

THE DRAFT ELECTRONIC DELIVERY OF SERVICES BILL, 2011

A BILL

to provide delivery of Government services to all citizens by electronic means by phasing out of manual delivery of services delivered by the Government including matters connected therewith or incidental thereto.

CHAPTER 1 **PRELIMINARY**

1. Short title, extent, commencement and application – (1) This Bill may be called the Electronic Delivery of Services Bill, 2011.

(2) It shall extend to whole of India and save as provided in this Bill, it applies to any contravention or offence thereunder committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

(4) Every notification issued under sub-section (3) shall be laid before each House of Parliament.

2. **Definitions.** – (1) In this Act, unless the context otherwise requires, -

(a) “access”, the word “access” shall have the meaning assigned to it in section 2(1)(a) of the Information Technology Act, 2000.

(b) “appropriate Government” means as respects any matter,—

- (i) enumerated in List II of the Seventh Schedule to the Constitution;
 - (ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution;
- the State Government and in any other case, the Central Government;
- (c) “Central Commissioner” means Central Electronic Delivery Services Commissioner” appointed under sub-section (1) of section 7;
 - (d) “Citizen” shall have the meaning assigned to it in Article 5 of the Constitution of India;
 - (e) “communication device” shall have the meaning assigned to it in section 2(1)(ha) of the Information Technology Act, 2000.
 - (f) “computer resource”, the word “computer resource” shall have the meaning assigned to it in section 2(1)(k) of the Information Technology Act, 2000.
 - (g) “Electronic Delivery of Services” means the delivery of public services in the form of receipt of forms and applications, issue or grant of any license, permit, certificate, sanction or approval and the receipt or payment of money by electronic means by following the procedure specified hereunder;
 - (h) “notification” means notification published in the Official Gazette and the expression “notified” with its cognate meanings and grammatical variations shall be construed accordingly;
 - (i) “prescribed” means prescribed by rules made under this Bill;
 - (j) “regulations” means the regulations made by the Central Commissioner under this Bill;

- (k) “resident” means an individual usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area in India;
- (l) “State Commissioner” means State Electronic Delivery of Services Commissioner appointed under sub-section (1) of section 9;

CHAPTER 2
ELECTRONIC DELIVERY OF SERVICES

3. Use of electronic delivery of services in Government and its agencies. – (1)

Where any law provides for –

- (a) the delivery of services in the form of receipt of forms, application or any other document by any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
- (b) the delivery of any licence, permit, sanction or approval by whatever name called in a particular manner;
- (c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such delivery of services, receipt or payment, as the case may be, is effected by means of such electronic mode as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe –

- (a) the manner and format in which such electronic services shall be rendered;

- (b) the manner or method of payment of any fee or charges for such electronic services under clause (a).

4. Mode of delivery of electronic services. – (1) The appropriate Government may, for the purposes of this Chapter and for efficient delivery of services to the public through electronic means authorise, by order, use of computer resources, including communication devices at various delivery locations for greater accessibility to such services.

(2) Notwithstanding anything contained in any other law for the time being in force, the appropriate Government may authorise any service provider to collect, retain and appropriate service charges for rendering any such delivery of service by electronic means.

(3) The appropriate Government shall, by notification in the Official Gazette or Electronic Gazette specify the nature of services and their respective scale of service charges which may be charged and collected by the service providers under this section:

Provided that the appropriate Government may specify different scale of service charges for different types of services.

5. Time limit of delivery of electronic services. – (1) Every office, authority, body or agency owned or controlled by the appropriate Government for electronic delivery of service shall within one hundred and eighty days from the enactment of this Bill –

- (a) identify the service or type of service;
- (b) plan the manner and format of such service or type of service;
- (c) provide a cut-off date, wherever possible, for rendering any such service or type of service;

(d) prescribe the manner or procedure which facilitates such service or type of service;

(e) devise processes and procedures to ensure adequate integrity, security and confidentiality of information or data thus collected, preserved and retained; and

(f) create appropriate framework which is necessary to give legal effect to such service or type of service.

(2) The appropriate Government may, for the purposes of sub-section (1), shall prescribe for all its agencies etc. a framework for –

(a) computerisation of records,

(b) web presence or enablement;

(c) use of shared technology infrastructure; and

(d) electronic authentication.

Explanation. – For the purposes of this section, –

(i) “web presence or enablement” means a website, which as part of the National Portal of India, rendering mandated services electronically in the language chosen by the user;

(ii) “shared technology infrastructure” means access to any such unified technology infrastructure, which provides single point electronic access to all prescribed services using a computer resource or communication device;

(iii) “ electronic authentication framework” means a framework, which provides access to Unique Identification (UID) services as and when become available to a resident.

(2) The appropriate Government may, for the purposes of sub-section (2), by rules prescribe –

(a) the procedure and format of accessibility, preservation and retention of records;

(b) the manner and format in which such services shall be integrated and delivered with the National Portal of India;

(c) the quality of service delivery;

(d) the modes, methods or applications related to shared technology infrastructure.

6. Right to electronic delivery of services. – (1) Notwithstanding anything contained in any other law for the time being in force, subject to provisions of this Bill, all citizens shall have the right to electronic delivery of services.

(2) The appropriate Government for the purpose of sub-section (1) to provide electronic delivery of services as per prescribed manner and format.

CHAPTER 3

REGULATION OF ELECTRONIC DELIVERY OF SERVICES

7. Appointment of the Central Electronic Delivery of Services Commissioner. –

(1) The Central Government may, by notification in the Official Gazette, appoint a Central Electronic Delivery of Services Commissioner for the purposes of this Bill.

(2) The Central Commissioner shall discharge his functions under this Bill subject to the general control and directions of the Central Government.

(3) The Head Office of the Central Electronic Delivery of Services Commissioner shall be at Delhi, and the Central Electronic Delivery of Services Commissioner may, with the previous approval of the Central Government, establish offices at other places in India.

8. Functions of the Central Commissioner. – The Central Commissioner may perform all or any of the following functions, namely:-

- (a) monitoring implementation of this Bill on regular basis;
- (b) exercising supervision over the activities of the State Electronic Delivery of Services Commissioners;
- (c) laying down the technology and quality standards to be maintained by the State Electronic Delivery of Services Commissioners;
- (d) facilitating the web portal integration for electronic delivery of services;
- (e) specifying use of shared technology infrastructure for electronic delivery of services using State Data Center (SDC), State Wide Area Network (SWAN), Common Service Centres (CSCs) etc.
- (f) specifying the manner in which the State Electronic Delivery of Services Commissioner conduct their work with the State Government agencies, etc.
- (g) hearing and deciding appeals against the order of the State Electronic Delivery of Services Commissioner;
- (h) laying down the duties of the State Electronic Delivery of Services Commissioners;
- (i) disclosing progress in implementation of this Bill through a designated web portal; and

(j) any other function with the previous approval of the Central Government.

9. Appointment of the State Electronic Delivery of Services Commissioner. –

(1) Every State Government shall by notification in the Official Gazette, appoint a State Electronic Delivery of Services Commissioner for the purposes of this Bill.

(2) The State Electronic Delivery of Services Commissioner shall exercise the powers conferred on, and to perform the functions assigned to under this Bill.

10. Powers and functions of the State Electronic Delivery of Services Commissioner. –

(1) Subject to the provisions of this Act, it shall be the duty of the State Electronic Delivery of Services Commissioner to establish a framework for implementation of this Bill;

(2) The State Electronic Delivery of Services Commissioner shall have the following functions, namely:

(a) maintaining a database of all such authorities, bodies, agencies etc. which may fall under the definition of appropriate Government under this Bill;

(b) facilitating the web portal integration for electronic delivery of services within the State;

(c) monitoring implementation of this Bill within the State on regular basis;

(d) submission of reports on implementation of this Bill within the State to the Central Commissioner on regular basis;

(e) facilitating integration of electronic delivery of services using State specific, State Data Center (SDC), State Wide Area Network (SWAN), Common Service Centres (CSCs) etc.

(f) hearing and deciding complaints against any such authorities, bodies, agencies etc. of appropriate Government at the State level for non compliance of any of the provisions of this Bill;

(g) any other function as directed by the Central Commissioner.

11. Obligations and accountability. – Notwithstanding anything contained in any provision of this Bill, the obligation and accountability to implement the provisions of this Bill rests with the appropriate Government.

CHAPTER 4 **OFFENCES AND PENALTIES**

12. Penalty for impersonation. – Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information to avail any electronic delivery of service shall be punishable with imprisonment for a term which may extend to three years and with a fine which may extend to one lakh rupees.

13. Penalty for unauthorised access, etc.. –

Whoever not being authorised to access any computer resource maintained for the purpose of electronic delivery of service, fraudulently or dishonestly

(a) accesses or secures access to such services; or

(b) downloads, copies or extracts any data, computer data base or information from any such computer resources, or stored in any removable storage medium; or

(c) introduces or causes to be introduced any computer contaminant or computer virus into any such computer resource; or

- (d) damages or causes to be damaged any data, computer data base or any information residing in any such computer resource; or
- (e) disrupts or causes disruption of any such computer resource; or
- (f) denies or causes the denial of access to any person authorized to access any such computer resource by any means; or
- (g) provides any assistance to any person to do any of the acts aforementioned; or
- (h) charges the services availed of by a person to the account of another person by making use of the password or any other unique identification feature of any other person; or
- (i) destroys, deletes or alters any information residing in any such computer resource or diminishes its value or utility or affects it injuriously by any means; or
- (j) steals, conceals, destroys, or alters or causes any person to steal, conceal, destroy, or alter any computer source code used for any such computer resource with an intention to cause damage,

shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation. – For the purposes of this section, the expressions “computer contaminant”, “computer virus” and “damage” shall have the meanings respectively assigned to them in the *Explanation* to section 43 of the Information Technology Act, 2000.

14. Residuary penalty. – Whoever commits an offence under this Bill, for which no penalty has been separately provided, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to twenty-five thousand rupees or both.

15. Offences by companies. – (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Bill or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (i) “company” means any body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

16. Bill to apply for offence or contravention committed outside India. – (1) Subject to the provisions of sub-section (2), the provisions of this Bill shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Bill shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves any computer resource maintained for the purpose of electronic delivery of service.

17. Power to investigate offences. – Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), a police officer not below the rank of Inspector shall investigate any offence under this Bill.

18. Penalties not to interfere with other punishments. – No penalty imposed under this Bill shall prevent the imposition of any other penalty or punishment under any other law for the time being in force.

19. Cognizance of offences. – (1) No court shall take cognizance of any offence punishable under this Bill, save on a complaint made by the Central Commissioner or State Commissioner or any officer or person authorised by it.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence punishable under this Bill.

CHAPTER 5 **MISCELLANEOUS**

20. Bill to have overriding effect. – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

21. Power to give directions. – The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule, regulation or order made thereunder.

22. Protection of action taken in good faith. – No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Central Commissioner, State Commissioners or any person or officer acting on behalf of him, for anything which is in good faith done or intended to be done in pursuance of this Bill or any rule, regulation or order made thereunder.

23. Modes or methods for encryption for electronic delivery of services – The Central Government may, for secure use of the electronic medium and for promotion of electronic delivery of services prescribe the modes or methods for encryption.

24. Removal of difficulties. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Bill as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

25. Power of Central Government to make rules. – (1) The Central Government may, by notification in the Official Gazette make rules to carry out the provisions of this Bill.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner and format in which such electronic services shall be rendered under clause (a) of sub-section (2) of section 3;

- (b) the manner or method of payment of any fee or charges for such electronic services under clause (b) of sub-section (2) of section 3;
 - (c) the manner in which the authorized service provider may collect, retain and appropriate service charges under sub-section (3) of section 4;
 - (d) the manner or procedure which facilitates electronic delivery of service or such type of service under clause (d) of sub-section (1) of section 5;
 - (e) the processes and procedures to ensure adequate integrity, security and confidentiality of information or data thus collected, preserved and retained under clause (e) of sub-section (1) of section 5;
 - (f) the procedure and format of accessibility, preservation and retention of records under clause (a) of sub-section (3) of section 5;
 - (g) the manner and format in which electronic delivery of services shall be integrated and delivered with the National Portal of India under clause (b) of sub-section (3) of section 5;
 - (h) the standards related to quality of electronic delivery of services under clause (c) of sub-section (3) of section 5;
 - (i) the modes, methods or applications related to shared technology infrastructure under clause (d) of sub-section (3) of section 5; and
 - (j) the modes or methods for encryption for electronic delivery of services under section 23.
- (3) Every notification or rule made by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the

session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

26. Power of Central Commissioner to make regulations. – (1) The Central Commissioner may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Bill and the rules made thereunder to carry out the purposes of this Bill.

(2) Every regulation made under this Bill shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

27. Power of State Government to make rules. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.