper discusses the problem of violation of procedural due process in automatic systems of decision-making. The Study examines the question of the digital divide as a problem of constitutional law, noting the fact that lack of technological access, low levels of digital literacy, and poor infrastructure have negative impacts on disadvantaged populations. Digital segregation not only violates the idea of quality in public services access but also questions the validity of a government that is not available to all citizens. The other issues that research focuses on include the existing legal framework about the process of online approvals and the emerging data protection regulations. The author suggests that the legal validity may not be enough for the process to be constitutional. Based on an in-depth examination of some important concepts from administrative law, certain deficiencies are highlighted. Although digital governance is an inescapable and indispensable development in the administrative process, it needs to align itself with the constitution to ensure that efficiency does not undermine fundamental rights. This paper calls for a pragmatic and holistic approach in which regulation, transparency in algorithms, mechanisms for dealing with grievances, and bridging the digital divide need to be taken into consideration, it is only through such reforms that digital government approvals will have legal and constitutional legitimacy in India.**

***Keywords*: E-Governance, Digital Approvals, Article 14, Article 21, Privacy, Digital Divide.**

1. Introduction

From the era of paper-based administration to that of computerized or electronic administration is a huge paradigm shift in terms of public administration[1]. The process of shifting to digitalization has been expediated in India due to projects such as Digital India[2]. Approval through the government's digitization program involves licenses, permits, registrations, and certificates issued through electronic means rather than manual means, thus cutting down human interventions in decision-making processes[3].

Despite the numerous benefits associated with this change in the system, such as shorter waiting periods, better periods, better documentation, and less corruption, there are also some constitutional issues that arise. First replacing human judgment with algorithms poses new problems concerning fairness, transparency, and accountability[4].While regular procedures involve a relatively transparent process where individuals can learn about the reasons for their rejection and how to appeal against the ruling, digital procedures use opaque methods to make decisions that are not easy to comprehend[5].As a result, it is questionable whether the system complies with Article 14 of the constitution.

Moreover, there are critical ramifications for the rights to life and personal liberty guaranteed by Article 21 in this regard. The use of digital technology by government systems involves processing of personal information, which raises questions regarding privacy and surveillance in view of the recent

[1] M.P. Jain, *Principles of Administrative Law* (LexisNexis, latest ed.).
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[3] Ministry of Electronics and Information Technology, E-Governance Initiatives Report.
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judgment of K.S. Puttaswamy V. union of India that declared privacy as a fundamental right[6].It is also pertinent to note that a lack of proper data security measures could result in as situation where citizens face the danger of their personal information being misused by government agencies[7].Moreover, automated decision-making systems do no provide procedural guarantees like the hearing right[8].

A further matter of concern that exists is the problem of the digital divide in the country. Digital divide exists on socio-economic as well as geographical lines in the country. Lack of access to internet facilities, inadequate digital literacy, and infrastructural problems impact in the rural population the most. Therefore, by opting for digital governance, it could very well be said that some people might get left behind without any access to public services[9].

This paper attempts to study if the processes for digital approval by the government authorities in India are constitutional in nature or not, especially about Article 14 and 21. The study discusses the law relating to the process of digital approval, starting with its recognition by the legislature under Information technology Act,2000 along with changes in the data protection legislation under the Digital personal Protection Act,2023[10]. In addition, the paper also studies digital approval through the Prism of administrative law[11].

Using doctrinal and analytical methodology, the research seeks to demonstrate the conflict that arises between technological progress and constitutional provisions. The conclusion reached is that although digital governance contributes to better administration, its regulations should be done cautiously to avoid infringement of the constitutionality protected rights[12].

2. Legal Framework

The legal framework of the digital approvals in the Indian context rest on the statutory provision of electronic records, authentication, and data protection. The cornerstone of this legal regime is the Information Technology Act,2000, which came into existence for the purpose of E-Governance and giving legality to digital transactions. The Act provides for the legal recognition of electronic records and electronic signatures which brings them at par with traditionally written documents[13]. The legal provisions relating to digital and electronic signatures have been incorporated under section 3 and 3A of the Act providing for authentications of the electronic records necessary for digital approvals[14]. Moreover, section 4 provides for fulfilling the requirements of any law regarding written information if the information has been out in the electronic mode[15].

Apart from recognition, there is another rule relating to the section 4ility of electronic records, which finds mention in section 65B of the Indian Evidence Act,1872. Under this rule, there are certain conditions that need to be satisfied in order for an electronic record to be admitted as evidence, with certification being one such requirement.it is significant to note that the importance of sections 65B has already been highlighted by judicial pronouncement in various case laws, such as Anvar P.V. Vs. P.K. Basheer, wherein it was held by the Supreme Court that the requirement of Section 65B is obligatory[16]. This was followed by another judgment in Arjun Panditrao Khotkar Vs. kailash Kushanrao Gorantyal[17].

Yet another important aspect of the legal framework is embodied in the Digital Personal Data Protection Act 2023 aimed at addressing issues pertaining to data privacy and security. The Digital Personal Data Protection Act,2023 sets up an elaborate framework with regards to the collection, processing, storage, and use of personal data by both state and non-state actors[18]. Some of the basic principles that have been incorporated within the framework are those of purpose limitation and data minimization, which form a crucial aspect of ensuring that digital governance framework does not undermine the privacy of individuals.

Furthermore, the process of digital governance is bolstered by different subordinate legislation and policies, such as those that pertain to electronic authentication as well as cybersecurity guidelines. It should be noted that the controller of certifying Authorities (CCA) is crucial in regulating digital signature certificates, which ensures that electronic authentication methods are reliable[19]. Government policies, for example the Digital India Program, have also encouraged digitalization through their adoption[20].

Even with this well-defined legal framework in place, some loopholes persist. Although the legal provisions may secure the legality of digital decisions, they do not tackle problems concerning the transparency of algorithms and the accountability of automation. Thus, despite the presence of the legal framework, its adequacy in securing constitutional compliance is questionable.

3. Article 14 Analysis: Equality and Arbitrariness in Digital Governance

The concept of equality before the law and equal protection under the law is enshrined in Article 14 of the India Constitution, which serves as one of the bedrocks of constitutional governance[21]. The doctrine of equality before the

[6] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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[8] A.K. Kraipak v. Union of India, (1969) 2 SCC 262.

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[10] Information Technology Act, 2000; Digital Personal Data Protection Act, 2023.

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[12] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

[13] Information Technology Act, 2000, Preamble.

[14] Information Technology Act, 2000, Section 3 & 3A.

[15] Information Technology Act, 2000, Section 4.

[16] Indian Evidence Act, 1872, Section 65B.

[17] *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.*

[18] Digital Personal Data Protection Act, 2023, Statement of Objects and Reasons.

[19] Office of the Controller of Certifying Authorities (CCA), Government of India.

[20] Government of India, Digital India Programme (2015).

[21] Constitution of India, art. 14.

law has evolved through judicial pronouncements to incorporate the rule against arbitrary action by the state[22]. This is crucial in the realm of digital governance, especially concerning automated approvals processes within the government.

The digital Approval process involves algorithms and data-driven decision-making. It is regarded as being impartial and unbiased. However, the digital approval process might come up with decisions that are hard to understand and analyze[23]. The digital approvals process could work like a "BLACK BOX", rendering it very hard for those concerned to comprehend the justification behind accepting or rejecting their applications[24]. There are no explanations provided as there is no justification needed. This implies that the decision-making process is arbitrary and unjustified.

In E.P Royappa V. State of Tamil Nadu, the Indian Supreme Court Stated that element of arbitrariness is contrary to the concept of equality, thereby declaring that arbitrariness on the part of the state in any action amounts to an infringement of Article 14[25]. Similarly, in Ajay Hasia V. Khalid Mujib Sheravardi, The Indian Supreme Court Stressed that actions of the state should be in accordance with rational considerations and not based om unreasoned and unrestricted discretion.

A further aspect regarding the interpretation of Article 14 in relation to digital governance is the problem of indirect discrimination. While digital technology has been created for all to use, the reality is that it tends to discriminate against some people more than others, especially those who lack digital knowledge and lack technological infrastructure[26].In other words, while equality may exist theoretically and on paper, its actual implementation results in equality, which violates the very meaning of equality[27].Substantive equality, as understood in constitutional jurisprudence, takes into account inequality.

Moreover, the absence of any proper system of accountability in automated systems makes it difficult to determine who is responsible for wrong decisions. While in an ordinary administrative mechanism, one can pinpoint those people to be blamed, it is impossible to find out who exactly is liable in case of wrong decision-making algorithms[28].

Although the use of digital governance has the possibility in increasing efficiency and minimizing biases, there are new ways in which digital governance can introduce new elements of arbitrariness and governance. To avoid any violation of Article14, it is important for digital approval mechanisms to have certain characteristics, which include transparency, reasoning and protection from discrimination.

4. Article 21 Analysis: Privacy, Due Process, and Digital Governance

The right to life and personal liberty is guaranteed by Article 21 of the Indian Constitution, which has been read extensively to include derivative rights like privacy, dignity and fairness of procedure[29]. The Supreme Court has evolved the scope of Article 21 in such a manner that the state's actions impacting life or liberty must be justified and reasonable[30]. About electronic governance and automatic approval mechanisms, Article 21 becomes significant for the very reason that no arbitrary interference can take place in an individual's private sphere.

The landmark ruling in the case of K.S. Puttaswamy V. Union of India recognized privacy as a fundamental right under Article 21[31]. According to this ruling, privacy encompasses informational privacy, integrity of the body and freedom of choice. As a result, there is a duty on the part of the state to secure personal information against any unlawful interference or exploitation. In addition to that, the concept stipulates that the state should not interfere with the privacy of individuals without any justification in terms of a statute and a legitimate aim.

Approvals and service deliveries through digital governance are possible using central databases, biometrics and data sharing. However, the use of these tools for effective delivery service is accompanied by an increased threat to surveillance and misuse of data[32]. Weaknesses in measures aimed at providing security and protection from such threats can result in unauthorized access, data breaches and profiling of people, thus violating their right to privacy[33]. Though the Digital Personal Data Protection Act, 2023 is aimed at regulating data processing, doubts exist about the adequacy of compliance with its provisions, particularly about the states, wide exemption[34].

Aside from privacy violations, digital approval mechanisms give rise to critical problems concerning procedural justice. Pursuant to Article 21, every process prescribed by the laws must be fair, reasonable and just as per the precedent set in Maneka Gandhi V. Union of India[35]. However, digital decision-making models can run their course without affording people a chance to respond to decisions detrimental to their interests. The lack of human intervention in the process and adequate grievance redress measures violate the fundamental concepts of natural justice, including audi alteram pattern.

The opacity of algorithmic systems further hinders accountability. People who suffer from unfavorable decisions lack about the reasons for the same, thereby making it impossible for them to seek redress. Not only does it undermine the procedural guarantees, but it also creates doubts in the

[22] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

[23] Deven R. Desai & Joshua A. Kroll, "Trust but Verify: A Guide to Algorithms and the Law," (2017).

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[28] Mireille Hildebrandt, "Algorithmic Regulation and the Rule of Law," (2018).

[29] Constitution of India, art. 21

[30] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

[31] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

[32] Usha Ramanathan, "Privacy and the Aadhaar Project," (2014).

[33] Gautam Bhatia, *Privacy and the Indian Constitution* (Oxford University Press, 2019).

[34] Digital Personal Data Protection Act, 2023.

[35] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

minds of people regarding the effectiveness of digital governance systems. As per the Supreme Court, the principle of justice in administrative actions is an essential aspect of Article 21 of the Constitution.

The chilling effect that an overly invasive data collection process can have on freedom in another dimension of the issue. People may be reluctant to exercise their rights for fear of being always watched, thus curtailing their liberties. Such a phenomenon will become increasingly prevalent with rise of a digital environment where continuous data collection is common practice.

Although the implementation of digital administration can streamline many processes, the constitution remains relevant, in accordance with Article 21. Protection of people's right to privacy and due process of law is paramount to ensure that any form of digital approval system remains legitimate.

5. Digital Divide: A Constitutional Challenge to Inclusive Governance

The phenomenon of digital divide implies a difference among people based on the use of information technology. People who cannot afford the use of technology owing to socio-economic factors, location, and education level are at the receiving end of the digital divide in many ways. This is particularly true in India where the digital governance initiatives have taken a great leap but still pose a challenge because of exclusion from the process by a section of people unable to utilize technology.

The issue of exclusion of certain people from such digital systems poses a significant problem, especially when it comes to the violation of constitutional rights under Article 14 of the Constitution of India, which enshrines the right to equality before the law and equal protection of laws. Although digital systems are built to serve everyone in principle marginalized people, such as rural inhabitants, economically weaker groups and senior citizens, may not benefit from them due to their limited use in practice[36].

It has been held that equality as per Article 14 is not only formal but also substantive and therefore, it is incumbent on the state to recognize social and economic inequalities already existing in society. In state of Kerala V. N.M. Thomas, it was reiterated that steps should be taken to ensure equality in its substantive form[37]. Thus, the principle being applied to digital governance reveals that there is a duty on the state to see that technology does not perpetuate existing inequalities.

Another question that emerges is whether digital exclusion would lead to violation to Article 21, which protects the right to life and personal liberty. The need to access essential services provided by the government in areas like healthcare, rationing and identity cards have become dependent on digital technologies. In the case of people unable to use such digital technologies, they will not have access to these essential services, which might affect their life and livelihood.

The empirical evidence provided below further emphasized the problem of the digital divide in India. Data from reports published by TRAI, as well as others suggest that there is a wide gap when it comes to accessing the internet between the urban and rural areas in India[38]. Moreover, there is also continuous to the presence of gender discrimination in terms of access to digital technology.

Furthermore, the lack of alternatives to gain access to government facilities contributes to the issue. With the phasing out of physical applications and verification processes, those individuals who are unable to benefit from technology face a lack of choice. In essence, an indirect form of discrimination takes place, where the exercise of their rights becomes dependent on their ability to use technology.

Digitalization presents a considerable obstacle in achieving equality and inclusive governance as enshrined in the constitution. Although digitalization can bring about many advantages, it should be ensured that it will be accessible to all societal groups. Closing the gap between the haves and have-nots by providing appropriate infrastructure and education and ensuring alternative means of delivery of governmental services is crucial in establishing e-governance in accordance with constitutional values.

6. Challenges and Loopholes in Digital Governance

Even though digital governance and automation have many advantages, there remain several structural and legal hurdles which prevent them from becoming effective and constitutionally valid methods of decision-making. One of the most prominent problems is associated with cyber security threats, absence of transparency in algorithms used, and lack of grievance redressal system[39].

One of the key obstacles that needs to be considered here is the susceptibility of the digital governance mechanism to various cybersecurity attacks. The government infrastructure that collects and stores tons of information and data about people and their risk of cybercrime, data breaches, and other forms of cyber-attacks. This may result in an infringement on the fundamental right to privacy of individuals guaranteed by Article 21. However, even with the help of legislation such as the Information technology Act,2000 and the Digital Personal Data Protection Act,2023 there are certain limitations in terms of cybersecurity and data protection[40].

A second major problem that exists in such systems is the lack of transparency in the process of decision-making through algorithms. Digital authorization systems involve the use of automated systems, whose decisions are made inside the system's "BLACK BOX" making the criteria of decision-making unknown to the user. This makes it hard for the individual to know whether their application has been accepted thus hindering them from contesting decisions that are taken

[36] World Bank, *Digital Dividends Report* (2016).
[37] *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.
[38] TRAI, Internet Subscription Data Reports.
[39] Ministry of Electronics and Information Technology, Cyber Security Strategy Reports.
[40] Information Technology Act, 2000; Digital Personal Data Protection Act, 2023.

against them. The lack of transparency goes against the principle of natural justice, putting people at risk of arbitrariness, hence violating Article14[41].

Furthermore, inadequate remedies for grievances exacerbate this problem even further. In conventional administrative systems, there is a process of hierarchical review, and people can argue their case in front of the relevant authority. Bu in digital systems, there is no proper process of appeal or review available, and hence people cannot seek any recourse when they receive any wrong decision. This is especially important in automated systems because mistakes might occur due to incorrect inputs to the system, system failures, or biases in the algorithm.

Additionally, there is no clarity regarding who should be held accountable in case of decision made by algorithms. While a person making such decisions can easily be held liable in case they deny someone access to some service for their personal gains, there is no way to hold an algorithm accountable. Therefore, it is much harder to enforce the law against any wrongs committed by such a system.

Even though digital governance can prove to be very efficient and convenient, it poses several challenges that need to be taken care of to ensure its legality within the constitutional framework.

7. Conclusion

The move from the conventional process of governance to the digital platform is one significant step in the history of governance in India. The adoption of digital approval for government functions has improved efficiency, decreased bureaucracy, and increased transparency. Nevertheless, as this research indicates, the transformation into digital governance should not only be viewed from a technological perspective but also from a constitutional point of view. The increased dependency on automation and data in the process of governance calls for constitutional review, especially with respect to Article 14 and 21of the Indian Constitution.

In the light of Article 14, the use of technology-based solutions, which should ideally be unbiased and objective in nature, can lead to arbitrary discrimination owing to the non-transparency and inaccessibility of these systems. Lack of sufficient disclosure in terms of the criteria for algorithmic decision-making hampers efforts towards determining the legitimacy of these actions and the outcomes they produce. Further, the presence of the digital device makes things worse in the sense that the most vulnerable and marginalized communities could get deprived of their right to access government facilities.

On similar lines, the relevance of digital technology-based systems under Article 21 cannot be denied. Given the scale of surveillance and collection of data under government databases, serious questions emerge regarding privacy and rights. In addition to this, the Information Technology Act of 2000 and the Digital Personal Data Protection Act,2023 can provide a platform for ensuring regulations fail to guarantee protection of the individual. In addition, the nonexistence of procedural guarantees in the use of such systems- like the denial of a right to a fair hearing or appeal-represents an enormous hurdle for the natural law of justice and due process.

It is in this light that the need for a balanced and holistic model of governance becomes critical. The reforms should target improving transparency in the use od algorithms, securing data and ensuring grievance. At the same time, there is the need to ensure equitable access to digital services by bridging the digital divide through the provisions of appropriate infrastructure and digital literacy.

The notion of digital governance is an inevitable one because of the digital advancement in technology in general. Nonetheless, the success of digital governance should not merely be based on its efficiency but also how well it preserves the constitutional values of quality, justice, and dignity. The rights-based framework in the context of digital governance can help us maintain our core values despite technological advancements.

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