

ISSN 0972-1983

VOL 53 | NO. : 04 | Pg. 1-156 | APRIL 2023 | ₹100/- (SINGLE COPY)

CHARTERED SECRETARY

THE JOURNAL FOR GOVERNANCE PROFESSIONALS

Good Governance - Stepping Beyond Boundaries



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
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Evolution of Digital Documentation – An Observation

Globally, there are a multitude of methods that can be employed for executing digital documents; however, amongst them all, electronic signatures remain the most ubiquitous medium used for signing. Albeit their ubiquity within this field, they warrant mention as these signatures come in diverse forms such as an individual's typed name or even a biometrically derived signature through fingerprint or facial recognition.



Vikas Pansare, ACS

Pansare & Associates

csvikaspansare@outlook.com

INTRODUCTION

Since times immemorial, India has always been the hub of knowledge, culture, religion, and awareness. The various historical, cultural, and religious events and verses, texts and phrases were first inscribed on stones, precious metals, leaves and finally on paper. Documentation has been an integral facet of our culture since ages. The foremost among these are the Vedas, a holy collection of ancient religious texts written in Sanskrit at least approximately 1400 BCE, believed to be one of India's earliest forms of documentation etched on palm leaves – described as the oldest known literature in India.

Inscriptions are another quintessential form deeply entrenched in Indian culture and society. These inscriptions had unparalleled significance, proving immensely useful in recording significant milestones and events or noteworthy accomplishments alike; carved into stone or metal with great precision and meticulously. The edicts engraved by Emperor Ashoka during the 3rd century BCE on pillars and rocks dispersed across the Maurya Empire remain some of India's most well-known inscriptions to date.

Complementing these documents is another equally significant part of Indian cultural heritage: storytelling passed down orally across generations over countless ages invoking cherished history often delightful yet poignant remain etched in the listeners mind and heart even long after they were heard.

Over time, India has remained committed to documenting its knowledge discoveries in fields ranging from science and technology to mathematics, astronomy, medicine; it became home to many world-renowned researchers known globally. The historical texts and government records that now safeguard scientifically grounded research papers unparalleled anywhere else in our post-modern and digital age.

CURRENT GLOBAL SCENARIO

In today's digital era, where the documents/ records also exist digitally and are accessible from almost any part of the globe. This is mainly due to digitisation and availability of technology at individual level.

Further the documents are also executed digitally. The digital document execution involves the process of affixing one's signature onto legal documents in electronic form, without being constrained by physical limitations such as pen and paper. This latest practice due to its paramount locational and technological convenience, expediency, and cost-effectiveness and more important time efficiency has proved to be game changer in comparison to traditional modes of signing papers.

Globally, there are a multitude of methods that can be employed for executing digital documents; however, amongst them all, electronic signatures remain the most ubiquitous medium used for signing. Albeit their ubiquity within this field, they warrant mention as these signatures come in diverse forms such as an individual's typed name or even a biometrically derived signature through fingerprint or facial recognition.

Worldwide various legislations have been enacted to recognise the digital document execution. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) is an instance within US jurisdiction whilst similar legislation exists around the globe like Canada's Electronic Transactions Act or The Regulation on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) of the European Union.

In this digital age, electronic signatures have been revolutionary and path breaking. Digital notarization services exist that permit legal documents even to be notarized electronically in a seamless and efficient manner. The process involves a notary public or authorized agent who verifies the signatory's identity and authenticity of the document, before affixing a seal of approval via electronic means.

Considering its unparalleled convenience and timesaving and portability efficiency, digital document execution has emerged as a favorable method for signing and completing legal procedures. This trend will only continue it seems - businesses from around the world are rapidly adopting new processes and methodologies with open arms as they recognize that digitizing their operations will provide them with significant advantages over their competitors. Thereby resulting in better efficiencies and improved time management. Further it is also eco-friendly.

THE NEED FOR DIGITISATION

There are several reasons why digitizing documents can be beneficial:

Easy accessibility: Digitized documents can be easily stored on a computer, mobile or any device or cloud-based storage platform, making them accessible from anywhere with an internet connection. This means that people can access the information they need more quickly and efficiently.

Space saving: Physical documents can take up a lot of space, especially in businesses and organizations with a large volume of paperwork. Digitizing documents eliminates the need for physical storage space, freeing up room for other purposes.

Cost savings: Digitizing documents can help reduce costs associated with printing, copying, and storing physical documents. Additionally, digital documents can be easily shared electronically, eliminating the need for postage or courier services and other logistical obligations.

Improved efficiency: Digitized documents can be easily searched, sorted, and organized, allowing people to find the information they need more quickly. This can improve productivity and save time.

Better security: Digital documents can be password protected and encrypted, making them more secure than physical documents that can be lost, stolen, or damaged.

Improved search within the document: Key words, or specific words, phrases, names, figures etc can be searched within voluminous documents in very lesser time when compared to physical documents.

Overall, digitizing documents can improve accessibility, efficiency, and security, while also saving space and reducing costs

DISADVANTAGES OF DIGITIZATION

While there are many advantages to digitizing documents, there are also some potential disadvantages to consider:

Data loss: Digital files can be lost or corrupted if not properly backed up or stored. This can result in the loss of important information or data.

Accessibility issues: While digital documents are generally more accessible, they may also present accessibility issues for individuals with disabilities, such as those who are visually impaired or are otherwise differently abled.

Cost: While digitizing documents can help reduce some costs, it can also be expensive to implement and maintain the necessary technology and infrastructure. This can be a significant investment for some organizations especially the maintenance cost attached to such systems/ storages.

Technological obsolescence: Digital file formats and storage methods can become obsolete over time, making it difficult to access or recover information from older files. This can be particularly problematic for organizations that need to retain records for extended periods of time and regularly update their systems, since there are costs involved in this.

Security risks: While digital documents can be more secure than physical documents in some ways, they are also vulnerable to cyber-attacks, data breaches, and other forms of hacking and system failures / errors. This can put sensitive information at risk.

While digitizing documents can provide many benefits, it is important to consider the potential drawbacks and take steps to mitigate these risks.

Definitions:

Section 3(11) of General Clauses Act, 1977 defines Document. — “Document” shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter ;

As per Section 3 The Indian Evidence Act, 1872

“Document”. –“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document.

Words printed lithographed or photographed are documents.

A map or plan is a document.

An inscription on a metal plate or stone is a document.

A caricature is a document.

“Evidence”. –“Evidence” means and includes –

(1) all statements which the Court permits or requires to be made before it by witnesses, in

relation to matters of fact under inquiry.

such statements are called oral evidence.

(2) 4[all documents including electronic records produced for the inspection of the Court;]

such documents are called documentary evidence.

As per Section 29 of The Indian Penal Code

29. “Document”. —The word “document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1. —It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2. —Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words “pay to the holder” or words to that effect had been written over the signature.

Section 2 of Information Technology Act, 2000 defines the following:

(o) “data” means a representation of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

(p) “digital signature” means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3.

(q) “Digital Signature Certificate” means a Digital Signature Certificate issued under subsection (4) of section 35.

(r) “electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device.

(s) “Electronic Gazette” means the Official Gazette published in the electronic form.

(t) “electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro fiche;

Section 4 of Information Technology Act, 2000 authorised electronic governance and legally recognised electronic records.

Legal recognition of electronic records.

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference

Exceptions:

Significant to note that Information Technology Act, 2000 does not apply to, —

In this digital age, electronic signatures have been revolutionary and path breaking. Digital notarization services exist that permit legal documents even to be notarized electronically in a seamless and efficient manner. The process involves a notary public or authorized agent who verifies the signatory’s identity and authenticity of the document, before affixing a seal of approval via electronic means.

- (a) a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881.
- (b) a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
- (c) a trust as defined in section 3 of the Indian Trusts Act, 1882.
- (d) a will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
- (e) any contract for the sale or conveyance of immovable property or any interest in such property.
- (f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

DIGITAL REVOLUTION AND E-GOVERNANCE IN INDIA

E-governance initiatives by the Government of India took a broader dimension in the mid-1990s, more so, with people centric services. Prior to that, the computerisation was limited only to strategic departments like Meteorological Department, Department of Atomic Energy, Electricity Dept. Later the major Information and Communication Technology initiatives of the Government included, projects, such as railway computerization, Banks, and land record computerisation etc. The Information Technology Act was introduced which gave legal recognition and foundation and framework for digital records. Later in 2000’s the Department of Company Affairs implemented MCA21 an e governance initiative for the corporates. This further led to and spilling over of technological revolution throughout the country. Later, many states which started ambitious individual e-governance projects aimed at providing electronic services to citizens.

Though these e-governance projects were citizen-centric, they could make less than the desired impact due to their limited features, plus having the robust technological infrastructure including the last mile internet and digital connectivity was also required. The more comprehensive planning and implementation for the infrastructure was the need of the hour, more particularly so operational issues to be addressed etc., and therefore there was need to establish a more connectivity between the citizens and the government.

Evolution of Digital Documentation – An Observation

In July 2015, Digital India a flagship programme was launched under the leadership our Prime Minister Shri Narendra Modi to transform India into digitally empowered society and knowledge economy. Digital India authorities / services are listed below.

- Controller Of Certifying Authorities (CCA)
- Centre For Development Of Advanced Computing (C-DAC)
- Centre For Railway Information Systems (CRIS)
- Common Services Centre (CSC)
- Department Of Agriculture Cooperation And Farmers Welfare (DACandFW)
- Small Farmers Agribusiness Consortium (SFAC)
- Department Of Empowerment Of Persons With Disabilities (DEPWD)
- Department Of Finance Services
- Department Of Industrial Policy and Promotion (DIPP)
- Department Of Science and Technology (DST)
- Ministry of Electronics and Information Technology, (MeitY)

Digital India Platform has following initiatives / programme.

- Aadhar
- Bharat Broadband Network (BBNL)
- Common Service Centres (CSCS)
- Accessible India Campaign and Mobile App
- Agrimarket App
- Beti Bachao Beti Padhao
- Bhim (Bharat Interface For Money)
- Crime And Criminal Tracking Network and Systems (CCTNS)
- Crop Insurance Mobile App
- Digital AIIMS
- E-Granthalaya
- e-Panchayat
- Ebiz

Digitize India Platform (DIP):

Its an initiative of Government of India with the aim is to digitize and make usable all the existing content in different formats and media, languages, digitizing and creating data extracts for Document Management and Managing the Records.

It provides platform for processing and extracting relevant data from document images in a format that may used for the analysis.

It further provides digitization services from scanned document images or physical documents for any organization.

This platform envisages a paperless office, make data available on demand to the citizens, free archived documents storage spaces and enhance digital public service delivery.

Entities delivering citizen and customer centric services like Registration, Issuance of Certificates, permits etc., involve extensive handling of documents, such documents are critical for effective service delivery. With such a surge in documents generated every day, storing and retrieving documents become an operational challenge.

Entities usually convert these documents into images through scanning. In most of the cases it is not being done appropriately as it is a human intensive and costly process. This leaves the entities with digital images which cannot be retrieved, and data cannot be processed. If one such entity has already had the scanned documents/images; this platform assists them, to extract the relevant data from the same and provide with the data extracts in a usable format. This platform also provides an innovative solution for all these challenges by combining Machine inputs with human intelligence to deliver logically verified data. Further this platform converts them into images and digitize them.

Benefits Associated with DIP

Digitized data extracts generated by DIP will help one organization to:

- Indexing the document images by using the data extracts.
- Manage, retrieve, and access the document images more efficiently through keyword-based search.
- Use the data extract as automated data inputs in IT applications avoiding manual data entry.
- Store the data extract for analysis and informed decision making.
- Repurpose, reproduce, and share the data in different formats for ex. Printed forms, PDF files etc.
- Safeguard against physical disasters by replicating the data across different formats and locations.
- Secure the document and data access by using restricted access and encryption techniques.
- Digitally archive the documents saving space and costs.

NeSL

With the growth of Non-Performing Assets (NPA's) in the banking system, there was growing need to have aggregated view of Assets apart from readily available knowledge of the liabilities. An Information Utility (IU) was therefore recommended to be set up as a competitive industry so that evidence could be presented, as facts established as per law, enabling resolution of credit/investment failures / shortcomings. RBI also felt the need for Account Aggregation and have since codified the regulations under NBFC directions thereby enabling asset aggregation across asset classes.

In the above environment, National E-Governance Services Limited (NeSL) was incorporated to augment the Information Infrastructure of India with a focus on delivering services for the public, government, and public financial institutions.

In India, the legal recognition of electronic contracts has been upheld since the inception of the Information Technology Act, 2000 (IT Act). This was a strategic measure that aimed to provide a regulatory and legal framework for electronic transactions. Prior to this landmark legislation, there existed no specific statute that governed digital documents or e-contracts in India.

Since The Indian Contract Act was a 19th century enactment, it did not address any aspect relating to digital documentation or electronic contracting. Before the inception of the IT Act, India lacked a specific legislation that governed digital documentation / records and electronic contracts. Thus, concerns regarding their validity and enforceability in courts were raised; ambiguity overshadowed them. The introduction of IT Act, marked an imperative milestone by bridging gaps, providing clarity and cementing trust around legitimacy issues concerning all those engaged in digital documentation.

Electronic records alongside digitalized signatures emerged on equal footing with paper-based agreements backed by conventional signatures. As such it provided support towards cementing the legitimacy of electronically formed contractual obligations.

In witness to this act's jurisdictional reach over e-contracts transactions across various industries soared manifold-E-commerce found broader appeal while Banking and Insurance sectors followed suit; even Real Estate began to leverage from self-authenticating documents emanating post-it.

Significantly, Digital Signature Certificates (DSC) were part of the MCA21 project, launched by the then Department of Company Affairs, and later eSign services was one such example services introduced by the Government in 2015, allowing citizens to affix their signature electronically with Aadhaar authentication. Through this convenient platform, the usage of e-contracts has been propelled forward. In this digital era, electronic signatures, digital notarization, and other technological advancements have become increasingly popular means of executing contracts.

The progression of technology coupled with evolved legal frameworks has been paramount in shaping India's history regarding electronic contracts. The implementation of the IT Act stands as a testament to its effectiveness; it aided in promoting the use of electronic agreements and cementing digital commerce on Indian soil.

DIGITAL DOCUMENT EXECUTION (DDE)

In this digital age, quick financing is the need of the hour. So, unless legal / business documents are executed swiftly the transactions would not occur with required pace and clarity. DDE is a paperless execution and storage of financial contracts, which results in more efficient and superior enforcement, thereby enhancing the 'Ease of Doing Business'.

DDE platform is designed to eliminate the need for physical Stamp Paper and paper-based execution or signing of any contract or Loan Documents.

This concept of DDE was formulated under the guidance of Ministry of Finance and IBBI for NeSL to serve the financial

sector in facilitating dematerialization of financial contracts. It saves substantial resources by Digital E-stamping within a few minutes and by affixing of digital signatures (DSC) by parties to the contract on NeSL's platform,

It ensures that the error free execution and in efficient and effective way.

- This platform to create loan and security documents with retrieval in a timely manner.
- The documents executed on this platform are fully authentic, ensuring that storage of the undisputed and
- Irreputable record of debt on the Information Utility (IU) with confirmation of the disbursement/repayment.
- This platform will prevent storage of physical documents by financial creditors resulting in substantial savings and easy retrieval of documents.

It is a platform for an acceptance or agreement on debt balances throughout the existence of the debt and is therefore the Major beneficiaries are:

1. The Borrower and Lender,
2. Guarantors, Security providers,
3. Auditors of the Debtor,
4. Prospective Lenders, Credit Rating agencies, Credit scorers.
5. Policymakers, and
6. Judicial fora would resolve disputes more easily, even without the formal judicial system.

It serves as a single source of truth. It helps in establishing an infrastructure that stores data points of each financial contract, including the amount of debt, outstanding balance, security interest of lenders, default and financial statements or repayment history.

All financial contracts ranging from loans of banks or moneylenders, debentures, commercial paper, etc. are mandatorily filed with adequate details, including repayments in this digital repository. Each business transaction creates a creditor who is eligible to file details of credit provided to its buyers, including the payment due dates. In either case, when the due date for the payment is crossed, a default can be filed electronically which serves as an early warning to all creditors linked to the person that has failed to pay on the due date. There is no physical movement of files. The era of paper and it's scanning of invoices or demand notices is truly over.

The contract execution process in the DDE platform is totally seamless, online and real-time. The entire process of documentation of a loan contract takes about few minutes starting from upload of data by the lender to the DDE platform followed by E-stamping and E-sign, excluding time taken by borrower for perusal and acceptance of details of the contract on the DDE screen. DDE provides a whole new contracting experience and leverages the legal evidentiary value of Information Utility (IU).

Evolution of Digital Documentation – An Observation

Digital Document execution (DDE) platform facilitates, dematerialization of the document execution and customer acquisition transactions, Online stamp duty payment and receipt of stamp certificate, paperless green processes, Support information needs of loan exchange platform, It serves as a repository for digitally executed loan documents, results into minimal capex based implementation. It also generates demat contract, enables eStamping, eSignature (e-Sign) and document upload.

RECENT SCENARIO

Majority of Bank Guarantees (BG) in India are currently issued physically as paper documents by banks, on request from customers (Applicant) and in favour of beneficiaries. Important to note since September 2022, Indian Banks commenced issuing e-bank guarantees or e-BG. HDFC Bank was the first bank to issue e-BG. There have been 15,68,798 DDE transactions till 15th March 2023.

The Economic Survey 2022-23 presented in the Parliament in the recent Budget session, highlighted the core principle of the NeSL-DDE platform. These include submission of information and document/agreement to be executed on the platform giving flexibility to accommodate any agreement/document format, Consent-based process, digital payment of stamp duty and affixing of digital e-stamp certificate and also verification of the identity of the executants and digital execution using an electronic signature and more importantly Secure storage transmission and retrieval of the digitally executed document generated.

e-BANK GUARANTEES (e-BG)

The realm of banking in India has been undergoing a significant transformation over the past few years with the implementation of electronic bank guarantees or e-bank guarantees. This revolution aims to create a more streamlined and convenient process for issuing, managing, and enforcing banking guarantees.

The evolution witnessed by India's e-bank guarantee system has been driven entirely by the need for providing convenient and efficient banking processes tailored specifically for business needs and to bring more transparency and authenticity. Additionally, rapid advancements in digital technology coupled with mounting pressure on financial institutions' higher reliance on faster yet secure banking services have created a surge in usage concerning these modernised methods of payment systems; thus, increasing their popularity exponentially.

For many years ahead today's ever-growing demand is likely providing several further opportunities thereby ensuring that this newer mode of resolving bank transaction disputes amongst banks continues its current trajectory being adopted rapidly across industries globally and will become even more prevalent and robust in India.

FEATURES OF e-BG

It is completely digital and eliminates paper, Digital e-stamping and thereby eliminates the need to print stamp paper, e-BG document embedding digital stamp as a composite electronic

(PDF) document, Further (very significant) no restrictions to impose any standardized BG template, beneficiaries and applicants can continue to use the present documentation templates, Digitally signed by bank official as permitted under the Information Technology Act, prevents tampering of any part of the document since it will invalidate the signature.

NeSL serves as the central repository for all e-BG, its an Information Utility (IU) under IBC, NeSL is authorized and mandated to hold all debt relation information as a central repository of the country. Any e-BG issued is stored centrally in NeSL Information Utility repository apart from storage by the respective issuing banks. Any subsequent event of the BG, e.g. amendment, invocation, cancellation/closure are also recorded with NeSL on confirmation from the bank.

All stakeholders, i.e. beneficiary, applicant (customer) and the bank have ability to access NeSL platform directly for searching, viewing and downloading e-BG, anytime: provides a single version of truth for all stakeholders, direct notification to beneficiary and other parties on issuance or change of status for each e-BG: thereby eliminating the reliance on Structured Financial Messaging System (SFMS) message for the purpose, More authenticity by allowing beneficiaries, as verified users of NeSL, to issue discharge letter/confirmation or invocation advice through NeSL platform.

CONCLUSION

Digital Documentation has been the need of the hour, and a precursor to eContracts, e-BG, and e-Stamping and various other digital forms and utilities, including execution of documents. The volume and the complexities of transactions have forced the stakeholders to have a platform for a greater, faster, reliable and trusted documentation keeping in view transparency required as well as efficient and more informative and evidence-based system. This is indeed revolutionary and step forward to the ease of doing business for all stakeholders.

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e-BG Government Circulars

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2	Ministry of Defence	Circular No. 4(23)/D(Acq)122; Dated 20.09.2022
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