

Non-personal Data Governance and its Interface with Personal Data Protection: Emerging trends in India and the EU

With the enactment of the EU General Data Protection Regulation in 2016, companies worldwide were tasked with bringing their processing activities in compliance with the law. The extent of compliance was felt by many as impeding future research and innovation. It was increasingly realized that with the advancements in AI and big data analytics, data generates value and economic wealth. EU began to recognize the importance of enabling data sharing to promote innovation and maximize the value of data. Recently, the EU enacted the Data Governance Act, laying down conditions for re-using data held by public sector bodies. The EU also proposed adopting various data regulations, including the Digital Services Act, the Digital Markets Act, the Data Act, and the AI Act. However, there are questions about how personal data protection under the GDPR would be respected while allowing data sharing through other regulations.

While the EU has taken the lead in developing its data regulation landscape, things are yet to concretize in India. After around five years of deliberation, India withdrew the draft data protection legislation, the Personal Data Protection Bill, 2019. The conversation around non-personal data regulation in India has highlighted a proposed framework to make community data available for social, public, and economic value creation. The framework recommended by a Committee of Experts on Non-personal Data Governance Framework defined stakeholders such as data custodians, data trustees, data trusts, and data businesses and suggested that a Non-personal Data Regulatory Authority governs data businesses and sharing. Besides regulating through legislation, India has recently developed a Draft National Data Governance Framework Policy in May 2022 after criticism of the Draft India Data Accessibility and Use Policy in February 2022. The policy aims to create an India Datasets programme consisting of anonymized and non-personal datasets. An Indian Data Management Office (IDMO) would be responsible for managing and reviewing the policy.

Like the EU, India faces the question of how a non-personal data governance framework would intersect with personal data protection. In this respect, there was a suggestion that the draft data protection law, the Data Protection Bill, 2021, should regulate non-personal data. This situation presents whether single or separate legislation must regulate personal and non-personal data. There are several related and unaddressed issues, such as the questionable nature of anonymization, intellectual property concerns, and various privacy risks.

In this background, the roundtable would discuss the following -

- The privacy risks posed by free sharing of non-personal data
- The privacy risks posed by processing of anonymized data by AI, Big data analytics, and ML
- The privacy risks of streamlining government data sets across agencies
- The feasibility of binary classification of data as personal data and non-personal data
- The challenges posed by the reversibility of anonymization
- The challenge of regulating mixed datasets(datasets containing both personal and non-personal data)
- The challenge posed to the free sharing of non-personal data by intellectual property rights such as trade secrets and database rights
- The need to balance privacy rights with the progress of the digital economy
- The viability of having single legislation and a single regulator for both personal data protection and non-personal data governance
- The challenges associated with overlaps in regulations affecting personal data processing (such as the overlaps between GDPR, AI Act, Data Governance Act, and Data Services Act)
- Reconciling Prohibition of exclusive arrangements as part of the Data Governance Act vis a vis IP rights
- Data altruism – Scope and lessons for India