

# On the Rule of Law Guarantee of Digital Government Construction

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**Abstract.** The construction of digital government is a systematic and global change of government governance model. At present, China's digital government construction is facing the dilemma of lack of legislation, insufficient system supply, high data barriers, lagging data security and personal information protection, and low motivation of public participation. To this end, the author stands in the perspective of administrative law to analyze various problems in the construction of digital government in theory and practice, and provide suggestions for the construction of digital government.

**Keywords:** Digital government, Digital governance, Rule of law.

## 1. Introduction

The "Outline for the Implementation of the Rule of Law Government Construction" released in 2021 clearly requires that "efforts be made to realize the deep integration of government governance informatization and rule of law, optimize and innovate government governance processes and methods, and vigorously enhance the digital level of rule of law government construction". The "digital government" revolutionizes the administrative model and provides a multifaceted and dynamic governance of the digital state and the digital society. Compared with the traditional model, "digital government" facilitates government agencies to break time and space constraints, strengthen departmental collaboration, and improve administrative efficiency, which is a useful innovation in social governance. At present, the work of promoting the construction of digital government is in full swing: Shanghai is building a "one-stop-shop" smart city, Guangdong is exploring the integration of "whole government", and Zhejiang has issued "Public Data Regulations", and many successful experiences have been accumulated in practice in various regions.

However, the lack of a corresponding legislative system has led to problems such as insufficient systematization, prominent data barriers, and lack of institutional support for personal information and data security in practice, coupled with limited government digital services and difficulties in public participation, all these legal pitfalls not only hinder the completion of digital government construction, but also pose problems for China's digital governance. In this regard, the author re-examines the policy from the perspective of administrative law and attempts to make suggestions for the establishment of corresponding regulations.

## 2. The past life of "digital government": from open government to digital governance

Digital government governance takes digital technology as the basis for government innovation and fully exploits the value of digital information. The construction of "digital government" in China can be roughly divided into three stages.

1. The stage of automated office, with the main goal of improving administrative efficiency.
2. The stage of government informatization, with " reforming from management-oriented government to service-oriented government " as the main symbol.
3. The stage of government digitalization, with government reengineering and government intelligence as the main features.

There is a historical inevitability in the shift of state governance from one-way authoritarian control and limited interaction of representative democracy to pluralistic interaction of digital consultation. Digital governance is the use of information and digital technology to reorganize government functions, which includes two dimensions: "empowerment" of government organizations internally and "empowerment" of the public externally.

### **3. The current situation of digital government construction: achievements and dilemmas**

#### **3.1. China's digital government exploration**

At present, China is still in the stage of improving the infrastructure of digital government. After the 19th National Congress put forward the digital China strategy, provinces and cities have taken actions for the construction of local digital government and launched corresponding master plans and guidelines, striving to integrate information technology into the process of governance mode and innovate the way of government services. *The 2019 China Digital Government Service Capability Assessment General Report* shows that by the end of 2019, 10 provincial governments in China had introduced and made public their provincial digital government planning plans; there are about 14,500 government websites in the national collection; and many places have coordinated the completion of provincial government service apps. The government has been gradually opening up public data to society and improving its governance capacity.

At the same time, the government has also carried out legislative practices around digital transformation, and has enacted laws and regulations on public data opening, digital divide bridging, and personal information protection.

#### **3.2. Dilemma of Promoting Digital Government Governance**

Digital transformation and government function transformation are isolated from each other and have not yet been integrated with other systemic reform goals, such as rule of law government construction and service-oriented government construction, which are the main problems of digital governance at present.

##### **3.2.1. Insufficient rule of law and systemic construction**

The formulation of regulations concerning the construction of digital government in China is still dominated by administrative regulations and supplemented by departmental regulations, and the superior or fundamental legislation is still blank, and a benign and stable legal framework system has not yet been established. In recent years, administrative regulatory documents such as the "Outline of National Informatization Development Strategy" and the "13th Five-Year Plan" have been issued one after another, making China have a certain degree of legal regulation in the field of digital government governance, but the above regulations lack overall layout and top-level legal system design, which is prone to the problem of data barriers and hinder the government digitalization process.

##### **3.2.2. Strong Data Barriers and Difficult Data Disclosure**

At present, China's data governance is ineffective, mainly in terms of low data sharing and insufficient coverage; low conversion rate of data economy; and protectionism of government department data.

In fact, many public data collected by the government using its coercive power have extremely strong commercial value, and if this part of government data is opened to the society, the data potential can be released to the maximum. Unfortunately, China's Interim Measures for the Management of Government Information Resources Sharing do not clearly regulate the boundary restrictions on data disclosure and the ways and prices of data sharing. However, Zhejiang Province made a good attempt in its Public Data Regulations in January this year to make principled provisions on these issues.

### **3.2.3. Strengthening personal information protection and data security management**

Most developed countries are regulated by bills on data security, and the U.S. has bills such as the Social Media Privacy and Consumer Rights Act, while the EU has adopted the European General Data Protection Act (GDPR), which has become a security barrier for building electronic data services in these countries. And China's first relevant special law "Data Security Law" also came into force on September 1, 2021, only the relevant judicial interpretation, guiding cases and legal application issues to be regulated, the implementation effect is also pending the test of time.

Meanwhile, the government's information collection is not meticulously regulated, which may lead to the violation of individual privacy and the right to self-determination of personal information. The Civil Code of the PRC provides that government agencies shall follow the principles of legality, propriety and necessity to effectively protect citizens' personal information and shall not collect it excessively or use it arbitrarily. However, China's current Interim Measures for the Management of Government Information Resources Sharing does not make clear and specific provisions, and it is difficult for government staff to accurately judge the difference between government information resources and personal privacy information.

### **3.2.4. Absence of Participation of Multiple Subjects**

Influenced by the traditional closed administrative culture, the channels for citizens and NGOs to participate in governance are yet to be unblocked, resulting in the core of digital government - the interaction of multiple subjects - not being realized. The lack of transparency in China's administrative system, the lack of mass participation in the government decision-making process, and the limited social supervision of the policy implementation process, making the construction of digital law government lag behind the digital transformation process.

## **4. The improvement of digital government: the road is long and difficult**

In order to solve the above problems, the Chinese government needs to introduce a Digital Government Law to regulate the construction of digital government; it also needs to accelerate the improvement of the case guidance and judicial interpretation of the Data Security Law and the Personal Information Protection Law to determine the scope of application of the law in detail and strictly, so as to strengthen the protection of data and provide strong institutional support for breaking down information barriers.

### **4.1. Formulate the Digital Government Law to achieve compliance with the law**

The legal framework for digital government in China is not yet perfect. From international experience, South Korea has achieved remarkable results in breaking down information barriers and digital government after the enactment of the E-Government Act and the Regulations for the Implementation of the E-Government Act. The 13th International Digital Government Assessment Ranking Study Report of Waseda University says that Korea's international digital government assessment in 2017 is in the fourth place in the world.

China can learn from the experience of Korea, widely absorb opinions and suggestions on the basis of the practice of various local governments, and formulate the Digital Government Law as the superior law, which stipulates the general purpose, general principles and general direction of the construction of the regulated digital government.

### **4.2. Clarify the principle of public data disclosure and realize data interoperability**

The country can draw on foreign laws based on local experience to open some public data to the public. There is the draft Data Act of the European Union abroad, and there are also local legislative practices in China such as the establishment of the Regulations on Government Data Sharing and Opening in Guizhou and the implementation of the Regulations on Public Data in Zhejiang.

The issue of public data should adhere to the following principles:

1. In principle, data opening is mainly free of charge, and the government shall not make profit from it. For data that are difficult to be used by ordinary individuals, the government can follow the principle of "Who benefits and who compensates" and require enterprises to compensate the government for the cost of data processing.

2. In principle, non-confidential and sensitive data should be opened up, and departmental management regulations should not be used as a reason to refuse data sharing.

3. The procedures for data disclosure should be regulated. The government information management department should not be absent, out of place or overstepped.

In short, the opening of public data should adhere to the principle that unconditional is the main, conditional is supplementary, and non-opening is the exception, so as to realize the open sharing of government data and society and release the potential energy of data resources.

#### **4.3. Strengthen data security and protect personal information**

Data security is a prerequisite for the construction of digital government. China's "Network Security Law", "Regulations on Protection of Critical Information Infrastructure", "Regulations on Network Security Level Protection", "Data Security Law" and other laws have played a positive role in related fields, but there are still a lot of legal gaps concerning data security.

The rule of law in digital government requires technology and the rule of law in parallel, transforming the means of social governance and ultimately achieving a digital transformation of government with the values of efficiency, fairness and justice. This not only requires a comprehensive construction of the rule of law framework for data security protection in conjunction with the Data Security Law, but also requires the introduction of the following regulations: For government data security issues, the State Council can promulgate corresponding administrative regulations to reduce the risk of human factors. For enterprises' use of government affairs data, relevant regulatory departments or industry associations can promulgate guidelines or industry self-regulatory regulations, etc. Localities can also make local data security regulations according to local conditions.

At the same time, a distinction should be made between personal information and general administrative information with reference to the Civil Code. When handling data involving personal information, the government should make clear to the public the purpose, manner and scope of handling the information, follow the principle of proportionality and the principle of minimal harm, and realize the whole process of supervising data collection before, during and after the event.

#### **4.4. Sound participation system and meeting public needs**

The Digital Government Law should stipulate the principles, procedures, methods and safeguards for the participation of non-governmental organizations and the general public in government governance to form a benign interaction mechanism of multiple interest subjects. Governments at all levels can also encourage public participation in governance and conduct assessments to strengthen the construction of digital government by means of administrative constraints.

#### **4.5. Base on local practice and establish global vision**

In recent years, China's digital transformation of government services has developed rapidly, catching up with the pioneer countries in many fields, especially in the field of online services. According to the United Nations E-Government Development Report 2020, China's e-government development index ranked 20 places higher in the world in 2020 than in 2018, and the "online service index" jumped to 9th in the world. Our digital government construction should not only be based on the local community, but also look at the world. From "Sunshine Government" to "Digital China", we should build international public opinion, tell the story of Chinese digital governance, show Chinese wisdom, and provide Chinese experience for the world digital reform.

## 5. Conclusions

From the 19th National Congress, which proposed the concepts of "digital China" and "smart government", to the 4th Plenary Session of the 19th CPC Central Committee, which proposed the strategic plan of "promoting the construction of digital government and strengthening the orderly sharing of data", the construction of China's digital government and the "smart government" have been in full swing. The construction of China's digital government and digital government services has moved forward a little bit.

At present, the construction of China's digital government has now entered a critical stage of transformation, which requires the support of top-level design, technological innovation, local practice, ideological emancipation, talent training and other aspects, as well as the supply of a strengthened legal system. Constructing a perfect framework of digital government rule of law is conducive to incorporating constructive contents such as data security, data protection and data flow into the rule of law regulation, and promoting the successful transformation of government governance.

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