

CUTS Webinar

Optimal Governance of NPD 2.0

Date and Time: July 12, 2022, Tuesday • 02:00PM-03:30PM (IST)

Background & Context

The sheer economic value of data¹, quantum of data flow, and encompassing nature of data, makes examination on approaches to data regulation imperative. Despite being the fastest-growing digital economy and having a flourishing IT industry, India lags far behind in its data protection regime and unlike many other countries, does not have a dedicated regime for protecting personal or Non-Personal Data (NPD).

The most recent development towards having a data protection regime has been the Joint Parliamentary Committee's (JPC) Report on the Personal Data Protection Bill 2019 (the bill, now called as the draft Data Protection Bill, 2021). Its recommendations pertaining to widening the scope of the bill to include aspects of NPD, including anonymised personal data, are believed to be fraught with many lacunas, such as: vague definition of NPD, premature and piecemeal regulation of NPD, enablement of government access to NPD without adequate guardrails, among others. It is feared that such lacunas, especially in the absence of the final report of the Committee of Experts on NPD, may lead to various unintended challenges and adverse consequences for:

- Data principals, by diluting the objective of individual privacy of the PDPB'19;
- Data fiduciaries and data processors, by fueling regulatory uncertainty;
- The proposed Data Protection Authority, by overburdening it with regulating aspects of NPD, which may also forefront its many architectural issues; and
- Startups, by hampering their growth and stifling their incentives for innovation.

Furthermore, it is to be noted that the government has proposed many other policies regulations, which also deal with regulating NPD. These include: the draft National Data Governance Framework Policy 2022,² draft Data Accessibility Policy 2022,³ Open Network of Digital Commerce (ONDC), Reserve Bank of India (RBI)'s Account Aggregator (AA) Framework, among others. Such developments have led to multiple policy drafts in circulation, risking functional overlaps and fueling regulatory uncertainty.

¹ Data and Artificial Intelligence (AI) can add up to USD500bn to India's Gross Domestic Product (GDP) by 2025, available at: <https://nasscom.in/knowledge-center/publications/unlocking-value-data-and-ai-india-opportunity>.

² Draft National Data Governance Framework Policy, available at: https://www.meity.gov.in/writereaddata/files/National%20Data%20Governance%20Framework%20Policy_26%20May%202022.pdf

³ Draft India Data Accessibility and Use Policy, 2022 <https://www.meity.gov.in/content/draft-india-data-accessibility-use-policy-2022>

Against this backdrop, the webinar seeks to deliberate upon the issues mentioned below.

Issues for Discussion

- While globally the data governance community is abuzz with activity, the world is fragmented by divergences in data regulation.⁴ Which approach should India adopt?
- Will regulation on NPD in the status quo present a case of premature regulation?
- Does the inclusion of NPD in the draft DPB'21 dilute the primary objective of protection of privacy of individuals?
- Has India reached the 'adequacy standard' for privacy to move to the next objective of deriving data value, i.e. should these be considered sequential steps, rather than concurrent steps?
- Given the recent regulatory developments, do we envisage a case of functional overlaps and regulatory friction upon operationalisation of DPB'21?

Tentative Agenda

Time (IST)	Description	Speakers
02:00-02:05 PM	Opening Remarks	Pradeep S Mehta, Secretary General, CUTS
02:05-02:15 PM	Presentation	Vidushi Sinha, Senior Research Associate, CUTS
02:15-03:15 PM	Panel Discussion	<ul style="list-style-type: none"> • Mr. Jawahar Sircar, Member of Rajya Sabha • Mr. Parminder Jeet Singh, Executive Director, IT for Change • Mr. Daniel Castro, Vice President, Information Technology and Innovation Foundation (ITIF) • Ms. Astha Kapoor, Co-Founder, Aapti Institute • Mr. Gaurav Gogoi, Member of Lok Sabha* • Mr. Manish Tewari, Member of Lok Sabha* <p><i>Moderated by Amol Kulkarni, Director (Research), CUTS</i></p>
03:15-03:25 PM	Q&A Session	<i>Moderated by Amol Kulkarni, Director (Research), CUTS</i>
03:25-03:30 PM	Closing Remarks	Sidharth Narayan, Policy Analyst, CUTS

⁴ A world fragmented by divergences in data regulation, available at: <https://www.livemint.com/opinion/columns/a-world-fragmented-by-divergences-in-data-regulation-11646153126442.html> <https://ausdatastrategy.pmc.gov.au/sites/default/files/2021-12/australian-data-strategy.pdf>

*Final confirmation awaited.