



The Dialogue™

INFORM ENGAGE IDEATE

Response

# DRAFT NATIONAL DATA GOVERNANCE FRAMEWORK POLICY

Submitted by: The Dialogue

Authors: Eshani Vaidya & Sreyan Chatterjee

# ABOUT THE DIALOGUE

The Dialogue™ is a public-policy think-tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry, on areas around technology and development issues. The Dialogue™ was ranked amongst the Top-Ten think-tanks in the world to watch out for by the Think-Tank Civil Societies Programme, Lauder Institute, University of Pennsylvania, in their 2020 and 2021 ranking index.



[info@thedialogue.co](mailto:info@thedialogue.co)



[www.thedialogue.co](http://www.thedialogue.co)

# INTRODUCTION

The draft National Data Governance Framework Policy (**NDGFP**) is a testament to the regulatory foundation being laid for what is being termed as a framework for a ‘digital whole of government’. Other jurisdictions have seen the use of framework policies to digitise the welfare state, public utility provisioning and service delivery for government schemes. As India’s digital government expands and strengthens, the NDGFP is a timely intervention to start the process of regulating the public sector’s use of data.

The Preamble of the NDGFP states that *‘the power of this data must be harnessed for more effective Digital Government.’* Further it posits that data-driven approaches towards welfare service delivery sit at the centre of responsive governance. The stated objective is to ‘improve governance through a whole-of-government approach.’<sup>1</sup> In furtherance of this goal, the draft NDGFP prioritises—

- standardisation of data-related practices;<sup>2</sup>
- acceleration of data sharing and digital governance;<sup>3</sup> and
- improving access to publicly held non-personal<sup>4</sup> and anonymised data.<sup>5</sup>

The start of the regulatory journey in India goes back to the National Data Sharing and Accessibility Policy, 2012 (**NDSAP**). The NDSAP attempted to create a data sharing framework which centred on data sharing and accessibility policies on the principles of ‘interoperability’, ‘accountability’, ‘sustainability’ among several others. These principles were also mentioned in the previous draft of India’s Data Accessibility and Use Policy released in February, 2022.<sup>6</sup> (**IDAUP, 2022**)

It is unclear whether there is a clear decision to unlock directly the value of data through monetisation. Important questions of ownership of public data arise in this situation. While a clear ownership right with the State may open up much needed revenue streams for public spending, there is no clear consensus on the effects such data enclosures may have on the incentives to innovate for entrepreneurs as well as the exclusions that may occur at the level of the end-users.

The first section of our response highlights the manner in which data ownership is dealt with in the draft NDGFP. The second section will highlight the need for the next step in policy interventions to ensure optimal allocation of economic rights. The third section studies the approach towards governance with particular focus on the institutional mechanism envisaged. Lastly, we list out the ‘missing pieces’ in the current iteration of the NDGFP that may create dangerous loopholes.

## I. DATA OWNERSHIP

The Preamble of the draft NDGFP states that ‘non-personal data and anonymized data from both Government and Private entities’ will be part of the India Data Sets Program.<sup>7</sup> It also refers to these data sets, collectively, as

---

<sup>1</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 2.1.

<sup>2</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 2.3(b).

<sup>3</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 2.3(a).

<sup>4</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 5.4.

<sup>5</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 6.5.

<sup>6</sup>Kamesh Sekhar & Karthik Venkatesh, Our Response to Draft India Data Accessibility and Use Policy, The Dialogue, 2022.

<sup>7</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 1.7

‘digital government data’,<sup>8</sup> which may indicate placing ownership of the datasets thus curated in the State. A similar approach was taken in IDAUP, 2022.<sup>9</sup>

In order to assign value, and subsequently frame the contours of ownership rights over data, it is important to analyse the expectations and outcomes associated with such data. Data valences are ‘an expectation or social value that mediates the social performance of data, or what data can do and will do within a particular social system’.<sup>10</sup> One must constantly assess ‘valences’ or ‘expectations’ of data for each stakeholder and build policy atop such analyses. Provisions that can be reflective of such an approach include those assigning ‘value’ to data and incentives for data sharing. The scope for building data valences as primary motivator for facilitating data sharing is absent in the present form of the NDGPF.

The NDGPF is silent on the need to incentivise private entities to share their data. The policy expresses an intention to set up data management and security standards<sup>11</sup> and ‘catalyse data-based innovation’.<sup>12</sup> However, data may be a rivalrous resource<sup>13</sup> in many contexts and there is significant evidence of dominant private entities having de facto control over particular sectoral data. The government has made considerable efforts in mitigating the effects of monopolies in the digital space<sup>14</sup>, but data flows remain siloed and stifled.<sup>15</sup> The NDGPF should include a common framework to begin to structurally separate layers in the data value chain in various key sectors.

The data brought within the ambit of NDGPF is restricted to non-personal data and anonymised data. At the outset, it is important to define terms like ‘government data’ and distinguish ‘anonymised data’ from ‘deidentified data’. Loosely interpreted, sensitive personal data sets that have been anonymised may also come within the ambit of ‘anonymised data’. The inclusion of such data, such as health data, comes with myriad privacy and exclusionary harms. Anomysation also does not guarantee an individual their right to privacy as the risk of re-identification remains high.

The assignment of value to data is one that must begin by examination of the data flow at its ‘source’ and the core use-case of the end-user, irrespective of its speculative use cases further along the value chain. Data stemming from people and/or communities, must be layered with an economic framework that can restore control and flow of benefits to those people and/or communities. The NDGPF also falls short of regulating data with no discernible source, such as metadata about communities or other ‘commons’.<sup>16</sup> These gaps may result in accelerating a data extractive mode of production.

## II. DATA RIGHTS

The IDAUP, 2022 provided for the ‘principles’ based on which the framework would function and ‘definitions’ that would provide the contours within which delegated legislation could be formulated. The NDGPF does not

<sup>8</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl. 1.4.

<sup>9</sup>Kamesh Sekhar & Karthik Venkatesh, Our Response to Draft India Data Accessibility and Use Policy, The Dialogue, 2022.

<sup>10</sup>Brittany Fiore-Silfvast & Gina Neff, What we talk about when we talk data: Valences and the social performance of multiple metrics in digital health, EPIC 2013 Proceedings, Am. Anthropological Ass’n (2013), <https://anthrosource.onlinelibrary.wiley.com/doi/pdfdirect/10.1111/j.1559-8918.2013.00007>.

<sup>11</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl.2.3.(b).

<sup>12</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl.1.6.

<sup>13</sup>Parminder Jeet Singh & Anita Gurumurthy, Data Sharing Requires a Data Commons Framework Law, Data Governance Network Policy Brief No. 2, Jan. 2022.

<sup>14</sup>Consumer Protection (E-commerce) (Amendment) Rules, 2021, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Open Network for Digital Commerce.

<sup>15</sup>T. Fia, An Alternative to Data Ownership: Managing Access to Non-Personal Data through the Commons, Sept. 2020

<sup>16</sup>Parminder Jeet Singh & Anita Gurumurthy, Data Sharing Requires a Data Commons Framework Law, Data Governance Network Policy Brief No. 2, Jan. 2022.

take this route which reduces the ability of stakeholders to understand, investigate and rework the processes by which data driven society will be organised.<sup>17</sup>

One of the cornerstones of a citizen-centric framework is a responsive grievance redressal mechanism. The NDGPF delegates the function of grievance redressal to the Indian Data Management Office ('IDMO')<sup>18</sup>, set up under the Ministry of Electronics and Information Technology ('MeitY').<sup>19</sup> Additionally, the NDGPF does not grant the 'data principal' any explicit rights. The rights mentioned are solely those of 'usage' and limited to 'data usage rights along with permissioned purposes'.<sup>20</sup> 'Permissioned purposes' have not been further defined to include a consent mechanism. Notably, the NDGPF does not specify a consent mechanism.

### III. GOVERNANCE

It is unclear how the overlaps in responsibility with regulatory bodies set up within other ecosystems, for instance the National Health Authority ('NHA') or the Data Protection Authority ('DPA'), will be resolved through this policy. The manner of collaboration with the NHA is important to define because the draft Health Data Management Policy also provides the NHA with the responsibility to formulate guidelines for data management and standardisation. The DPA also sets up a grievance redressal mechanism and sets out standards of data sharing and collection of non-personal data under the proposed Data Protection Bill, 2021.

### IV. STANDARDS AND CAPACITY BUILDING

The NDGPF emphasises the need for standards across various government platforms. While such standards are, in fact, a necessity, it is important to steer clear of a 'one size fits all' approach. Every platform operates with a multitude of stakeholders, each of whom assign value to the outcomes of the specific ecosystem. Consolidation of such diversity in a single set of standards will not have the desired effect.

Additionally, data management must not be restricted to development of standards alone. As discussed in the draft NDGPF, capacity building measures are a necessity. Collaborating with officials at the state and local government levels is an essential step towards enforcing training practices and other capacity building measures. Without adequate training in the process of data collection, any data analysis or outcomes garnered will be skewed. Community engagement will play a pivotal role in ensuring that the data collection process is accurate and efficient in nature.

### V. OTHER CONCERNS AND GAPS

#### ■ Classification of Data [Cl.6.4]

The IDAUP provided the bare bone foundations for classification of data into categories of open, restricted and non-shareable.<sup>21</sup> A risk assessment format must be considered which will not only provide for proportionate compliance obligations, but will also allow smoother flows across the newer open digital ecosystems (ABDM, ONDC etc.)

<sup>17</sup>Pasquale, F. (2015). The black box society: The secret algorithms that control money and information. Cambridge, MA: Harvard University Press.; Arne Hintz, Data Protection Policies: Towards Citizen-Centric Regulation, IT for Change Jan. 2020.

<sup>18</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl.6.14.

<sup>19</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl.5.1.

<sup>20</sup>Ministry of Electronics & Information Technology, National Data Governance Framework Policy (Draft), May 2022, cl.6.10.

<sup>21</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 7.

## ■ India Data Management Office ('IDMO') [Ch.6]

The IDAUP provided for the India Data Office as well as a basic governance structure, such as the tenure<sup>22</sup> and the setting up of support units.<sup>23</sup> The NDGPF gives no information regarding the constitution and functionality of the IDMO, or its scope. It also has no representation from the community or district levels of government, and thus runs the risk of exclusionary practices.

## ■ Oversight Mechanism

There is no mention of a review process or an independent audit mechanism. In lieu of this, the NDGPF mentions the intention to use 'report carding' within the IDMO.<sup>24</sup> The absence of a system of checks and balances will leave citizens vulnerable. An independent community monitoring and local audit system must be established so as to effectively enforce the policy and build confidence in the community networks.

## ■ Ambiguity in New Initiatives

The NDGPF introduces 'India Datasets Program'<sup>25</sup> and a 'Datasets Access Platform'.<sup>26</sup> These terms remain undefined. Such a black box approach towards governance may minimise algorithmic accountability on platforms and lead to digital data discrimination.<sup>27</sup>

---

<sup>22</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 6.4.

<sup>23</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 6.4.

<sup>24</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 5.2.

<sup>25</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 5.4.

<sup>26</sup>Ministry of Electronics and Information Technology, India Data Accessibility and Use Policy, Feb. 2020, cl. 6.7.



The Dialogue™

INFORM ENGAGE IDEATE



<https://thedialogue.co>