

Draft India Data Accessibility & Use Policy, 2022

Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Ministry of Electronics and Information Technology (MEITY) for inviting comments and suggestions on the proposed Data Accessibility & Use Policy, 2022. CUTS further congratulates MEITY for offering another policy to boost the digital economy. The Policy is crucial to enhancing evidence-based policy making and facilitating congruent and robust governance strategy. Since India is at a critical juncture of the technological landscape, consultation and deliberation is an important and progressive step towards foresight of unintended consequences of the said Policy.

General Comment

Draft on Data Accessibility & Use Policy, 2022 MEITY aims to boost the digital economy propelled by the expansion of the digital economy driven by data “radically transform India’s ability to harness public sector data”.¹

The draft envisions an overhaul of the digital economic ecosystem to develop a regulatory regime that can drive economic growth and promote entrepreneurship and innovation in India. This seems to have become a critical component in India’s achieving a US\$5tn economy.²

The Data Accessibility & Use Policy aims to unlock high-value data across the economy, congruent and robust governance strategy, interoperable digital infrastructure, data skills and data-driven culture.³ This would be done by permitting the licensing and sale of public data by the government to the private sector.

The policy privileges data to be the most critical factor in boosting economic and commercial activities within the digital ecosystem that includes all data and information

¹ India Data Accessibility Background Note And Use Policy. (2022). Retrieved from <https://www.meity.gov.in/writereaddata/files/Background%20Note%20for%20India%20Data%20Accessibility%20and%20Use%20Policy.pdf> [02 March 2022].

² *Ibid*

³ *Ibid*

created, generated, collected and/or archived by the Central Government, barring certain exceptions.⁴

The Policy's objective is broad and overreaching in scope. It lacks the coherence required for a seamless implementation to meet the considerable challenges, such as interoperability of data across the government departments, privacy and creating positive economic impact. This would have implications for social and economic justice, given that some of its framings are related to the handling, management, and use of data trespass upon data protection mandates.

MEITY website claims that the draft has been evolved by consulting with various stakeholders, including academia, industry and government, but the process has not been transparent.⁵ In this context, it is not easy to understand the intention and rationale of each stakeholder.

Specific Comments

Data as Revenue Generation

Analysis: In its current form, this draft advocates for economic growth by selling citizen's data as a revenue generation model in its objective. Commodifying citizen's data as a revenue generation model for the government has been repeatedly advocated throughout the accompanied documents '*background note*' and '*policy framework*' uploaded on the MEITY website. Economic Survey 2018-19 reflected a similar objective by advocating transforming citizen data into a public good for revenue generation.⁶

The Policy views access to data as the sole driver of entrepreneurship, innovations, and economic growth within the digital ecosystem, increasing the government's temptation to generate more and more data to gain economic incentives.

Recommendation

Boosting the digital economy is a legitimate aim, but it should not push the government toward the unethical practices of data collection. This must ensure that data collection on citizens should stick to the best practices, that is, minimum collection of data and limiting it to the relevant and spelled-out purposes.

Privacy and Individual Freedom

⁴ *Ibid*

⁵ <https://www.meity.gov.in/content/draft-india-data-accessibility-use-policy-2022>

⁶ Supra Note 1

Analysis: The Policy aims to consolidate and share interdepartmental data across the government departments under India Data Office (IDO), established under MEITY. This might result in the complete profiling of users/consumers and potentially enable state-sponsored surveillance, particularly in the absence of data protection mandates. However, India is on the verge of finalising data protection mandates. Still, it would be inadequate on the face of '*Data Accessibility & Use Policy*' as the latest Data Protection Bill, 2021 allows the exemption of the government agencies.⁷

Subsequently, the Policy fails to align with the Supreme Court decision in which it states that privacy is a fundamental right protected under the constitution. In addition to this, the understanding of the Policy is that '*data anonymisation*' is an '*irreversible process*'. Still, researchers have shown that re-identification from the anonymised data is possible without strict access control.⁸

The Policy has not given enough attention to the anonymisation process, which increases the vulnerability of re-identification, leading to violation of fundamental rights of the people.

Recommendation

The Policy needs to take a balanced approach to boost economic growth and uphold fundamental rights such as privacy and individual freedom. To achieve this, it is vital that the '*Data Accessibility & Use Policy, 2022*' harmonised with the highest standards of rights-protective data protection mandates and frameworks available. This will ensure digital growth and civil liberties are complementary and not mutually exclusive. Additionally, in case of data breach and anonymisation, legal accountability and independent regulation should be put in place to foster confidence among people.

Limited Clarity in Definitions

Analysis: The policy provide limited clarity on key concepts and definitions, which leave them for interpretation by the government. For instance, the Policy creates a category of '*High-Value Datasets*', which it views as a critical component towards accelerating governance, innovation and economic growth within the digital sphere. Still, neither the policy draft nor background clearly outlines what consists of '*high-value datasets*.'⁹

⁷ Report of the JPC on the Personal Data Protection Bill, 2019. (2021). Retrieved from https://www.medianama.com/wp-content/uploads/2021/12/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf [24 February 2022].

⁸ Brogan, C. (2019). Anonymising personal data 'not enough to protect privacy', shows new study. *Imperial College London*. Retrieved from <https://www.imperial.ac.uk/news/192112/anonymising-personal-data-enough-protect-privacy/> [02 March 2022].

⁹ Supra Note 1

Similarly, clause 11 of the Policy fails to adequately address pricing and licensing issues by outlining that government agencies, which have been considered owners of the data in Policy, will decide.¹⁰ This might lead to differential treatment and exploitation of data. Ambiguity in definition and policy prescriptions leads to flawed implementation and operationalisation, thereby compromising the policy's intended aims. This will obfuscate transparency and public accountability that can ramify individuals' social and economic rights.

Recommendation

The Policy should clearly define categories and key concepts that will help establish This includes any decision regarding the combination of databases to derive derivative databases or insights.

Conclusion

CUTS looks forward to the Ministry of Electronics and Information Technology accepting the suggestions given above and assisting the government in its endeavours of empowering consumers and individuals. For any clarifications/further details, please feel free to contact Asheef Iqubbal, Senior Research Associate, CUTS at (aql@cuts.org).

¹⁰ *Ibid*