

Optimal Governance of NPD 2.0

12 July
2022
Tuesday

02:00 pm - 03:30 pm
(Indian Standard Time)

Background

The constitution of the Committee of Experts on Non-Personal Data (NPD) Governance Framework (Gopalakrishnan Committee) in 2019 fore-fronted issues relating to NPD and gave specific suggestions on its governance.¹ While the Committee's first report in July 2020,² and revised report of December 2020,³ were lauded for their visionary work, the reports were based on several assumptions encapsulated in our previous report titled [Navigating the Puzzle of Non-Personal Data Sharing](#). Our report titled [Dimensional Analysis of Future of Non-Personal Data Sharing](#) conducted an in-depth assessment of the approaches and recommendations stipulated in the Committee's report.

Notably, the final report of the Committee is awaited. However, the Joint Parliamentary Committee (JPC) on the Personal Data Protection Bill 2019 (PDPB'19) has recommended widening the scope of the PDPB'19 to include aspects of NPD. Key provisions in the recommended draft bill included:

- Change in the bill's title from PDPB'19 to Data Protection Bill'21 (DPB'21).
- Empowering the government of India (GoI) to frame rules on NPD.⁴
- DPA proposed to govern personal data and NPD in instances of a data breach.⁵
- Provision for criminal liability in case of re-identification from NPD.⁶

¹ Government of India, Ministry of Electronics and Information Technology, Office Memorandum: Constitution of a Committee of Experts to deliberate on Data Governance Framework, available at: https://www.meity.gov.in/writereaddata/files/constitution_of_committee_of_experts_to_deliberate_on_data_governance_framework.pdf

² The Gopalakrishnan Committee First Report, available at: <https://ourgovdotin.files.wordpress.com/2020/07/kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>

³ The Gopalakrishnan Committee Revised Report, available at: <https://ourgovdotin.files.wordpress.com/2020/12/revised-report-kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>

⁴ Clause 92(1) of the draft DPB'21

⁵ Clause 25(6) of the draft DPB'21 states that the DPA shall in case of a NPD breach, take necessary steps, as may be prescribed, thus, there is lack of clarity on the data breach reporting procedure.

⁶ Clause 83(1) of the draft DPB'21

In light of the above, Consumer Unity & Trust Society (CUTS) undertook a [research-based advocacy campaign on NPD](#). As a part of this initiative, extensive desk research and stakeholder consultations were conducted on the subject, encompassing the above and other relevant regulatory developments⁷ in India and practices in other jurisdictions.⁸ This yielded a research report titled ‘NPD 2.0 – Mapping the way forward for optimal governance of non-personal data’.

This webinar, ‘Optimal Governance of NPD 2.0’, was organised by CUTS to deliberate the way forward for NPD governance based on the report’s findings, which was also released in the webinar. The webinar was attended by different stakeholders, such as researchers, academicians, lawyers, industry players, and media personnel.

Panel Details

<p>PRADEEP S MEHTA Secretary General, CUTS International</p>	<p>RITESH PANDEY Member of Parliament Member, Joint Committee on Personal Data Protection Bill</p>	<p>ASHISH AGGARWAL Vice President NASSCOM</p>	<p>PARMINDER JEET SINGH Executive Director, IT for Change Member, Committee of Experts on NPD</p>
<p>AMOL KULKARNI Director (Research) CUTS International (Moderator)</p>	<p>DANIEL CASTRO Vice President, Information Technology and Innovation Foundation (ITIF)</p>	<p>ASTHA KAPOOR Co-Founder Aapti Institute</p>	<p>VENKATESH KRISHNAMOORTHY Country Manager-India BSA The Software Alliance</p>
<p>VIDUSHI SINHA Senior Research Associate CUTS International (Presentation)</p>			

The opening remarks for the webinar were delivered by **Pradeep S Mehta**, Secretary General, CUTS. Moderated by **Amol Kulkarni**, Director-Research, CUTS, the panel included Hon’ble Member of Parliament (MP), **Ritesh Pandey**, who is also a member of the JPC on PDPB’19; **Parminder Jeet Singh**, Executive Director, IT for Change and Member, Committee of Experts on NPD; **Daniel Castro**, Vice President, Information Technology and Innovation Foundation (ITIF); **Astha Kapoor**, Co-Founder, Aapti Institute;

⁷ Open Network for Digital Commerce (ONDC), the Account Aggregator (AA) Framework proposed by the Reserve Bank of India (RBI), draft National Data Governance Policy, among others.

⁸ A few good practices followed in other jurisdictions included separate frameworks for personal and NPD, as followed in Europe with the General Data Protection Regulation (GDPR) provisions and Free Flow of Data (FFD) Regulation. Europe’s GDPR provides specific definition of NPD and Singapore’s data protection law granularly classifies data under different sub-heads, with precise definitions.

Ashish Aggarwal, Vice President, NASSCOM and **Venkatesh Krishnamoorthy**, Country Manager- India, BSA | The Software Alliance. **Vidushi Sinha**, Senior Research Associate, CUTS, presented the key findings and recommendations of the CUTS research report. **Sidharth Narayan**, Policy Analyst, CUTS, summarised the key findings from the discussions.

The video recording of the webinar is available [here](#).

Summary of Discussions

India is one of the fastest-growing data-generating nations in the world and has had several phenomenal developments in its digital economy.⁹ However, on the other hand, cyber breaches and privacy violation risks have increased manifold, and concerns around data misuse and surveillance have heightened. This becomes more worrisome given that the country currently lacks a dedicated and robust personal data protection law.

To ensure an inclusive digital economy that works for all, it would be pertinent to adopt a collaborative approach, as opposed to an adversarial one, across stakeholders and do away with the element of opacity and surprise in policy making. The inclusion of NPD in the draft DPB'21 as an example for the same came as a surprise to most stakeholders and happened without adequate deliberations.

Apart from the inclusion of NPD in the draft DPB'21, there have been several sector-specific policies that have incorporated aspects of NPD. These include the Open Network for Digital Commerce (ONDC), the Account Aggregator (AA) Framework proposed by the Reserve Bank of India (RBI), and the draft National Data Governance Policy, among others. Private sector players like PhonePe, Uber and Google have also begun voluntarily sharing NPD. Additionally, GoI has been putting its house in order, as seen by the whole-of-governments approach adopted in the recently released draft National Data Framework Policy.

With this background, the panellists shared their views on the optimal way forward for the governance of NPD 2.0. The key discussion points that emerged during the session have been encapsulated below.

Prioritisation of a Dedicated Personal Data Protection Law

Panellists highlighted that a dedicated personal data protection law had been long overdue and should be treated as a priority by the GoI. Speakers noted that data governance is gaining more prominence in light of emerging data driven technologies like 5G & Internet of Things (IoT).

⁹ India has over 700 million internet users and over 400 million smart phone users., who generate over 150 exabytes of data annually. There are more than 100 unicorns in over 70,000 start-ups in India, and their number continues to grow. Moreover, 5,000 patents are being filed every month. The Government E-marketplace portal has over 50 lakh sellers, 12 to 15 lakh Indians are booking tickets online, drones are being used to sprinkle fertilizers, and digital mapping of property in villages is underway.

Noting the trend of developments in other jurisdictions, panellists opined that personal data protection had been given precedence over the maximisation of the economic value of NPD, and India should follow suit.

Concerns emanating from the inclusion of NPD in DPB'21 were discussed. These included: first, the dilution of the primary objective of the PDPB to focus on individual privacy; second, overburdening of the proposed DPA; and third, GoI's access to NPD was without adequate guardrails. In this regard, Ritesh Pandey opined that it is unlikely that the next version of the draft DPB'21 will include aspects of NPD.

With the Monsoon Session round the corner, many hoped that the GoI would take up the mantle during this session itself. While stressing the criticality of operationalising a personal data protection law, panellists acknowledged that not all stakeholders might agree with the provisions of draft DPB'21 in its entirety. However, there was consensus that a framework for recognition of personal data rights was the need of the hour.

From a global perspective, it was highlighted that many countries had been closely watching developments in India, especially since it has been taking on more leadership positions, such as hosting the G-20 summit.

Further, panellists believed that merely operationalising the personal data law would be a myopic perspective. GoI would also need to consider steps towards ecosystem enablement and be cognizant that the ecosystem may take 2-3 years to stabilise.

Deepen Understanding of NPD & Community Data

Experts on NPD noted *it was futile to discuss the protection of NPD, as done in the draft DPB'21, unless there is an understanding of what it means to protect NPD*. Drawing reference to community data, panellists noted that it is necessary to *critically think about data not as a commons resource but as a community resource*. To ensure that communities draw value from data generated and is about them, concepts such as data trusts, cooperatives and collaboratives should be explored.

However, operationalising these concepts still required more research, deliberation and efforts on the ground. In this regard, a few success stories from other jurisdictions were discussed. This included the United Kingdom's Data Trust Initiative. Further, other sectoral examples of data cooperatives in the health tech and transport sectors were highlighted.

With respect to mixed datasets, it was discussed that the dataset would have to be segregated into personal data and NPD. The personal data framework should govern the personal data subset and NPD aspects should be governed by the NPD framework. In the case of an inextricably linked dataset, it was suggested the personal data framework should be applied.

Panellists also flagged that it is imperative to develop the work of the Committee of Experts on NPD. The importance of deep diving into the understanding of NPD, its vague definition and related concepts, such as community rights were also discussed. In this regard, panellists said they were looking forward to the third report by the Committee of Experts on NPD.

A Classic Case of Premature Regulation

Despite a lack of nuanced understanding of NPD and its related concepts, experts said that a need for NPD regulation must be established first. After that, the approach of *hard regulation v. soft law* should be considered for optimally governing NPD. As per the panellists, it may be too soon to jump into hard-wired regulation. They recommended GoI to provide enabling frameworks and focus efforts to unlock NPD's potential for innovation, empowering citizens, ecosystem enablement and proper implementation of the policies/ frameworks.

Unlocking Innovation Through Voluntary Data-Sharing Mechanisms

It was noted that while a part of NPD may involve security considerations, NPD-related policy frameworks focus more on unlocking innovation. In this respect, speakers echoed that *voluntary sharing by the private sector should be considered and promoted by the GoI*. Due credit was also given to the draft National Data Governance Policy for promoting data sharing within and GoI getting its own house in order first. The shift from a mandatory to an enabling framework was appreciated as well. Further, specifically in the case of data processors, it was highlighted that even voluntary sharing might not be possible. Data processors collect data on behalf of entities and have contractual obligations with their data fiduciaries, which prevents them from sharing data.

Other Points of Discussion

- Considering international jurisprudence and developments in India, panellists opined that criminal liability for re-identification of data might potentially dampen data sharing.
- Due cognizance was given to different initiatives being taken in the European Union (EU) for data sharing and the EU approach to sectoral level policies. Panellists said they were confident that the EU would see a sea of such sectoral policies in the education, agriculture and transportation sectors. In India, a similar approach could be adopted with industry taking the lead and working collaboratively, with governments enabling the initiatives. It was discussed that ultimately the nature of data is such that each sector will have to consider their peculiarities for the governance of NPD.
- As per panellists, data is non-rivalrous, and it is not a depletable resource like gold, oil, etc. Therefore, many stakeholders and companies can use it simultaneously. It is the use of data which creates value, therefore, there should be an increased focus of policymakers on maximising the value of data.

- It was noted that continued advocacy for a National Competition Policy may prevent cross jurisdictional turf wars while catering to risks that could arise from data monopolisation.

Recommendations and the Way Forward

As the way forward, panellists recommended the following:

- Adopt a collaborative approach between stakeholders, and avoid knee-jerk reactions in policy making on data protection.
- Exclusion of NPD from the scope of the draft DPB'21.
- Prioritise operationalisation of dedicated law for personal data protection.
- Develop conceptual and nuanced understanding of NPD, considering community rights.
- Efforts for community empowerment and digital rights' literacy are necessary.
- Need for comprehensive cybersecurity framework.
- Explore a co-regulatory approach to get data governance 2.0 right.
- If GoI decided to carry on with the JPC's inclusion of NPD, recommendations relating to the restriction of powers of DPA to personal data breach and removal of references to NPD breach were proposed. Further, the incorporation of checks and balances on government access to NPD was also recommended.

This event was organised by CUTS, as a part of the project titled "Research-Based Advocacy on Unintended Lacunae of including aspects of NPD in PDPB". The project team included Amol Kulkarni (Director-Research), Sidharth Narayan (Policy Analyst) and Vidushi Sinha (Senior Research Associate).

The team extends their sincere gratitude and appreciation to all colleagues who supported the event organisation. We would like to especially acknowledge the efforts of Vijay Singh (Assistant Director), Akshay Sharma, Ritu Sharma and Vandana Sharma (Programme Team), Madhuri Vasnani, Mukesh Tyagi and Rajkumar Trivedi (Publications Team), Keval Sharma and Sweepthish Jayan (IT Team)