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# **REFORMS NEEDED IN THE DIGITAL ERA: SCRUTINIZING THE COMPANIES ACT, 2013**

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## **ABSTRACT**

In today's world of digitalization, a significant adoption of digital methods has been witnessed in the corporate sector. The advent of digitalization has its own pros and cons; and while a large number focuses on the positives of digitalization, it is also important to understand the negatives, and work on those limitations for a better structure, compliance and error free mechanisms. The Companies Act, 2013 provides provisions for e-governance to streamline corporate governance in India. This paper focuses on critically analysing those provisions, highlighting the fallacies in the act, discussing provisions introduced by other countries to protect from data theft and ensure strict legislation for e-governance, and providing appropriate actions that needs to be taken to strengthen the data filing system and electronic governance in India. This paper aims to gather views on the lack of regulatory framework for e-governance under the act, and the need to bring amendment in the act with the constant rise of tech startups and digitalization of majority of procedures while setting up of a company, to govern and protect them from data theft and held accountable the wrongdoers from getting a free pass due to lack of legislations or variance in jurisdiction.

## INTRODUCTION

The wave of digitalization has hit the Indian Market, and several important procedures have also followed the route of digitalization. The digital filing system in India aims at providing improved corporate compliance, accessibility and transparency, and though, it has made several achievements in the field, it also comes along with some challenges that are needed to be discussed. The Indian Government have digitalized several services such as, online tax filing, online registration of a company, digital land management systems, e-bidding, e-auction, helping the companies to carry out their functions with an ease and in much less time. This paper embraces the strength of Information Technology in fostering the Indian Economy and acknowledges the challenges that comes along with it, and tackling the issues with the best possible solutions.<sup>1</sup>

In essence, this paper seeks to unravel the extreme intricacies of E-Governance and the Companies Act, 2013.

## UNDERSTANDING E-GOVERNANCE?

E-Governance refers to the new approach adopted by the government by introducing digital tools and systems to manage corporate compliance. It is a collaboration between Indian Government and Technology, to ease the complex corporate procedures and fasten the data filing process. The wide development and acceptance of e-governance is fueled by the growing Indian Economy, to serve the citizens and companies with the best of technology.

The Companies Act 2013, provides for provisions for E-Governance, simplifying the interaction between companies and regulatory authorities, and reducing the on physical procedures that wastes large amount of time of the companies.

Over the years, India has taken a number of actions to advance e-Government more widely and enhance the delivery of governmental services to its citizens. Resources, people, procedure, and technology have been its primary pillars.<sup>2</sup>

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<sup>1</sup> Kumar, D., & Panchanatham, *Strategies for rebooting the government in e-mode*, Global Journal for Research Analysis, 3(8), 129–130.

<https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/404.php>

<sup>2</sup> Vanya Verma, *Role of e-governance and digital India in empowering Indian citizens*, iblogpleaders, (2021). <https://blog.ipleaders.in/role-e-governance-digital-india-empowering-indian-citizens/>

With the new E-Governance model, Companies are empowered to grow their business, improve and ensure strong and wide connections, invite cross border collaboration and transaction and add to the growing economy of India.

### **E-Governance Provisions under Companies Act, 2013**

Digital Compliance have been incorporated in few sections of the Companies Act, 2013, to regulate the E-Governance procedures. Section 15,51,89, 92, 93, 108, 120, 124, 137, 173, 398, 399,401,402,403 of the act deals with the aspects of E-Governance, however, it is important to note that these sections do not entirely layout the provisions for e-governance, a part of these abovementioned sections provides for some aspects of e-governance. It is henceforth, be derived that Companies Act 2013, lacks provisions that entirely focuses on E-Governance and its regulations and implications.

- **Sec 89** provides for the companies to file the information related to their beneficial ownership electronically with the registrar of the company to ensure transparency with respect to shareholding structure.
- **Sec 92** mandates for companies to file their annual return with details including the company's directors, shareholders and other essential details electronically to ensure transparency and accountability.
- **Sec 93** mandates companies to update every change regarding shareholders and their positions electronically to ensure transparency and information accessibility to all.
- **Sec 15, 51 and 108** promotes electronic voting by providing an option to shareholders to vote through electronic means during a meeting where voting is to be done, promoting e-governance.
- **Sec 120** promotes companies to maintain documents, reports and records in an electronic form.
- **Sec 124** provides for unpaid dividend account. It ensures that the stakeholders have access to information regarding the unpaid dividend account ensuring transparency.
- **Sec 137** provides for companies to file their financial statements electronically with the

registrar.

- **Sec 173** provides companies with an option to hold meetings electronically.
- **Sec 398** provides for provisions relating to filing of applications, documents, inspection, etc in electronic form.
- **Sec 399** allows the inspection of documents and other reports filed electronically to the registrar.
- **Sec 401** provides for Provision of value added services through electronic form.
- **Sec 402** gives power to apply the IT Act in every record in electronic form.
- **Sec 403** provides for electronic payment of fees.<sup>3</sup>

## CHALLENGES OF E-GOVERNANCE

Despite these provisions, E-Governance in India have countered several challenges:

- **Cybersecurity Concerns**

With the companies uploading their sensitive data through electronic means, the risk of data theft increases. Cybersecurity is the utmost concern of the era. So many data theft cases have been registered, and many big companies have lost their sensitive financial data through cyber fraud. It's getting harder for the judicial system to keep track of all the data breaches that happen, let alone bring the criminals to prison, as technology advances every day.<sup>4</sup> Data theft causes a massive financial loss to the companies.

One of the prominent data breach cases in India, was, the Yes Bank and Reliance Jio Data Breach Case, 2020, where Yes bank's sensitive financial data and client data was exposed through Reliance Jio's third party vendor, which released yes bank's critical data, customer's record including their transactional data.

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<sup>3</sup> Companies Act, 2013.

<sup>4</sup> Erum Khatoun, *Top 10 data breaches that have occurred in India in 2020-21*, iblogpleaders, (2021). <https://blog.ipleaders.in/top-10-data-breaches-that-have-occurred-in-india-in-2020-21/>

Sec 134 of the Companies Act, was highlighted in this case, as it requires boards to take significant step and protect company's data. In this, case it was also held, both the companies were accountable for their data protection lapses.

Another case, that highlights data theft and questions the provision of the act, is MobiKwik Data Leak, where sensitive information of millions of customers was leaked which included their KYC details, bank account details, questioning sec 134 of the act, where company was entitled adopt strict protocols to reduce such cybersecurity risk.

From the above two cases, it can very well be derived that the current provisions in the Companies Act, does need amendment and there's need to bring in, provisions that safeguards the companies from such data breach.

- **Technical Glitches of the System's Software**

Another major challenge is the technical errors the web portal faces, which delays the process, such delays are of complex nature, which costs a lot of time to the company. Vulnerabilities in such software also attracts the hackers to decode into the system and get access to sensitive information of the company. Companies should always invest, in highly encrypted forms of communication and filing system, with software that do not often crash.

- **Sensitive information at the hands of third-party vendors**

Companies provide a lot of sensitive information related to the company's financial statements, client's personal data, financial transaction, company's traction to the third-party vendors, which leads to a high increase in chances of data theft if the information is not encrypted properly, making it easier target for hackers to hack the sources and steal the information. Sometimes, it is the third-party vendors who sell this information to the competitors, for money, and since there is no explicit provision under the companies act that restricts the company from sharing such information with the third-party vendors, they cannot be held liable for the fraud.

- **Insider Threats**

Employees of the company who has access to the sensitive information of the company,

can also participate in such malpractice and leak or sell or misuse such information for personal benefit, harming the reputation of the company alongside the financial losses that company might have to suffer.

- **Lack of Strong Authentication**

If the system lacks strong and protected data filing system, any unauthorized person may be able to seek the access of the system and through there can access any file or report of the company.

- **Lack of clarity on Financial Reporting Standards**

The requirements for financial reporting provided under the act is vague and does not specify a clear understanding about the standardized financial reporting, which can generate misreporting's and misunderstandings as to which form of financial reporting to opt for, which then lead to chaos.

- **Limitation on Corporate Governance**

The Act only provides general guidelines for corporate governance, it fails to provide specific instructions on corporate governance, which then creates a challenge for business to comply with the rules of the act.

- **Lack of provisions against fraud**

The Act fails to provide strict and clear provision against fraud. Due to this, there is no strict enforcement of the provision. The provisions that cover fraud under the act are also vague and confusing, that does not provide any benefit to the company or act against the wrongdoers. It provides an opportunity to the wrongdoers to cover their crime and shield themselves from getting caught.

## **SOLUTIONS FOR THESE CHALLENGES**

- **Implementation of Strong access control**

To ensure that only authorized personnel have access, implementation of stringent

access controls and authentication procedures, such as multi-factor authentication (MFA) have to be adopted, to ensure complete data safety and no leak of sensitive information through any insider or outsider.

- **Amendments in the Act**

The Companies Act needs addition of provisions under E-Governance, that induces liability on the wrongdoers and also ensures protection of the shareholders, directors and members of the company. Provisions at the time of corporate fraud needs to be re-introduced with strict implementation and punishment aspect.

- **Cybersecurity**

Data transfer must take place through safe and encrypted channels with limited access. Along with the IT Act, the Companies Act must also contain provisions that deals with cyber security and handles data theft cases, to ensure complete data protection and safe transfer of information through the company's system.

- **Use of AI and provisions related to AI in the act**

AI must be used by the companies to auto drive discrepancies in the system or report, and such AI generated provision must be specified clearly in the act, to avoid any misuse of the technology and hold accountability at the time of any fraud. The application of this solution is a challenge in itself, so a very structured AI system that works in the favor of the company and its member is important.

- **Addition of Regulatory Framework**

The current provisions in the act, lack proper regulatory framework to govern the digital process. Thus, there's a need to introduce clauses that regulates the digital filing system and govern the electronic transactions and registrations to prevent for any major unforeseen cyber fraud.

## **CONCLUSION**

Advancement in technology brings growth in the economy and a new set of challenges to

overcome. E-Governance is a step towards development of the Indian Economy. The aim is to tackle these challenges discussed in this paper, and bring out a strong legislation that covers all these challenges and protects the companies and ones interested in the company from any kind of loss or fraud. Companies Act, 2013 covers a lot of provisions regarding the new data filing system, the new amendments would enhance the act and help in regulating the digital framework more closely and strictly. Therefore, there's a need to bring in the necessary changes to fully adapt to the digital world.