

To:

**The Ministry of Electronics and Information Technology,
(Government of India)
Electronics Niketan, 6, CGO Complex,
Lodhi Road, New Delhi - 110003
10th June, 2022**

We thank the Ministry of Electronics and Information Technology for the opportunity to provide feedback on the National Data Governance Framework Policy. The process of consultation is a welcome one, and we hope that this spirit of transparency and due process is continued in the framing of future policies by the Ministry.

Responsible data sharing and open data platforms, as the Draft Policy recognises, has the potential to deliver better governance and services for the Indian polity. However, we believe that this Draft is still quite far away from a meaningful policy document - many of the ideas posited in the document, including the proposed institutional framework and protocols for sharing of non-personal data lack clarity, opening the door for confusion and incorrect implementation.

To this end, Aapti proposes the following changes to be incorporated within the Policy:

1. Enact a data protection legislation and build capacity for data-driven innovation
2. Create an enabling ecosystem for data by outlining mechanisms for data sharing as well as prescribing standards for data storage, interoperability and use
3. Harmonise state-level data accessibility policies with the current Draft Policy framework to ensure seamless operationalization of its provisions across India
4. Impart greater clarity on the structure, roles, responsibilities and composition of IDMO to resolve for conflicts between IDMO and sectoral authorities
5. Institutionalise consultation processes within the Policy to enable active public participation through mechanisms such as data stewardship
6. Mandate highest technical standards for anonymisation of datasets, impose penalties and set up grievance redressal mechanisms for harms arising from data sharing and use

At Aapti Institute, we have been working on the idea of data stewardship closely, while examining lived experiences at the intersection of technology and society. Our detailed submission below builds off our engagement on questions of agency,

digital literacy and data rights, drawing from research on international best practices. We hope that this Draft Policy will go through several transparent iterations.

For any further questions, please contact Ms. Astha Kapoor (astha@aapti.in) or Ms. Soujanya Sridharan (soujanya@aapti.in).

We look forward to engaging further on this issue,

A handwritten signature in blue ink that reads "Astha Kapoor". The signature is written in a cursive, flowing style.

(Astha Kapoor, Co-founder, Aapti Institute)

The National Data Governance Framework Policy

The revised National Data Governance Framework Policy was published on the Ministry of Electronics and Information Technology website on May 25th, 2022. This was released after its precursor Draft India Data Accessibility and Use Policy, 2022 which was published for consultation in February 2022 was subsequently scrapped. The government has invited inputs on the Draft National Data Governance Framework Policy (NDGFP) that aims to unlock the potential of non personal data which is stored by different Government entities in silos by launching non-personal India Datasets program. The Draft Policy seeks to transform and modernise government data collection systems through standardised guidelines of collection, processing and use. The Draft Policy however fails to acknowledge the mounting privacy and digital rights concerns posed by its provisions, necessitating considered democratic deliberation and public review before it is rolled out.

What is needed to make the Draft Policy a meaningful and implementable regulatory instrument is an [enabling ecosystem](#) which creates mechanisms for sharing of non-personal data such as [data exchange platforms](#) and data collaboratives. Elsewhere, for sensitive data, mechanisms such as [confidential clean rooms](#) and data sharing layers, like the [X-road](#), may be explored as alternatives. More fundamentally, the Draft Policy should establish standards for data storage, interoperability and appropriate controls for data use such that data quality, usability and privacy are upheld through the lifecycle of a dataset.

Aapti's comments

1. Lack of an overarching data protection law

At the outset, the lack of an overarching data protection law disincentivises the government departments/agencies from maintaining high standards of data anonymisation, data quality and protecting the privacy of citizens. Enacting a data protection legislation is in line with the K. Puttaswamy verdict which recognises citizens' right to privacy as being fundamental to life and liberty, paving the way for a regime of data rights and a vision of data use grounded in human-centric values. In the absence of such an overarching law to regulate the use of citizens' data, there are few safeguards against the use and abuse of the data by a variety of parties - from the state to private entities and beyond. Lastly, the lack of data protection legislation also means that executive action on data use supersedes legislative intervention on matters of data governance, bypassing the need for democratic deliberation in the process.

2. Fragmented policy landscape for use of non-personal data

The Draft Policy makes it clear in Section 3.1 and 3.2 that it shall be applicable to all non-personal datasets and to all government departments and agencies. Additionally, it states in Section 3.3 that state-level governments are “encouraged to adopt the provisions of the policy”. This in Aapti’s view is undesirable as it leads to competing provisions in state-level data accessibility policies which could create logistical and regulatory challenges for the government officials seeking to harness data and operationalising provisions of this Draft Policy. Aapti therefore recommends harmonising the current Draft Policy with state-specific policies already introduced in Karnataka, Punjab, Telangana, to name a few. In fact, [research](#) by the Internet Freedom Foundation highlights the inconsistencies within such state-specific data policies that are marked by varying definitions and affordances for privacy. Due to such challenges, it is desirable that the current Draft Policy take the lead on articulating first principles and standards for data sharing and use, such that provincial governments may follow the precedent.

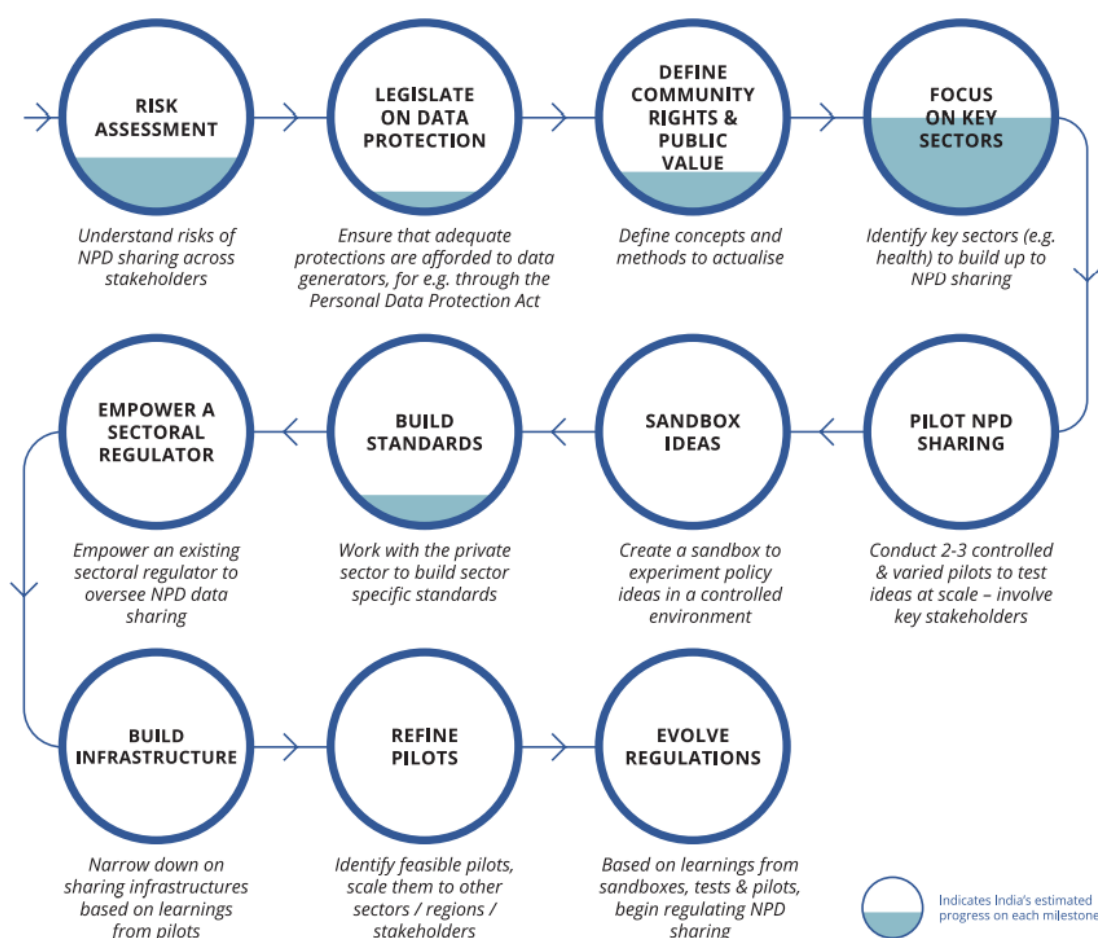
3. Ambiguity in data sharing for commercial vis. altruistic purposes

Section 1.7 mentions that the Draft Policy aims at laying down methods so that anonymized non-personal data can be accessed for research and innovation. But, the Policy fails to delineate the differences between data use for commercial purposes (ex: innovation by start-ups) that benefit a limited subset of private actors and data which is employed for altruistic ends (ex: academic research, education and planning) that creates broad-based social impact. To this end, Aapti recommends that the Policy adopt a value-based taxonomy for data use, defining the terms under which data requesters can obtain anonymised datasets. Such a taxonomy would be especially useful to distinguish between data sharing for commercial or private benefit and data sharing for public or altruistic purposes. Our [previous work](#) offers an approach anchored in building a stakeholder-driven ecosystem to support voluntary data sharing, in which the government is an equal participant and not just an extractor of data.

EU’s Data Governance Act defines data altruism as “*data voluntarily made available by individuals or companies for the common good*” and sets out a voluntary registration scheme for altruistic organisations to instil trust in individuals to make their data available to these organisations. We therefore recommend a need for a licensing framework to authorise data use for a variety of purposes : from commercial to altruistic. [FinData](#), a Finnish government-led data exchange authority, issues permits for secondary use of health data, whose purposes are outlined in an legislative frameworks which provides anonymised or pseudonymised data for use across a variety of purposes: from research and education to planning and policymaking.

4. Little incentive for private companies to share their data

One of the objectives of the Draft Policy is to create an India Datasets Platform that will contain non-personal datasets from both governmental bodies as well as private organisations. Private companies are unlikely to share non-personal datasets due to issues relating to trade secrets, confidential information, intellectual property or commercially valuable data. We recommend that the Draft Policy can encourage private companies to voluntarily share data by ensuring that access to data is facilitated by third-party 'data-sharing service providers' with a fiduciary duty as provided under EU's [Data Governance Act](#). Aapti's work on [non personal data sharing](#) builds a roadmap for India's data sharing journey and reimagines incentives in this data-driven context.



Source: Understanding Non-personal Data Sharing: A principle-first approach

5. Uncertainty about role, responsibilities and composition of IDMO

The incongruence in India's data governance regimes is further complicated by the creation of the Indian Data Management Office (IDMO) under Section 5 of the Draft Policy. While the IDMO falls under the MEITY, the Draft Policy does not address how these offices will interact with other departmental institutions involved in governing

data collection, use and sharing – such as the [National Health Authority](#) (for health data), the proposed [Data Protection Authority](#) under the Data Protection Bill, 2021 (for personal data) and the National Mission for Digital Agriculture, as contemplated by the [Indian Digital Ecosystem for Agriculture](#) framework (for agricultural data) . Further the lack of clear distinction of roles and who has final authority in case of conflict between IDMO and sector-specific authorities needs deliberation.

Clause 5.6 of the Draft Policy states that “Every Ministry/Department shall have Data Management Units ("DMUs") headed by a designated CDO who shall work closely with the IDMO for ensuring implementation of the Policy”. The Draft Policy does not give any clarity about the constitution of IDMO. We recommend that the Draft Policy lays down the constitution, qualification and process of appointment of IDMO members and that different expert committees tasked with data anonymisation and standard formulation must be set up. To this end we can borrow from the [US Federal data governance strategy](#) which aims to establish principles and practises to be followed by the government while accelerating the use of data for the benefit of the public. The strategy provides for the Chief Data Officer Council which is required to consult with public and other stakeholders on how to improve access to datasets of the government and shares responsibilities with other councils that focus on data-related activities.

6. Absence of consultative exercises that actively involve citizens

Further Clause 5.2 states that IDMO shall formulate rules, standards and guidelines in consultations with ministries, state government and industries. While it does provide for a minimum of 2 semi-annual consultations and report carding, the Draft Policy lacks clarity on how this consultation process would look like. We recommend embedding a structure for the consultation process that involves public participation and open dialogue and ensures a nuanced way of decision making predicated on an environment of trust and transparency. Aapti’s research on mechanisms of [data stewardship](#) - a framework to unlock social value of data while upholding the data rights of individuals and communities - hold the key to institute such consultative practices. Examples such as the [DECODE project](#) - a citizen-driven effort to implement bottom-up, data-informed policymaking for mobility and smart cities planning - constitute valuable precedents for the current Draft Policy to embed ethics of participatory governance in policymaking.

7. Lack of grievance redress mechanisms

The Draft Policy must incorporate provisions relating to redressal of complaints regarding data sharing and misuse of datasets. The Draft Policy must also lay down the authority responsible for and subsequent procedures for raising a complaint, for appeal in case request for data access is not granted and provisions for judicial remedy. To this

end we could borrow from the quasi-judicial functions of the proposed Data Protection Authority from the Draft Data Protection Bill,2021.

8. Disconcerting technical standards for anonymisation

While the Draft Policy does mention that data will be anonymised, it is important to note that anonymisation is not fool-proof and has the [risk of re-identification](#). It is crucial to determine and mandate the highest technical standard of anonymisation such as [randomisation, generalisation or masking](#) across all government departments and state-level policies. For instance, the GDPR defines anonymous data as data that “does not relate to an identified or identifiable natural person or to personal data rendered anonymous” so “the data subject is not or no longer identifiable.”[TheArticle 29 Data Protection Working Party](#) stated that an anonymisation solution that protected against specific risks of re-identification i.e singling out, linkability and inference is considered robust against re-identification.The lack of a data protection legislation - which would otherwise penalise intentional or unintentional de-anonymization - adds to the risk of improper anonymisation in India. We recommend defining a system of penalties within the Draft Policy to hold erring parties accountable when they fail to follow recommended standards to prevent the risk of misuse of data.

9. Vague and overbroad provisions

Lastly, the Draft Policy introduces several vague provisions which suffer from being overbroad and arbitrary. We recommend that the Draft Policy should include criteria on the basis of which IDMO will designate a platform by which datasets in the India Datasets program can be accessed and the mechanism to be followed to receive such designation. Section 6.9 of the Draft Policy states that IDMO reserves the right to limit access to any data requests for datasets other than those available on the Open Data Portal. However, the Draft Policy fails to mention the criteria upon which requests would be rejected. Absence of a data retention period can risk enabling sharing without any limit on periods for data storage, creating room for potential misuse of data. Similarly, Section 6.8 states that IDMO shall judge the genuineness and validity of data usage requests other than those made available in the Open Data Portal. We recommend that the judgement should be made on objective metrics.

Conclusion

While the Draft Policy is a step in the right direction, it needs to be made more robust and privacy-preserving. Democratising social value inherent to data is essential to achieve bottom-up, equitable development and this can be attained through consultations with state governments before such policies are rolled out nationwide.

Data stewardship, an evolving approach to data governance, is one such framework that could be embedded in the Draft Policy as it seeks to balance twin imperatives of privacy and data rights of individuals and communities while making available their data in a safe manner for socially beneficial ends.