

Data Regulation in India

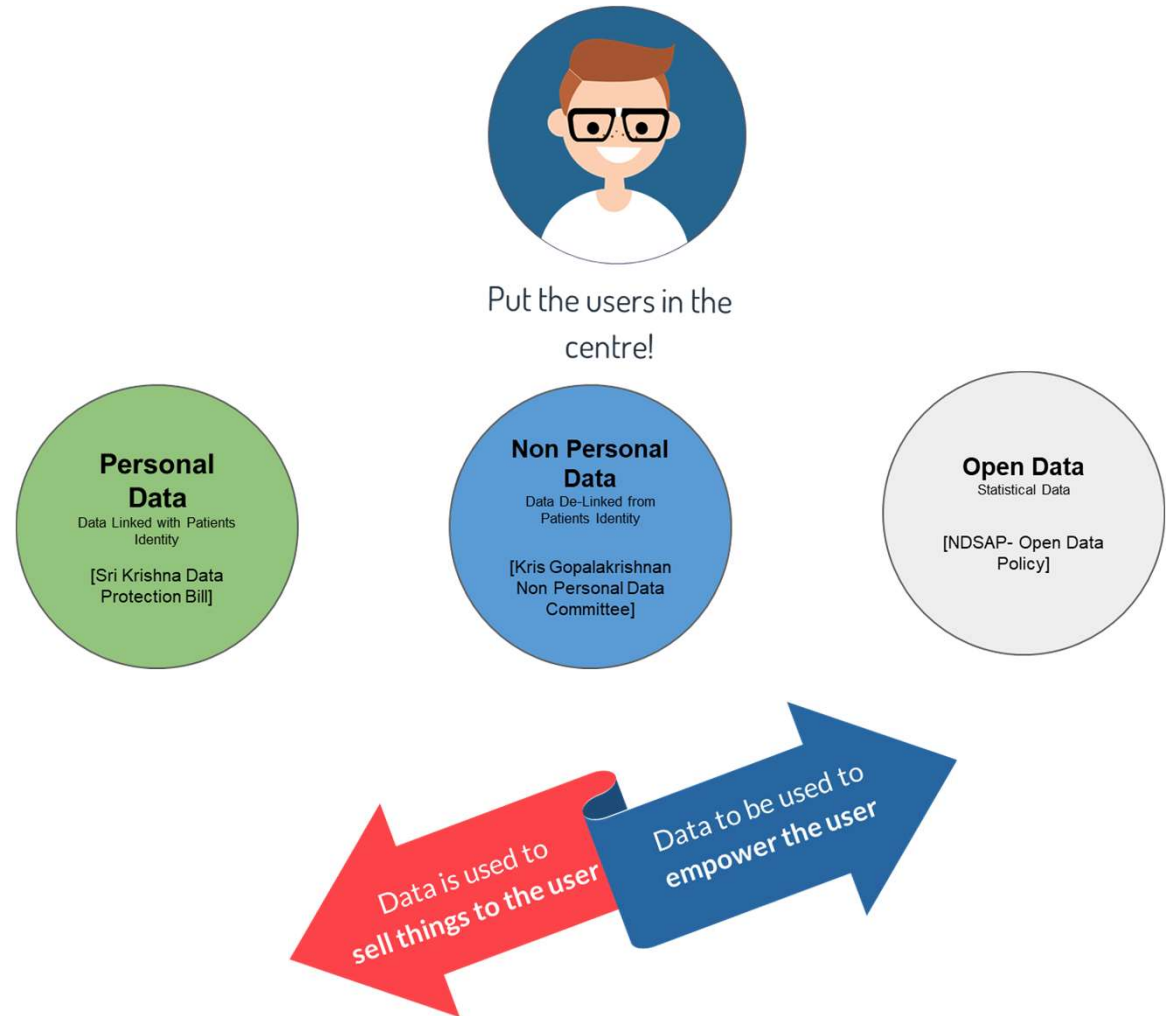
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The context for data regulation and sharing in India

- 1** Indians are Going Digital. *Paper is going paperless, cash is going cashless*
- 2** India is making digital infrastructure as public goods. *Platforms give rise to more platforms!*
- 3** Indians are becoming data-rich. *Data wealth is turning to real wealth*



PDB Bill 2019

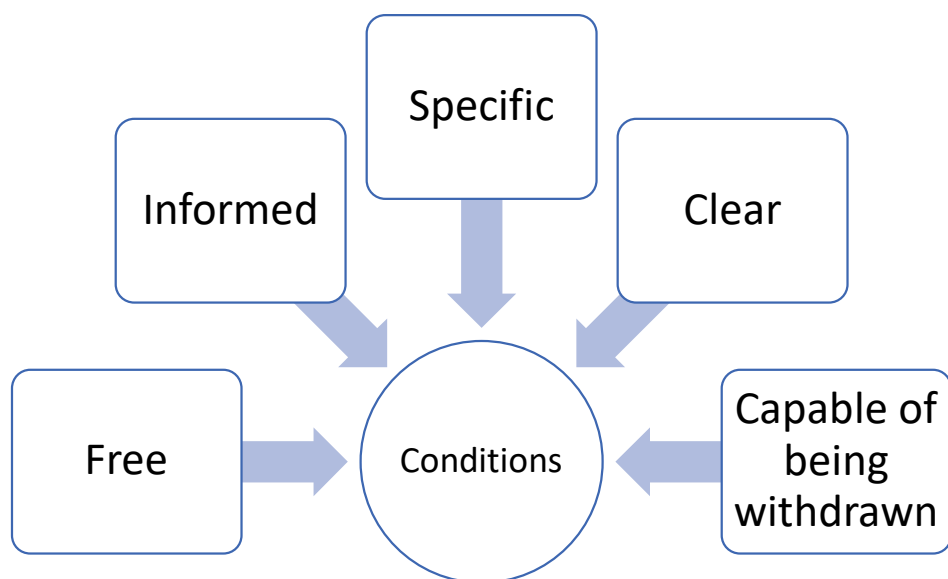
The Personal Data Protection Bill, 2019 aims to protect the privacy of individuals with respect to their personal data and governs the relationship between individuals and entities processing their personal data. It simultaneously strives to create a robust digital economy by ensuring innovation through digital governance.

Obligations of Data Fiduciaries

- Purpose Limitation and Collection Limitation – only for a specific, clear and lawful purpose.
- Notice – The data fiduciary is obliged to provide notice to the data principal at the time of collection of personal data.
- Data Quality – The key requirements of data quality are that data should be accurate, complete and up-to-date.
- Data storage limitation – The data fiduciary is not permitted to store personal data beyond the period reasonably necessary to satisfy the purpose for which it was initially collected or is being processed.

PDP Bill 2019

Consent by a Data Principal for Data Collection / Processing



Rights of the Data Principal

- The Right to Confirmation and Access
- The Right to Correction and Erasure
- The Right to Data Portability
- The Right to be Forgotten
- Exercise of rights - either directly or through a consent manager

Definition of Non Personal Data

When the data is not 'Personal Data' (as defined under the PDP Bill), or the data is without any Personally Identifiable Information (PII), it is considered Non-Personal Data

A general definition of Non-Personal Data according to the data's origins can be*

- Not related to a natural person – eg: weather data, sensor data
- Anonymized personal data

* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0250&from=EN>

Principles behind the NPD Regulation

Proposing a single national-level regulation in India to establish rights over non-personal data collected and created in India.

- **Sovereignty:** India has rights over data of India, its people and organizations.
- **Benefit India:** Benefits of data must accrue to India and its people.
- **Benefits the world:** Innovation, new models and algorithms for the world.
- **Privacy:** Misuse, reidentification and harms must be prevented.
- **Simplicity:** The regulations should be simple, digital and unambiguous.
- **Innovation and entrepreneurship:** The data should be freely available for innovation and entrepreneurship in India.

New Ideas in the proposed NPD Regulation in India

1. Consent for Anonymised Data

2. Data Business

3. Community

4. High-value Datasets

5. Data Trustee

6. Non-Personal Data Authority

Consent for Anonymised Data

We recommend that data collectors at the time of collecting personal data should provide a notice and offer the data principal the option to opt out of data anonymization.

- This is a disclosure requirement for data collectors.
- It provides a notice to data principals indicating that their personal data may be anonymized and used for other purposes.
- An opt-out mechanism from data anonymization should also be provided to the data principal.
- Opt-outs are effective on a prospective basis. Also, if consent has been provided and the data has not yet been anonymised, then the revocation of consent could be given effect to.

Data Business - A new classification of business

A Data Business is any organization (Government or Private organization) that collects, process, store, or otherwise manages data.

- A Data Business is a horizontal classification and not an independent industry sector. Existing businesses in various sectors that collect data will get categorized as a Data Business.

A Data Business collects and manages both Personal and Non-Personal Data.

- Organizations collect and process both Personal and Non-Personal Data and leverage them for various purposes including provision of services and economic purposes.

Data Businesses will share meta-data and the underlying data under appropriate regulations.

- The meta-data that will be shared will be the names of the data-fields collected by the Data Business.

Data Business - A new classification of business

A Data Business above a certain data threshold is required to register in India.

- Threshold parameters like the following may be considered - gross revenue, number of consumers/households/devices handled, % of revenues from consumer information*.
- Also the threshold parameters in the PDP Bill for Significant Data Fiduciary

As part of the initial registration, a Data Business would provide the following information:

- A business ID, nature of data services provided, locations where data is stored and processed

The information is stored in a meta-data directory managed by the NPD Authority.

- A view into the meta-data will give information about the Data Business and will enable further innovations using the underlying data.

Community – exercising rights over NPD

The rights over non-personal data include

- Right to derive economic and other value and maximising data's benefits for the community and
- Right to eliminating or minimizing harms from the data to the community.

Who will exercise these rights over non-personal data?

- In case of personal data, the rights are exercised by the data principal. However, in case of non-personal data, once the personal data is anonymised or in case the data pertains to things other than a person (such as machine, natural phenomenon, etc.), there is no data principal associated.
- A community can exercise these rights over non-personal data

What is a community?

- A community is any group of people that are bound by common interests and purposes, and involved in social and/or economic interactions. It could be a geographic community, a community by life, livelihood, economic interactions or other social interests and objectives, and/or an entirely virtual community.
- The community (through a non-profit organization - Section 8 company, Society, Trust) should be able to raise a complaint with a regulatory authority about harms emerging from sharing non-personal data about their community.
- We have defined the concepts of a Data Trustee and High-value Datasets in this context.

High-value Datasets (HVDs)

A High-value Dataset is a dataset that is a public-good and benefits the society at large.

- Useful for policy making and improving public service and citizen engagement
- Helps create new and high-quality jobs
- Helps create new businesses – startups and SMEs
- Helps in research and education
- Helps in creating new innovations, newer value-added services / applications
- Helps in achieving a wide range of social and economic objectives including
 - Poverty alleviation, Financial inclusion, Agriculture development, Skill-development, Healthcare etc.

Data Trustee – Managing an HVD

A data trustee is an organization, either a Government organization or a non-profit Private organization (Section 8 company / Society / Trust), that is responsible for the creation, maintenance, data-sharing of High-value Datasets in India.

Data trustees have a responsibility towards responsible data stewardship and a 'duty of care' to the concerned community in relation to handling non-personal data related to it.

- A data trustee should take due care wherever possible to Take best efforts to identify any unknown biases in the HVDs in their purview and declare them.
- The NPDA will set detailed guidelines to determine appropriateness of the chosen HVD / data trustee (in terms of dataset, objectives, size, actors involved etc.)

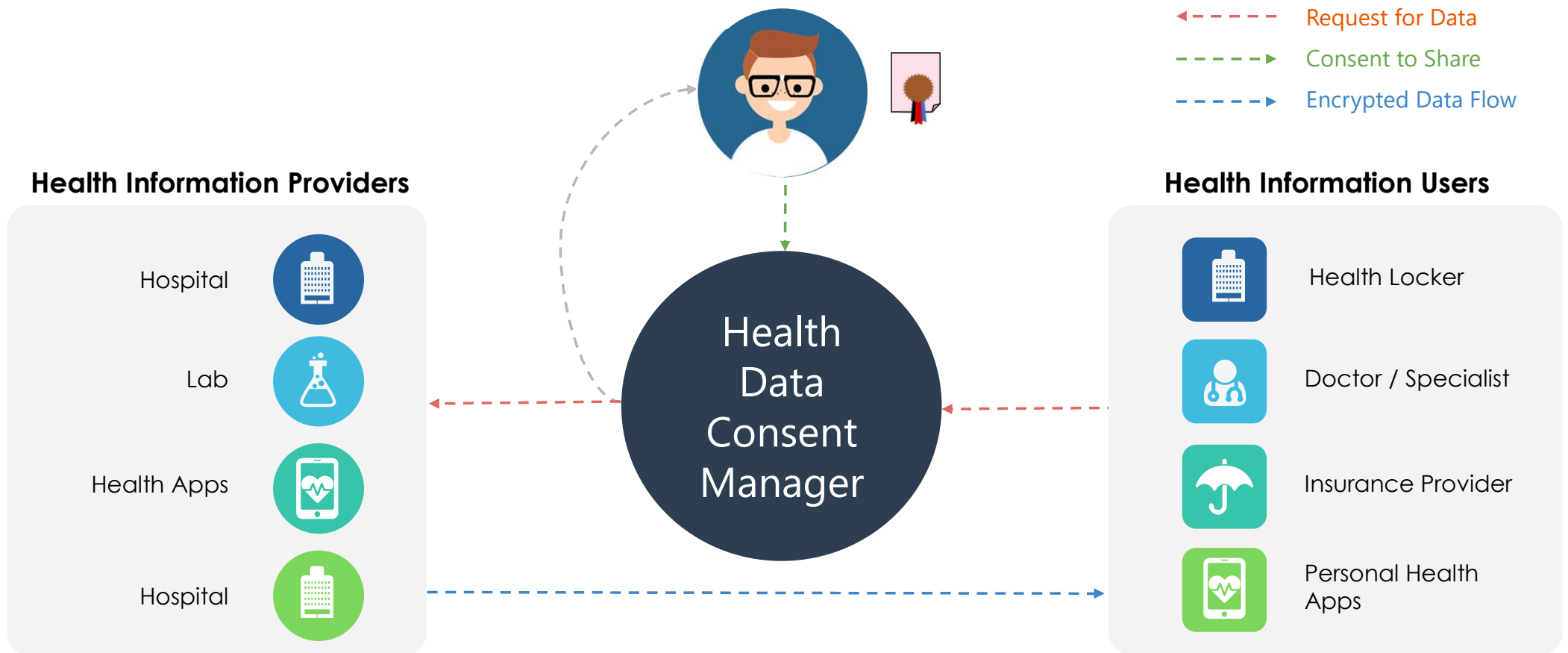
Example of data sharing for creating a High-value Dataset

An HVD for Transportation data is set-up by a Non-Profit agency playing the role of a data trustee for this dataset.

- It may work with the Directorate of Urban Land Transport, ride-hailing / sharing platforms, city police department, to collate traffic data in order to develop a city traffic solution.
- The data request to all major and significant ride-hailing platforms will be specific and for the purpose
 - It will be for a subset of the data fields collected by these data custodians.
 - The data sought may be factual / raw data related to start-time of a ride, end-time of ride and location, in order to understand city traffic situation.

Consent & Healthcare Data Flows

based on India's Data Empowerment & Protection Architecture (DEPA)



Thank You