

Legislative Brief

The Electronic Delivery of Services Bill, 2011

The Electronic Delivery of Services Bill, 2011 was introduced in the Lok Sabha by the Minister of Information Technology on December 27, 2011. The Bill was referred to the Standing Committee on Information Technology on January 5, 2012. The Committee submitted its Report on August 30, 2012.

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Highlights of the Bill

- ◆ The Bill requires public authorities to deliver all public services electronically within a maximum period of eight years.
- ◆ There are two exceptions to this requirement: (a) services that cannot be delivered electronically; and (b) services that public authorities, in consultation with the Commissions, decide not to deliver electronically.
- ◆ The Bill establishes Central and State Electronic Service Delivery Commissions to monitor compliance of government departments, and hear representations.
- ◆ Public authorities have to establish a mechanism to redress complaints. Complaints may be for: (a) non-delivery of services in an electronic form; or (b) deficiency in the electronic service provided. In the first case, a representation may be made against the mechanism's orders before the Commission.
- ◆ A maximum penalty of Rs 5,000 may be imposed on a defaulting officer by the Central and State Commissions.

Key Issues and Analysis

- ◆ To provide electronic services, information may be stored electronically. However, the Bill does not provide any safeguards to protect the security of such information.
- ◆ The Bill provides for complaints against: (a) non-availability of electronic services; and (b) deficiency in electronic service. The appellate mechanism is available in the former case and not in the latter case.
- ◆ The grievance redressal mechanism under this Bill may overlap with the grievance redressal mechanism under the Citizens Charter Bill, 2011. Additionally, some states have enacted their own laws on electronic delivery of services.
- ◆ The Bill states that a government order for the appointment of a Commissioner 'may not be questioned in any manner'. This may be in contradiction with the decision of the Supreme Court on the appointment of the Chief Vigilance Commissioner.
- ◆ The Standing Committee's recommendations include: (a) the need to simultaneously provide services manually; and (b) that infrastructure costs to be borne by the centre.

PART A: HIGHLIGHTS OF THE BILL¹

Context

In 2006, the government approved the National e-Governance Plan to provide certain services electronically. These services include electronic processing of passports, tax payments, and registration of companies.

In 2008, the Second Administrative Reforms Commission emphasised the need for a legal framework to implement e-governance.² Additionally, the Information Technology Act, 2000 (IT Act) was amended in 2008 to enable government departments to deliver services electronically.³ It empowers the government to authorise entities to set up, maintain and upgrade computerised facilities. However, the IT Act did not require the government to provide services electronically. The Bill mandates that public authorities provide services electronically and creates a statutory right to such services. At present, some states have notified Rules for electronic service delivery under the IT Act, while Jharkhand has enacted a law.⁴

Key Features

The Electronic Delivery of Services (EDS) Bill requires public authorities to deliver all public services electronically. There are two exceptions to this: (a) services that cannot be delivered electronically; and (b) services that public authorities, in consultation with the Commissions, decide not to deliver electronically. Public authorities have to provide services electronically within five years. This period may be extended by a maximum of three years in consultation with the Commission.

Public authority

- The Bill applies to all public authorities. It defines public authorities to include: (a) constitutional authorities; (b) statutory authorities; and (c) entities notified by the government. The definition includes bodies and non-governmental organisations substantially funded, directly or indirectly, by the government.

Notification of services

- Every public authority will publish a list of services it will deliver electronically. This list has to be published within 180 days of enactment of the Bill, and reviewed every year. The list should contain: (a) the date by which the services would be available electronically; and (b) the manner and quality of the delivery of services.

Electronic Service Delivery Commissions

- The Bill establishes Central and State Electronic Service Delivery Commissions. The Central (State) Commission will monitor the compliance of the public authorities under the central (state) government.
- Each Commission will comprise a Chief Commissioner and up to two Commissioners. The Commissioners will be eminent persons with at least 25 years of experience in information technology or governance. They will be appointed on the recommendation of a selection committee, consisting of the Cabinet Secretary (Chief Secretary), a Secretary to the respective government, and an expert in information technology or governance.

Complaint mechanisms

- The Bill requires public authorities to set up a grievance redressal mechanism (GRM). Complaints may be filed with the GRM for: (a) non-availability of electronic services; and (b) deficiency in such services provided. A person aggrieved by the decision of the GRM may make a representation to the Central or State Commission. Representations can only be made for non-availability of an electronic service.

Powers and Functions of the Electronic Service Delivery Commissions

- The Commissions' functions include: (a) monitoring the publication of services to be delivered electronically; (b) monitoring the GRM; and (c) simplifying the processes and forms for the electronic delivery of services.

Penalties

- The Commissions may impose a maximum penalty of Rs 5,000 on the head of department. Such penalty may be imposed for violating the provision of the Bill or directions of the Commissions. In case of a wilful and persistent default, the penalty may be increased to Rs 20,000.

PART B: KEY ISSUES AND ANALYSIS

Inadequate safeguards for private information

Clause 5 The Bill requires all government departments to provide services electronically. This may involve the storage and communication of information in an electronic form. While the right to privacy is a fundamental right, India does not have a law on privacy.⁵ In the absence of such a law, data that is stored electronically may be misused.

The IT Act was enacted to facilitate e-commerce by providing legal recognition to electronic transactions. It only penalises wrongful disclosure of information collected under that Act. It does not penalise disclosure of information collected by the government under other laws, such as under this Bill. For instance, presently, on the income tax website, any individual's PAN number can be accessed if the individual's name and date of birth are known.⁶ Similarly, on the Municipal Corporation of Delhi website, the details of property owned by any person are available.⁷

The Bill empowers the government to prescribe 'e-governance standards'. However, these standards may not include safeguards for privacy. The Standing Committee that examined the Bill recommended that suitable amendments be made either to this Bill or to the IT Act to address this issue.⁸ The Standing Committee on the IT (Amendment) Bill, 2006 had also recommended that suitable provisions be made in the IT Act to protect privacy of personal information.⁹ Further, the Standing Committee on the National Identification Authority Bill, 2010 recommended that a data protection law be enacted before personal information is collected on a large scale and linked across databases. It noted that in the absence of a data protection law, it would be difficult to deal with issues like access and misuse of personal information. It may be noted that, the Planning Commission has set up a group of experts, under the chairmanship of Justice A.P. Shah, to facilitate the preparation of a Privacy Bill.¹⁰

Inconsistency in the appellate mechanism

No appellate mechanism in case of deficiency of services

Clause 7 and 26 (1) Two types of complaints may be made to the GRM: (a) non-availability of the electronic service; and, (b) deficiency of the electronic service. A person aggrieved by the decision of the GRM in the former instance, may make a representation to the Commissions. However, there is no such provision to approach the Commission for deficiencies in the electronic service.

For example, in the case of electronic booking of railway tickets, the customer may complain if: (a) the service is not available electronically; or (b) the railways' website does not work. However, a representation to the Commission may only be made in the first case and not in the second case.

Lack of clarity of the term 'representation'

The Bill uses the term 'representation' and not the term 'appeal' to describe the recourse against the decision of the GRM. The meaning of the term 'representation' is not clear. In other legislations, such as the Right to Information Act, 2005 and the Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011 (Citizens Charter Bill, 2011), the term 'appeal' is used. The Standing Committee has recommended that the term 'representation' be replaced with the term 'appeal'.⁸

Bar on judicial review of appointment of Commissioners

Clause 22 The Central and State Commissioners will be appointed on the recommendations of the selection committee. The Bill states that an 'order by the government appointing a Commissioner may not be questioned in any manner'.

This may be in contradiction with a recent Supreme Court decision on the appointment of the Central Vigilance Commissioner (CVC).¹¹ The Court held that it can undertake judicial review in case there are procedural irregularities in the appointment of the CVC. In particular, the Court stated that it can review whether the selection committee has considered the relevant information while making the recommendation.

Overlap with other legislation

The Citizens Charter Bill, 2011, which is currently pending in Parliament, creates a statutory right to delivery of services. Under this Bill, a complaint can be filed for a violation of the citizens charter or any law, policy or scheme.¹² The Bill also provides for a mechanism to redress grievances.

The EDS Bill also establishes a mechanism to redress grievances. Grievances under this Bill may also fall within the ambit of the Citizens Charter Bill. Thus, in some cases there could be an overlap of jurisdiction of the two

Bills. It is not clear as to which mechanism may be approached in the first instance, and whether seeking relief under one mechanism would bar opportunities under the other. The Standing Committee recommended that there be no overlap of jurisdiction under the two Bills.⁸

Additionally, some states have enacted their own electronic service delivery laws. For instance, Kerala, Andhra Pradesh, and Chhattisgarh have prescribed Rules related to electronic service delivery under the IT Act, while Jharkhand has enacted a law.⁴

Standing Committee Recommendations on the Bill

The Electronic Delivery of Services Bill, 2011 was referred to the Standing Committee on Information Technology. The Committee submitted its Report on August 30, 2012. Some of the recommendations of the Committee are provided in the table below.

Table 1: Standing Committee Recommendations on the Bill

Issue	Standing Committee Recommendations
Need for the Bill	The need for the Bill should be reviewed as e-governance can be facilitated through amendments in the IT Act.
Infrastructure	The IT Department should co-ordinate with other Ministries to increase computer literacy and power supply.
Access to services	Services should be provided manually as well as electronically.
Exclusion of services	Consultations should be held with the public to review the services that may be excluded from electronic delivery.
Payment for services	The Bill should be amended to specify that no fee be levied on poor persons for accessing electronic services.
Penalties	Private persons authorised to provide access to services through kiosks should be penalised if they violate the Bill.
Financial cost	Additional resources to develop infrastructure at the state level should be borne by the central government.

Source: 37th Report of the Standing Committee on Information Technology, August 30, 2012; PRS.

Notes

1. This brief was prepared on the basis of the EDS Bill, 2011, that was introduced in the Lok Sabha on December 27, 2011.
2. 'Promoting e-Governance', 11th Report of the Second Administrative Reforms Commission, December 2008.
3. Section 6A, Information Technology Act, 2000.
4. Andhra Pradesh Information Technology (Electronic Service Delivery) Rules, 2011; Kerala Information Technology (Electronic Delivery of Services) Rules, 2010; Madhya Pradesh Information Technology (Regulation of Electronic Delivery of Citizen Services and Appointment of Service Providers) Rules, 2010; Chhattisgarh Citizen Service (Electronic Governance) Rules, 2003; and Jharkhand Electronic Service Delivery Act, 2011.
5. *Peoples Union for Civil Liberties vs. Union of India* (1997) 1 SCC 301.
6. The Income Tax website: <https://incometaxindiaefiling.gov.in/portal/knownpan.do> as accessed on October 3, 2012.
7. The Municipal Corporation of Delhi website: <http://111.93.49.17/mnsearchpropid.php> as accessed on October 3, 2012.
8. 37th Report of the Standing Committee on Information Technology, August 30, 2012.
9. 50th Report of the Standing Committee on Information Technology, September 7, 2007.
10. 'Group of Experts on Privacy Issue', Press Information Bureau, January 6, 2012
11. *Centre for PIL vs. Union of India* AIR 2011 SC 1267.
12. Clause 2 (f), Citizens Charter Bill, 2011.

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