Referencer on the JPC's recommendations for the Personal Data Protection Bill, 2019

January 2022

Vidhi Centre for Legal Policy

This referencer is a non-commissioned report prepared by the Centre of Applied Law & Technology Research (ALTR), at the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws and improve governance for the public good.

About the authors

Trishee Goyal and Dhruv Somayajula are Project Fellow and Research Fellow, respectively, working with ALTR.

Jai Vipra and Aniruddh Nigam are Senior Resident Fellow and Research Fellow, respectively, at ALTR.

Ameen Jauhar is the team lead for ALTR. Dr. Arghya Sengupta is the Research Director and co-founder of the Vidhi Centre for Legal Policy.

Referencer on the Recommendations of the Joint Parliamentary Committee Report on the Personal Data Protection Bill, 2019

The Joint Parliamentary Committee ("**Committee**") on the Personal Data Protection Bill, 2019 ("**PDP Bill, 2019**") has tabled its 'Report of the Joint Committee on the Personal Data Protection Bill, 2019' (the "**Report**") before the Lok Sabha and Rajya Sabha during the recently concluded Winter Session of Parliament on 16 December 2021. The PDP Bill, 2019 was introduced in the Lok Sabha in the Winter Session of Parliament in 2019. It was based on the Personal Data Protection Bill, 2018 that was drafted by the Committee of Experts under the Chairmanship of Justice Srikrishna, constituted by the Ministry of Electronics and Information Technology.

In its Report, the Committee makes extensive recommendations on various provisions of the PDP Bill, 2019. Some recommendations are substantive amendments to the PDP Bill, 2019, others are minor drafting changes while some recommendations are more conceptual in nature and require the Government of India to revisit its fundamental assumptions. The Committee has also compiled most of its recommendations into a redrafted bill titled the Data Protection Bill, 2021 (the "**DP Bill, 2021**"). There were also seven dissent notes to the Report. Members dissented primarily on the question of exemptions granted to government agencies (citing surveillance issues) while raising certain other issues for further consideration.

This referencer engages with each recommendation of the Report individually. It first provides a gist of each recommendation and what it hopes to achieve. It then provides our overall assessment of whether the recommendation ought to be acted upon or not. Finally, it provides reasons for our assessment.

It is hoped that this referencer serves as a useful document building on the Committee's Report as India slowly but surely makes its way towards enacting its first ever data protection legislation.

Recommendation No.	Parallel provision in DP Bill, 2021	Gist of Recommendation	Referencer Viewpoint	Explanation
1	Objects and Reasons of the Bill	The Committee observes that the PDP Bill, 2019 is covered under a broad and liberal interpretation of Entry 31, List I. Further, it observes that the DP Bill, 2021 is a special law containing a non-obstante clause and would govern the field of data protection irrespective of pre-existing laws. As such, the Committee recommends approval of the Objects and Reasons of the DP Bill, 2021.	Agree	The Committee rightly considers the DP Bill, 2021 to be within the legislative competence of the Parliament under List I of Schedule VII. However, there are significant state-level implications in the manner data is collected and processed. Further, the role of state governments will be essential in the functioning of an entity like the proposed DPA. Given that data governance is likely to be a prominent legislative field in the future, it is perhaps an apt time to consider how such provisions are to be legislated, specifically whether data governance should be added as a separate entry under any of the three Lists in the Seventh Schedule. The fact that such a large and emerging field for legislation is covered *under a residuary entry* represents a sub-optimal state of affairs in the federal framework of the Constitution.
2	None	The Committee observes that it is impossible to distinguish personal and non-personal data. Therefore, it recommends that for effective	Differ	1. We differ from the Committee's view in 1.15.8.1 that a large volume of non-personal data is essentially derived from the following sets of data- personal data, sensitive personal data and critical

		protection of privacy, both personal and non-personal data should be regulated by the DP Bill, 2021. Further, all data should be dealt with by a single regulator i.e., the Data Protection Authority, instead of separate regulators for personal and non-personal data.		personal data, converted into anonymized or non-re-identifiable data. Personal data is defined under the PDP Bill, 2019 as "data about or relating to a natural person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person, whether online or offline, or any combination of such features with any other information, and shall include any inference drawn from such data for the purpose of profiling". This definition limits personal data to the types of data or inference that directly or indirectly help identify or profile a person. While this is a vast amount of data in itself, it is still a small subset of all other data in the world. 2. The term 'data' would include weather data, military data, scientific, literary, economic or historical data, geospatial features, artistic work and any other representation of information, facts, opinions, concepts or instructions able to be communicated, interpreted or processed by humans or machines. As such, non-personal data consists of data that was never personal, i.e., it never related to a person, and data that was once personal and has now been anonymized. 3. The idea of separating personal data and non-personal data in its treatment is based on the former's inherent ability to identify a person.

				Axiomatically, personal data which has been anonymized, i.e., irreversibly transformed or converted in a manner that cannot identify a data principal (clause 3(2), PDP Bill, 2019), is also treated as non-personal data, as it loses the ability to identify a person and becomes part of the vast amount of data from which no inferences or identification of a data principal is possible. Thus, conceptually, the term 'non-personal data' precludes threats to privacy and data protection, unless we take into account issues of re-identification. 4. Acknowledging that certain processes may be developed that threaten to re-identify anonymized data which presents a threat from a data protection and privacy perspective, the PDP Bill, 2019 in clause 82 prescribes the only criminal penalty specifically to deter such re-identification. Any further cognizance of re-identification and its consequences can be undertaken by bolstering this provision further, to reinforce the primary goal of this legislation - privacy and data protection. It does not require doing away with the personal-non-personal distinction entirely. That would amount to throwing the baby out with the bathwater. 5. As the government retains the ability to address the privacy and data protection concerns that emanate from a certain subset of anonymized personal data

				within the much larger set of non-personal data, the inclusion of non-personal data within this law on this ground seems to be misplaced. This is especially because the government's views on treatment of non-personal data in general seems unclear at this stage and thus too premature to regulate in this Bill. 6. Lastly, while the idea of a single regulator for issues pertaining to data protection and data regulation in India offers institutional coherence, a single regulator does not automatically equate to a single legislation. Instead, if the goal is to ensure one data regulator in India, we recommend that non-personal data, and its allied benefits and risks, be regulated by a separate legislation, to be regulated by the existing Data Protection Authority ("DPA") under the PDP Bill, 2019, i.e., same authority but different legislations. 7. Similar regulatory structures that rely on regulating one underlying aspect through different legislations currently exist in India. An example is the underlying aspect of banking services within banking regulation[1] and foreign exchange regulation[2]- which operate through different legislations and subject-areas but rely on one regulator- the Reserve Bank of India.

[1] Banking Regulation Act, 1949
[2] Foreign Exchange Management Act, 1999

3	None	In this recommendation, the Committee provides timelines for implementation of the DP Bill, 2021, taking into account time required for transition and setting up of the requisite regulatory infrastructure. It recommends twenty-four months for implementation of the provisions of the DP Bill, 2021, and six months for the setting up of the DPA, from the date of notification of the Act. It further recommends comprehensive consultation with stakeholders to aid compliance with the provisions of the DP Bill, 2021.	Agree	We agree with this recommendation. There is no provision in the proposed DP Bill, 2021 that provides for such timelines of notification of the different clauses.
4	Clause 25	The Committee recommends that the DPA should imbibe certain principles when notified of a data breach. These include ensuring privacy of data principals when posting details of the personal data breach, placing the burden on the data fiduciary to prove that the delay in notifying the DPA / data principal was reasonable and maintaining a log of data breaches, irrespective of the harm to the data principal.	Partially agree	We agree with these recommendations insofar as personal data breaches are concerned. For non-personal data breach, please refer to our comments on recommendation 46. Further, we note that the principle relating to maintenance of a log of all data breaches to be reviewed periodically by the DPA has not been incorporated in clause 25, DP Bill, 2021.

5	Clause 16	1. The Committee has recommended that data fiduciaries which deal with children exclusively, should register themselves with the DPA. 2. The Committee recommends that on the attainment of majority, children should be given a mechanism to revalidate their consent.	Partially agree	1. It is unclear what will be achieved by registering such data fiduciaries with the DPA, when the Committee does away with the concept of "guardian data fiduciaries", in general. Our recommendation is that the concept of guardian data fiduciaries should not be done away with, which is elaborated in comments to recommendation 38. 2. We are in agreement with a consent renewal mechanism for children on attaining majority. However, this does not appear in the amendments recommended for clause 16 of the Data Protection Bill, 2021.
6	Clauses 26 and 28	1. The Committee recognizes that there is an immediate need to regulate social media intermediaries and the current law is insufficient to regulate social media platforms. In this context, it recommends that social media intermediaries should be considered publishers because they have the ability to select the receiver of the content and exercise control over the access of content hosted by them.	Partially agree	1. We differ with the recommendation on social media intermediaries being considered publishers of the content in the data protection law. The recommendation is akin to doing away with the safe harbor provision for social media intermediaries. While the role of social media intermediaries may require reconsideration, a data protection law does not provide the adequate context to do so. Section 79 of the IT Act, 2000 currently sets out the safe harbor provisions available to social media intermediaries, in conjunction with rules prescribed under the IT Act, 2000. The recommendation goes beyond regulating personal data processing by social

		2. A further recommendation is made that social media intermediaries should be held responsible for the content from unverified accounts on their platforms.		media intermediaries, and seeks to regulate online content being hosted by them. 2. We differ with the recommendation of making social media intermediaries liable for content posted from unverified accounts. This goes beyond and is contradictory to the voluntary verification model that is provided for in section 28, PDP Bill, 2019. Further, this recommendation is not reflected in the proposed DP Bill, 2021.
7	Clause 20	The Committee recommends that in order for meaningful implementation of the right to be forgotten, afforded to data principals under Clause 20, PDP Bill, 2021, it is necessary to empower the DPA with regulation making power.	Agree	We agree with this recommendation. However, the delegated legislative power within clause 20 is enabled for the government's rule-making powers, and not the DPA's regulation-making power.
8	None	The Committee recommends that India should develop an alternative indigenous financial system to ensure privacy given the privacy concerns in the financial sector, especially in the context of cross-border payments.	Partially agree	The SWIFT network has been known to contain vulnerabilities, including a mechanism for the United States National Security Agency to document transactions. To the extent that Indians' cross-border transaction data should be protected from unlawful foreign surveillance, an alternative to SWIFT may be considered. It is unclear whether the committee recommends a legal provision in the DP Bill, 2021 to set up such a network. Nothing in the DP Bill, 2021 prevents

				the government from setting up an alternative network in the future. Thus, there is no requirement for a provision in this Bill that would allow the government to set up an alternative cross-border payment system. Further, this recommendation does not feature in the DP Bill, 2021.
9	Clause 40	The Committee has recommended that while framing regulations, the DPA should keep in mind interests of startups, encourage innovations and promote sandboxes.	No comment	
10	None	The Committee has recommended that separate certification processes should be enabled for hardware manufacturers given the potential risks with computing hardware which can cause breaches.	Differ	We differ with this recommendation. As far as any hardware is being used for data processing, or a hardware manufacturer is collecting and processing data, it will be covered by the definition of "data fiduciary" and be obligated per the provisions of the draft law. It is unclear why this is inadequate. If there are concerns around the general security aspects of the hardware, and the risk of the same being compromised, those must be covered by the Information Technology Act, 2000, which deals with similar issues in terms of risks to computer resources. These general security concerns about the integrity of the hardware should not be covered in a data protection law. It is also pertinent to note that the same does not feature in the proposed revisions in the DP Bill, 2021.

11	Clause 33	The Committee recommends that, keeping in mind national security and data sovereignty concerns, the Central Government should take concrete steps to ensure that a mirror copy of sensitive personal data which is already in possession of foreign entities is stored in India. Further, proper infrastructure for data localisation must be put in place.	Partially agree	Please refer to our comments for recommendation 54 for manner of incorporation and implementation of data localisation provisions in the DP Bill, 2021. Moreover, this recommendation regarding proper infrastructure and concrete steps ensuring mirror copies in India are principled recommendations, and have not been included as part of the text of the DP Bill, 2021.
12	None	The Committee recommends that there should be a comprehensive data localisation policy formulated by the Central Government, in consultation with the sectoral regulators.	Agree	We agree with this recommendation. This recommendation is not reflected in the DP Bill, 2021.
13	Clause 1	The Committee has recommended that the title of the DP Bill, 2021 should be amended as "Data Protection Bill, 2021" as non-personal data is also recommended to be covered under the DP Bill, 2021. The Committee gives this recommendation stating that it is impossible to demarcate one from the other.	Partially agree	Please refer to comments for recommendation 2.

14	Preamble of the DP Bill, 2021	This recommendation covers the preambulatory text of the proposed DP Bill, 2021. The Committee has made several modifications to the original text of the preamble. 1. The Committee has recommended adding the word "digital" before "privacy of individuals" since, in its opinion, non-digitized data protection is not covered under this Bill. 2. The Committee has recommended substituting "social media intermediaries" with "social media platforms" in the Long Title. 3. The Committee has recommended adding the phrase "to ensure the interest and security of the State" in the Long Title, because in its opinion, digital privacy should be circumscribed and limited by the nation's sovereignty, integrity and state interest.	Differ	Regarding the addition of "digital" in its effort to limit this proposed statute only to digitally collected data, we differ with this limitation. The objective behind the DP Bill, 2021, as well as the Supreme Court's judgment in Puttaswamy, did not make this distinction. It is imperative that the preamble does not needlessly limit the scope of the right to privacy. After all, privacy in the digital space is a critical component of privacy generally. Furthermore, we also differ with the inclusion of social media platforms within the preamble. There is an overarching concern around whether content shared by such platforms needs to be the subject of regulation in a data protection law, or a general internal governance statute (like the Information Technology Act, 2000). In fact, under the recently effectuated IT (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021 (IT Rules, 2021), there is already adequate content moderation designed to ensure social media platforms are not endangering national interests and public order. The remit of the DP Bill, 2021 should only be to the extent where such a platform collects data of its users, and processes or shares it with third parties. The way content is generated or published, and moderation of the same, should not be brought within the scope of this proposed legislation. Lastly, regarding the addition of national interest and security, it is acknowledged that the sovereignty of the

				state is a vital issue. Yet, the bedrock of the proposed DP Bill, 2021 is to enhance protections for an individual's right to privacy with reasonable exceptions facilitating state interest. These exceptions are already carved in the substantive provisions of the PDP Bill, 2019 and do not require reiteration in the Preamble.
15	Clause 1	The Committee has amended the short title as the Data Protection Bill, 2021.	Agree	We agree with this recommendation of changing the year of the PDP Bill, 2021.
16	Clause 2	1. The Committee has recommended alterations to the applicability of the DP Bill, 2021 from "processing of personal data by the State, any Indian company, any citizen of India or any person or body of persons incorporated or created under Indian law"[3] to "processing of personal data by any person under Indian law". 2. The Committee recommends that clause 2, DP Bill, 2021 states that the law is applicable to non-personal data including anonymized data.	Differ	1. We differ with the alteration in relation to "any person under Indian law". The phrase 'any person under Indian law' seems to be a drafting error in this new draft, since the phrase "under Indian law" previously referred to entities incorporated or created under Indian law, and has not been deleted. This has the effect of rendering this clause redundant since any processing under Indian law will ordinarily be in Indian territory which is covered by clause (a). 2. Please refer to our comments regarding recommendation 2. For the foregoing reasons, we believe that non-personal data should not be introduced within the framework of this legislation at this stage and in this manner.

[3] As stated in clause 2(A)(b), PDP Bill, 2019

17	Clause 3(11)	The Committee has recommended shifting the definition of "consent manager" from the explanation under clause 23, PDP Bill, 2019 to renumbered clause 3(11), DP Bill, 2021.	No comment	
18	Clause 3(13)	The Committee has recommended that the word "independent" be omitted from the definition of "data auditor" in renumbered clause 3(13), DP Bill, 2021 since it is already referred to in clause 29, PDP Bill, 2019.	No comment	
19	Clause 3(14)	The Committee finds that "data breach" has not been defined in the PDP Bill, 2019. Therefore, it recommends addition of this definition to definitions clause as "data breach includes personal and non-personal data".	Differ	Please refer to our comments regarding recommendation 2. Our comments on this recommendation are further discussed in recommendation 46, which discusses the provision pertaining to data breaches.
20	Clause 3(15)	The Committee has recommended that the phrase "a non-government organization" should be inserted in the	Differ	We differ with this recommendation on two grounds. First, the current definition of "data fiduciary" covers all kinds of legal entities. Therefore, no gain is being made from including the term "non-government organisation".

		renumbered clause 3(15), DP Bill, 2021 which defines "data fiduciary".		This addition is superfluous. Second, the phrase "non-government organisation" has not been defined in law. It is unclear which specific entity the phrase refers to. As such, this addition is not required because it is both superfluous and is undefined in law.
21	Clause 3(17)	The Committee has recommended that the phrase "a non-government organization" should be inserted in the renumbered clause 3(17), DP Bill, 2021 which defines "data processor".	Differ	Please refer to our comments regarding recommendation 20 above.
22	Clause 3(18)	The Committee has added the definition of "data protection officer in clause 3.	Agree	We agree with the recommendation.
23	Clauses 3(20)(xi) and (xii)	The Committee has recommended that the definition of "harm" needs to be widened to include "psychological manipulation which impairs autonomy of the individual". Further, it also recommends inclusion of a residuary clause which is "such other harm as may be prescribed".	Differ	We differ with this recommendation. The inclusion of the two sub-clauses unduly expands the scope of 'harm' under the PDP Bill, 2019. While it is important to address data-based practices which may affect the autonomy of individuals, including such a vague reference within the definition of harms is likely to create significant problems in the interpretation and implementation of the PDP Bill, 2019. These inclusions may be removed upon further consideration for the following reasons. First, the phrase 'psychological manipulation which impairs the autonomy of the individual' is highly vague. The threshold at which

				catering to an individual's preferences or interests may be termed 'psychological manipulation' cannot be clearly identified. This is likely to create significant issues in implementation of this provision, considering the frequent use of recommendation systems which account for individual preferences. Second, the inclusion of sub-clause (xi) will lead to an expansion of the kinds of personal data which may be considered 'sensitive personal data' under the PDP Bill, 2019. The vagueness of the phrase 'psychological manipulation' will lead to several kinds of data being considered as 'sensitive personal data' even where it may not otherwise be considered as such. This is likely to increase the compliance burden for businesses and unduly deter them from practices which are aimed at personalising user experiences, thereby reducing consumer welfare. Third, the inclusion of sub-clause (xii) is an instance of excessive delegation. This is because the criteria based on which the Central Government may identify other harms in the future is not provided in this provision. The criteria for identification of harms are a question of 'essential legislative policy', and must be provided in the parent Act, failing which sub-clause (xii) is liable to be struck down. The problem of psychological manipulation which affects the autonomy of individuals should be redressed. However, the inclusion of this clause in the list of harms is not advisable. Psychological manipulation, which may be affected through micro-targeting of information to

				users based on a profiling of their preferences and interests, can have an impact on decisional autonomy. It is therefore necessary to provide users with transparency regarding the kinds of data being collected from them, and the factors that determine the recommendations provided to users. This can be achieved by requiring greater transparency in privacy by design policies and ensuring that users can meaningfully consent to, or opt-out, as the case may be, from personalisation of information or recommendations.
24	Clause 3(26)	The Committee has added "or information" in renumbered clause 3(26).	No comment	
25	Clause 3(28)	The Committee has recommended adding the definition of "non-personal data" as "data other than personal data" in the definitions clause.	Differ	We note that the term 'non-personal data' has been defined in the explanation for clause 91(2). Further, please refer to our comments on recommendation 2 regarding our views on including non-personal data within the framework of the PDP Bill, 2019.
26	Clause 3(29)	The Committee has recommended adding the definition of "non-personal data breach" as "unauthorized including accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to non-	Differ	Please refer to our comments on recommendation 2 regarding our views on including non-personal data within the framework of the PDP Bill, 2019. Our comments on this recommendation are further discussed in recommendation 46, which discusses the provision pertaining to non-personal data breaches.

		personal data that compromises the confidentiality, integrity or availability of such data" in the definitions clause.		
27	Clause 3(44)	The committee has recommended moving the definition of social media intermediaries from the explanation in clause 26(4), PDP Bill, 2019 to renumbered clause 3(44), DP Bill, 2021. Further, the term "social media platforms" has been used instead of "social media intermediaries".	Partially agree	We would like to point out that this definition does not carry with it the exceptions mentioned categorically in clause 26(4), PDP Bill, 2019. As such, we submit that the same should be carried along with the definition to renumbered clause 3(44). In reference to the change in terminology, please refer to our comments for recommendation 47.
28	Clause 4	In relation to Clause 4, PDP Bill, 2019 the Committee observes that the way it is drafted gives a negative connotation. Therefore, the Committee recommends an amendment to the clause as follows "The processing of personal data by any person shall be subject to the provisions of this Act and the rules and regulations made thereunder".	Differ	The proposed changes are likely to have the legal effect of lowering the standard of protection offered to users, and therefore, are not advisable. As a result of the proposed changes, the requirement of the purpose of data processing to be 'specific, clear and lawful' does not exist anymore. The negative connotation provided by the clause may be suitably modified without taking away the above-mentioned requirement related to the purposes of data processing under the Act. To this end, the section can be reworded to provide a positive connotation while retaining safeguards for users. This may take the following form: "4. Fair and reasonable processing – Any person processing personal data shall do so in a fair and reasonable manner that respects the privacy of the data

				principal, and such processing shall be for specific, clear, and lawful purposes."
29	Clause 5	In relation to clause 5, PDP Bill, 2019, on purpose limitation, the Committee recommends that an addition should be made to the purposes under clause 5(b) which provide for non-consensual processing under clause 12, PDP Bill, 2019.	Agree	This addition limits the purposes for which data is processed by state agencies without taking consent from data principals under clause 12, PDP Bill, 2019 to such purposes which the data principal would reasonably expect. We agree with this recommendation as it places processing of personal data without consent under clause 12 within the purpose limitation framework of the PDP Bill, 2019.
30	Clause 8(3)	Clause 8(3), PDP Bill, 2019, provides that where a data fiduciary finds that the personal data of the data principal which has been disclosed to another data fiduciary or processor is not complete, accurate or updated, it should notify such individual or entity of the same. The Committee recommends that a proviso should be added which exempts its application in cases where processing may be prejudiced under clause 12, PDP Bill, 2019.	Differ	We differ with this recommendation. It needs to be noted that clause 12, PDP Bill, 2019, provides for non-consensual processing. This does not mean that the processing has to be covert or not known to the data principals. A notice is still required to be given for processing under clause 12, even though consent is not required. Further, accurate data is essential, given that processing of data by the State can have significant implications on the data principal.

31	Clause 8(4)	The Committee has recommended the addition of a provision allowing for sharing, transferring or transmitting of personal data as part of business transaction along with a similar proviso as recommended in recommendation 30.	Differ	We differ with this addition. The provision is not required as it leads to undue interference into business dealings within a company.
32	Clause 9(1)	The Committee has recommended a slight modification to the general provision on limiting retention of data.	Agree	As proposed in recommendation 7, the DPA should also consider this in the regulations it formulates with respect to the right to be forgotten under clause 20, PDP Bill, 2019.
33	Clause 11(3)	The Committee has observed that the language of clause 11(3)(b), PDP Bill, 2019, is ambiguous and needs clarity. It recommends that the data principal's consent should be obtained after specifying the conduct and context explicitly.	Agree	We agree with the change made to clause 11(3)(b) to reflect this clarity.
34	Clause 11(4)	The Committee has recommended that the scope of the consent provision should be extended to include denial based on exercise of choice too.	Differ	We differ with this recommendation. The value of this addition is not clear. A fiduciary cannot provide services which require certain data if the data principal chooses to not give consent for the collection of that data. If such data is not necessary for the provision of the service,

				clause 11(4)(i), PDP Bill, 2019, already covers the rights of the data principal. The suggested phrasing removes precision from the PDP Bill, 2019.
35	Clause 11(6)	The Committee has recommended that when the data principal withdraws his consent from processing of personal data, without valid reason, the consequences they suffer should not be qualified as only "legal" consequences.	Differ	It is important to re-introduce the 'legal' qualifier for the consequences to be borne by the data principal if she withdraws consent for processing data without any valid reason. Without the word 'legal', even monetary consequences can be imputed to the data principal.
36	Clause 13(1)	The Committee recommends that an employer cannot be given unbridled freedom to process the personal data of an employee. An employer should be allowed to process data only if it is reasonably expected by the employee. It recommends clause 13, PDP Bill, 2019, to be redrafted accordingly.	Agree	We agree with this recommendation.
37	Clause 14	The Committee has recommended certain drafting changes to clause 14, PDP Bill, 2019.	No comment	

38	Clause 16	1. The Committee recommends doing away with the concept of "guardian data fiduciaries". The Committee does so because it is of the opinion that there is no advantage in creation of a new class of data fiduciaries but rather all data fiduciaries that process personal data of children should be required to comply with obligations provided for in clause 16, PDP Bill, 2019. 2. The Committee also recommends the phrase "best interests of the child" should be removed from clause 16(1) and it should be replaced with rights-based language, as in the rest of the PDP Bill, 2019. It does so on the basis that the current phrasing could allow for leeway for data fiduciaries leading to dilution of the law.	Differ	1. We differ with this recommendation. The class of "guardian data fiduciaries" was created keeping in mind that two kinds of data fiduciaries process personal data of children – first, those which exclusively process personal data of children, and second, those which do so incidentally. The idea was that special obligations, in relation to processing, would be placed on the first class while for the second class, depending on the harm being caused to children, parental consent mechanisms would suffice. Doing away with this distinction leads to the consequence of the entire internet being age-gated. All data fiduciaries, irrespective of their area of operation, will have to verify the age of the users, before processing their data. This is cumbersome and onerous. While the intention in this case is laudable, i.e., the data of children should be accompanied with processing safeguards in all contexts, its implementation is problematic. 2. We differ with this recommendation. The principle of "best interests of the child" is a fundamental principle of law relating to children, for example, article 3(1) of the Convention on the Rights of the Child, of which India is a signatory. Therefore, such omission should be reconsidered.

39	Clause 17(4)	The Committee recommends the addition of a provision that provides the data principal to exercise their right to decide how their data should be dealt with in case of casualty / death.	Agree	We are in agreement with this recommendation. The right to post-mortem privacy is an important facet of the right to privacy, and is being increasingly recognised across jurisdictions. It has two facets primarily, first, that which relates to control over the processing of personal data and second, that which relates to control over digital personality and access to digital assets and products. One of the most widely adopted post mortem privacy statutes is the Revised Uniform Fiduciary Access to Digital Assets Act in the US, which has been developed by the Uniform Law Commission, and has been brought into effect by almost all states of the US. It recognizes businesses that make, store, or provide digital assets, like Google and Facebook, as Custodians. Further, it provides the executor of an estate, or an attorney, with access to someone's online accounts after death or incapacitation if the deceased had explicitly consented to the same. Information with the custodians can either be accessed through online tools provided by the custodians or legal documents such as wills, trusts etc. which provide for the digital estate plan. In case the deceased has not utilised either online tools or a digital estate plan, the custodian's terms of service will dictate a fiduciary's access to a user's digital asset such as whether the account is transferable or non-transferable and terminate on the user's death.

40	Clause 19(2)	The Committee has recommended that trade secrets cannot be a ground to deny data portability and should only be denied in case of technical feasibility. It has accordingly recommended amending clause 19(2), PDP Bill, 2019.	Partially agree	The proposed modifications to clause 19(b), PDP Bill, 2019, which state that technical feasibility must be determined through regulations laid down in this regard, have a positive effect by ensuring that data fiduciaries are not able to deny data portability merely by asserting technical infeasibility. As per the modifications, they must instead, demonstrate such infeasibility in terms of regulations in this regard. The removal of 'trade secrets' from clause (b), however, may be reconsidered. While it is true that trade secrets are a dynamic concept that differ from domain to domain, this does not invalidate the claim that providing data portability may, in some instances, affect the competitive advantage that a data fiduciary may have because of their technical architecture. In this situation, requiring data portability, even where it unduly infringes on this competitive advantage by forcing a data fiduciary to change their technical architecture, can have a potentially negative impact on the quality of services available to users. Therefore, a limited exception to data portability for certain types of 'trade secrets', which may be determined strictly in terms of regulations laid down in this regard, may be necessary to retain the incentives for development of newer technical architectures. This can be structured in a similar manner to the exception for technical feasibility, thereby ensuring that mere assertion of trade secrets by a data fiduciary is not enough to deny the right to data portability.

41	Clause 20	The Committee has made some language modifications to clause 20, PDP Bill, 2019 which captures the right to be forgotten.	Agree	We agree with this.
42	Clause 21(5)	The Committee observes that a data fiduciary has been given arbitrary powers to reject requests for exercise of the data principal's rights. Therefore, it recommends that a proviso should be added which empowers the DPA to make regulations and determine the rationale behind denial of request.	Differ	We note that clause 21(3), PDP Bill, 2019 currently sets out regulation-making powers for the DPA regarding the period of compliance applicable to the data fiduciaries. Therefore, in our view, this addition is superfluous as the regulation-making powers where the DPA can provide for grounds of denial of requests made by the data principal already exists.
43	Clause 22(3)	The Committee has recommended that clause 22(3), PDP Bill, 2019 should be amended so as to allow the DPA to grant exceptions to certain data fiduciaries from requiring their privacy by design ("**PBD**") policy to be certified.	Differ	We differ with the drafting changes recommended. The intent of clause 22, PDP Bill, 2019 was that while every data fiduciary is required to have a privacy by design policy, only those data fiduciaries were required to get it certified, as may be required by the DPA in its regulations. The Committee, through the redrafting it has recommended, flips this model and requires that every data fiduciary, other than those in the exceptions, have to get their PBD certified. This would make compliance tedious and hamper ease of doing business. Therefore, we differ with this recommendation.

44	Clause 23(1)(h)	This recommendation adds a sub-clause to the "transparency" provision, requiring any algorithms used by a data fiduciary to be fair, and mandating disclosures of methods used for processing of personal data.	Agree	We agree with this, while proposing a slight modification. The suggestion of the Committee makes a crucial point in terms of algorithms that are now commonly used by many digital platforms and service providers, to collect, process and analyse data. However, while it is important to be transparent about the use of such algorithms, and give lucid descriptions of the criteria they rely on in their analytics and processing, there have been concerns raised by the developers of such algorithms on how far the "black box" of its functioning can be truly explained. Explainable algorithms have become a common point of discussion in AI ethics' discourses, and appear to be the inspiration for the Committee's proposed addition. It may be reworded to the following: '(h) where applicable and to the extent technologically feasible the data fiduciaries should disclose any algorithms that are used in data processing, and should also provide a clear description of the functionality of such algorithms, understandable to a reasonable, non-technical user.'
45	Clause 23	The committee has recommended deletion of the definition of "consent manager" from the explanation in clause 23, since it has recommended its addition to the definitions clause.	No comment	

46	Clause 25	1. The Committee is of the opinion that all data breaches need not be reported to the data principals since it may create panic among them. Therefore, it recommends that the DPA must first take into account the severity of the harm caused by the breach, and accordingly direct the data fiduciary to inform the data principal. 2. The Committee also recommends that clause 25(3) should provide a time period of 72 hours for reporting the breach to the DPA. 3. In relation to non-personal data breaches, the Committee recommends that it should be regulated through the rule making power of the Central Government. In light of that it has recommended the addition of clause 25(6), DP Bill, 2021, which provides that the DPA should take steps as prescribed.	Partially agree	1. We agree with the recommendation wherein the data fiduciary is required to report any personal data breach to the DPA as opposed to informing the DPA when that breach is likely to cause harm to the data principal. The DPA, being the regulator and having expertise on data protection, is ideally placed to determine which data breaches are likely to cause harm to data principals or consequently about which data breaches should data principals be informed. 2. We agree with the recommendation wherein the data fiduciary reports the data breach to the DPA within seventy-two hours. This ensures accountability and timely reporting of personal data breaches from the data fiduciary to the DPA. 3. We differ with this recommendation wherein the DPA shall take steps as prescribed under rules in the event of a non-personal data breach. The Committee proposes to include clause 25(6) which provides the government with rule-making power on how non-personal data breaches are to be treated by the DPA. This is an example of excessive delegation, as the rule-making power does not merely discuss procedural matters, but matters of substantial policy issues regarding the treatment of non-personal data breaches. As suggested in our comments to recommendation 2, the inclusion of non-personal data in this legislation does not

				suggest a coherent policy on the treatment of non-personal data, and this recommended provision continues to push the issue of having a substantive policy on non-personal data down the road by basing these within rules to be framed at a later date. 4. Lastly, the concept of a non-personal data breach is in a framework which identifies benefits of securely storing and accessing non-personal data, or a framework that identifies possible harms emanating from breach or unauthorized access to non-personal data. Given that the Committee's recommendations do not shed light on what the benefits of preserving or securing non-personal data are (which has been left for a future policy at a future date), the concept of regulating such breach raises questions of necessity and clarity of policy.
47	Clause 26	1. The Committee recommends that the term "social media intermediary" should be redefined as "social media platform". It does so on the basis that social media intermediaries "are not actually intermediaries that do the dual functions of an intermediary and a platform".	Partially agree	1. While we agree that social media intermediaries have gone beyond the role of being mere conduits, it needs to be pointed out that regulations as recent as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 refer to these entities as "social media intermediaries". Change in nomenclature in the DP Bill, 2021 leads to a certain sense of non-uniformity, especially, since such change is not required from the point of a data protection law. However, given that

		2. The Committee recommends moving the definition of "social media platforms" from clause 26 to the definitions clause renumbered as clause 3(44). 3. The Committee also recommends moving clause 26(4), PDP Bill, 2019 and merges it with clause 26(1). 4. The Committee adds a new sub-clause (4) to clause 26 which states that significant data fiduciaries shall be regulated by the regulations of sectoral regulators.		this change has no legal bearing, as such, we do not oppose the recommendation. 2. The definition as it appears in the DP Bill, 2021 does not seem to carry the exceptions mentioned in clause 26(4), PDP Bill, 2019. While that may be a drafting oversight, it is required that these exceptions be carried as well to mitigate confusion regarding the scope of "social media platforms". 3. This leads to some interpretational issues. First, it redesignates the DPA as the agency that can notify social media platforms as significant data fiduciaries unlike the central government, as was the case in the previous draft. If this is a deliberate change, it is a welcome move, since it leads to reduction of the perception of bias in such notification. Second, the clause also omits the mention of the Central Government as the notifying authority for the number of users that are the threshold for such designation. While this may be by way of drafting oversight, it should be amended. 4. This is a superfluous addition. It further leads to confusion about the status of data fiduciaries simpliciter who may come under sectoral regulations as well because it singles out only significant data fiduciaries as requiring to comply with sectoral regulations. This will lead to litigation and should be deleted.

48	Clause 28	Keeping in line with the change of terminology from "social media intermediaries" to "social media platforms", the Committee has recommended drafting changes to clause 28, PDP Bill, 2019.	No comment	
49	Clause 29(3)	The Committee has proposed a small amendment to the audit provisions of the DP Bill, 2021. It adds that concurrent audits be encouraged as a practice, by the DPA.	Differ	We differ with this. It is unclear what the Committee has intended to include by using the phrase "concurrent audits". As a general principle of legislative drafting, such ambiguities need to be avoided, or adequately clarified. Therefore, either the proposed modification be deleted, or concurrent audits be defined in Clause 3, DP Bill, 2021.
50	Clause 30	The Committee proposes that the Data Protection Officer ("**DPO**") for a data fiduciary also be a key managerial person. As such, the explanation proposed by the Committee includes the CEO, CS, MD, and CFO of a company.	Differ	We differ with this recommendation. The intention behind the Committee's recommendation is evidently the need to have a senior official of the company be held responsible for compliance with the provisions of the PDP Bill, 2019. That said, there is an inherent contradiction in having the DPO also hold a top managerial position with the same company. The DPO needs to be an insider, yet, be an individual who is independent of the obligations that company management typically has (like being responsible to investor interest). The DPO's priority needs to be

				towards ensuring compliance with the statute, even if, hypothetically, this may be at additional cost, or lower profits for the company (something a top management person will not be able to perform). In order to do that, she must possess qualifications similar to those of senior management. However, having a senior management individual perform functions of the DPO is likely to result in a conflict of interest. It is therefore suggested that the explanation be removed, and a clause may be inserted to indicate that a DPO's qualifications and perks may match those of senior management.
51	32(4)	The Committee has recommended the inclusion of renumbered clause 62 that confers th4e right to the data principal to file a complaint with the DPA, which the DPA shall forward to the adjudicating officer. In light of this, the Committee has recommended that clause 32(4) should specify that a data principal be able to approach the DPA, if their complaint has not been satisfactorily resolved by the data fiduciary.	Agree	We agree with this recommendation.

52	Clause 34	1. The Committee has recommended that the DPA, when approving a contract or intra-group scheme, must, in all cases consult the Central Government. 2. The Committee also recommends that cross border transfer of data under a contract or intra group scheme may not be approved, even if the data principal has consented, if the contract or intra group is against public policy. As such, it has recommended adding the phrase "is against public policy or state policy".	Differ	1. We differ with the recommendations made by the Committee, wherein the approval by the DPA is given in consultation with the central government and the contract or intra-group scheme may not be approved if the object of the transfer of sensitive personal data is against public policy or state policy. The DPA has been designated as the regulator body in charge of data protection and comprises domain experts who would go through the details of such intra-group schemes or contracts in detail. The DPA's decisions are taken keeping the best interests of the data principals and the objectives of data protection on a collective level. An additional requirement of the DPA to consult with the central government results in a scenario where the government is weighing in on private business contracts or intra-group schemes not on a substantive policy level, but on a case-by-case basis, which is arguably not the role of the government. This hampers ease of doing business, which is a stated governmental objective. 2. The term 'State policy' is ambiguous, subject to interpretation, and also raises a question on whether government policies may directly be used as a justification to void contractual arrangements that are otherwise perfectly legal. This term also increases the involvement of the central government, the representative of the 'State' in

				question, into the operations of private businesses and dilutes the powers of the DPA. Further, the term 'public policy' has been an accepted part of contract law jurisprudence. Section 23 of the Indian Contract Act, 1872 holds considerations in contracts that are opposed to public policy as unlawful, and section 24 of the Indian Contract Act, 1872 declares agreements with unlawful considerations void. These cases have further been elaborated in various Supreme Court judgments. In Central Inland Water Transportation Corporation Ltd v Brojo Nath Ganguly[4], the Supreme Court recognized that '*public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest.*' While the term public policy is generally an accepted legal term that is interpreted by the court on a case-by-case basis, its very nature raises questions over the necessity of adding the phrase 'State policy'. The separate inclusion of the term 'State policy' points to a different meaning other than what is understood as 'public policy', as any other interpretation would render the term redundant.
53	Clause 34(1)	The Committee has recommended addition of an explanation to clause	Differ	Please refer to our comments on recommendation 52 above. This explanation does not provide any clarity on

[4] Central Inland Water Transportation Corporation Ltd v Brojo Nath Ganguly, AIR 1986 SC 1571.

		34 to expand on the meaning of public policy and state policy as being against public or state policy if "the said act promotes the breach of any law or is not in consonance with any public policy or State policy in this regard or has a tendency to harm the interest of the State or its citizens."		what would be construed as 'not in consonance with State policy' or having 'a tendency to harm the interest of the State'. Clarity on the meaning of the phrase is required before incorporating such a phrase in a critical provision of the law.
54	Clause 34(1)(b)(iii)	The Committee, with a view to safeguarding the data of Indians, has recommended that sharing of sensitive personal data with a foreign government or agency would only be allowed if it has been approved by the Central Government.	Differ	The concern regarding sharing of sensitive personal data with foreign governments or agencies seems to be a policy decision that may be better placed within a licensing framework or as a mandatory term in a cross-border data-sharing contract or agreement. In our view, it is not desirable to have such a provision encoded within the law. Further, if there is a legal requirement for a foreign company to share or retain a copy of all sensitive personal data gathered by that company in its home country, this provision can do little more than present an opportunity for the DPA to levy a fine as that company may not seek to violate the laws of its home country. In such an event, the promulgation of this clause puts businesses in a quandary. An alternative framework for regulating the flow of sensitive personal data to foreign countries is to notify

				certain countries in buckets of 'red', 'yellow', and 'green'- based on the standard of their respective data protection laws, allowing for transfer of sensitive personal data within those countries deemed to have set out equivalent data protection standards.
55	Clause 34(1)(c)	The Committee recommends that to bring uniformity between different provisions, transfer of sensitive personal information, allowed by the DPA, should be in consultation with the Central Government.	Agree	We agree with this recommendation.
56	Clause 35	The Committee recommends that in clause 35, when the Central Government is laying down a procedure for data protection for exempted agencies, it should be "just, fair and reasonable and proportionate procedure".	Partially agree	This is an improvement on the PDP Bill, 2019 which provided carte blanche powers to the exempted agencies. However, this recommendation falls short by failing to include several safeguards such as observance of security measures, fair and reasonable processing of personal data. The draft proposed by the Srikrishna Committee, as recommended in the dissent note by Jairam Ramesh, MP, should be adopted instead.
57	Clause 36	The Committee has recommended drafting changes to bring clarity to clause 36.	Agree	We agree with the change recommended.

58	Clause 36(e)	The Committee recommends that there should be a statutory media regulator because self-regulation by the media is insufficient. Therefore, it has made changes to section 36(e) to provide that processing of personal data for journalistic purposes should comply with rules and regulations or code of ethics by "any statutory media organization".	Differ	We differ with this recommendation because a statute cannot refer to a body that does not exist.
59	Clause 39	The committee has recommended substituting the word "manual" with "non automated" in clause 39.	No comment	
60	Clause 40	The Committee has made small amendments to the provision enabling the creation of experimental sandboxes for facilitating data-driven innovation. It suggested a categorical inclusion of "start-ups" in sub-clause (2).	Partially agree	We partially agree with this recommendation. This addition is superfluous as the definition of "data fiduciary" is inclusive enough to include established tech corporations as well as newer startups. It is also likely to create some confusion as to why start-ups are mentioned categorically while other data fiduciaries are not. The provision should not imply any difference in start-ups or other data fiduciaries, any of which may require sandboxes for technological innovation.

61	Clause 40	The Committee has added an explanation to define what "sandboxes" are as provided for in Clause 40, DP Bill, 2021. It recommends that sandboxes "may or may not permit certain regulatory relaxations".	Partially agree	We partially agree with this. However, "may or may not permit" is superfluous drafting. The term "may" is understood to include "may not" as well. Thus, the phrase "may not" is redundant and can be deleted.
62	Clause 42(1)	The Committee recommends that a person can be appointed Member (Law) if they are an "expert in the area of law" having such "qualifications and experience as may be prescribed".	Differ	We differ with this recommendation. This can be understood to mean that a person who is not qualified in law can be appointed as Member (Law). We differ with this re-drafting. Member (Law) should be a person holding a formal qualification in law not "in the area of law". The statute should provide for qualification and experience requirements as well.
63	Clause 42(2)	The Committee has recommended that the selection committee, for the appointment of the Chairperson and whole-time members, should include technical, legal and academic experts.	Agree	This would make the selection committee more inclusive and representative. We agree with this recommendation.
64	Clause 45	The Committee has recommended drafting changes to clarify the role of the Chairperson of the DPA.	Agree	We agree with this recommendation.

65	Clause 49(2)(b)	The Committee has recommended the deletion of the word "personal" from clause 49(2)(b) to empower the DPA to take action against both personal and non-personal data breaches.	Differ	Please refer to our comments on recommendation 2 and recommendation 46.
66	Clause 49(2)(o)	The Committee has recommended that the Central Government and the DPA should be empowered by way of statutory authority to allow them to create a framework that provides for monitoring, testing and certification to ensure integrity of hardware equipment.	Agree	We agree with this recommendation.
67	Clause 50(2)	The Committee has recommended that clause 50(2) should be amended to include approval of codes of practice submitted by technical service organisations.	Partially agree	The term "technical service organization" should be reworded to technical standards' organisation, which may be defined as a national or international agency determining benchmarks, metrics, and other forms of standards that aid in the development, evaluation, auditing or any other form of assessment of a technological device. Examples of this could be the Institute of Electrical and Electronics Engineers (IEEE), and ForHumanity.

68:	Clause 50(6)(o)	The Committee has recommended the deletion of the word "personal" from clause 50(6) to signify that the DP Bill, 2021 provides for taking action against both personal and non-personal data breaches.	Differ	Please refer to our comments on recommendation 2 and recommendation 46.
69	Clause 55(1)	The Committee has recommended that there should be a safeguard mechanism, in the form of prior approval from DPA, when the Inquiry Officer orders for seizure of relevant documents and data, during an investigation.	Agree	We agree with this recommendation. It is instrumental in preventing potential abuse of discretion by the Inquiry Officer.
70	Clause 56	The Committee has recommended that for the purposes of clarity, in clause 56, the phrase "including economic activities" should be added so that the DPA, where required, before taking action in a matter concurrent with other regulators, regards the economic consequences of its actions and consults with economic regulators such as the RBI.	No comment	

71	Clause 57	This recommendation provides for the quantum of penalties to be prescribed, based on various factors such as start-ups or smaller data fiduciaries involved in research or innovation, in rules by the central government.	Differ	We differ with this recommendation. The Supreme Court, in the case of In Re: The Delhi Laws Act, 1912[5], has stated that the legislature's power to delegate rule-making powers cannot include questions of essential legislative policy. The prescription of a varying standard of penalties is a matter of essential legislative policy, as it shall determine the consequences of violations of the obligations set out in the PDP Bill, 2019. Setting out the quantum of penalty based on delegated legislation is, in our view, an excessive delegation of essential legislative policy and is liable to be struck down. Instead, the PDP Bill, 2019 should set out the quantum of penalties in the parent legislation itself. A similar approach has been followed in legislations such as the Insolvency and Bankruptcy Code, 2016 and the Consumer Protection Act, 2019.
72	Clause 60	The Committee has recommended segregation of the penalties for data fiduciary and data processor in clause 60, PDP Bill, 2019 to bring about greater clarity.	No comment	

[5] *In Re: The Delhi Laws Act, 1912*, AIR 1951 SC 322

73	Clause 62	The Committee has recommended inclusion of clause 62, DP Bill, 2021 to provide for a single window system for deciding penalties as well as compensation on receipt of complaint / application by the DPA.	Agree	The inclusion of clause 62 provides for a meaningful right to redressal within the framework of the DP Bill, 2021 which is a positive step recommended by the Committee.
74	Clause 64(4)	The Committee has recommended that the DPA create guidelines for the adjudicating officers while imposing penalties for violations of the proposed DP Bill, 2021.	Differ	We differ with this recommendation. An adjudication process can only be governed by the statute and delegated legislation under it. Guidelines for determination of penalties may be perceived as interfering with the independence of the quasi-judicial authority. It is recommended that principles of imposition of penalty may either be inserted with the parent statute itself, or be evolved over time through pronouncements of the adjudication officers, and courts.
75	Clause 65(2)	The Committee has recommended substituting "one application" with "representative application", in clause 65(2), to refer to class action case applications.	Agree	The inclusion of the phrase 'representative application' allows for the institution of class-action suits allowing flexibility for the affected data principals, especially when suffering varying degrees of harm. This is a positive change recommended by the Committee.
76	Clause 65(7)	The Committee has recommended that renumbered clause 65(7) should be	No comment	

		amended to reflect the procedure of hearing.		
77	Clause 68(2)	The Committee has recommended that the number of members in the Tribunal should be specified as consisting that of a chairperson and not more than six members.	Agree	We agree with this recommendation.
78	Clause 69(1)	The Committee recommends that for being a member of the Appellate Tribunal a person should be an expert in the stated fields. It does away with the requirement that the member should either be a bureaucrat or a judicial officer.	Agree	We agree with this recommendation.
79	Clause 73	The Committee has recommended the amendments be made to the original clause 72, DP Bill, 2021 to allow for appeals not only against decisions, but also orders passed by the DPA or its Adjudicating officers.	Agree	We agree with this recommendation. These amendments will ensure that appeals lie not just against the final decisions but also interlocutory orders, which are commonly appealable in regular courts proceedings (under the civil or criminal procedure codes).
80	Clause 75	The Committee has recommended clause 74(2) should be removed	Agree	Given that the Appellate Authority has been conferred the powers of a civil court regarding the execution of its

		because it dilutes the power of the Appellate Tribunal to execute its orders, and requires it to rely on civil courts with local jurisdiction for such execution.		orders as a decree of the civil court, sub-section (2) can be removed, which shall simplify the application and interpretation of this clause. This is a positive change recommended by the Committee.
81	Clause 75(2)	The Committee has proposed a reduction from ninety to sixty days for filing appeals before the Supreme Court, against final orders of the Appellate Tribunal.	No comment	
82	Clause 77	The Committee has recommended that an applicant or appellant should have the right to appear before the Tribunal through any domain expert, either employed by him or not. Accordingly, it has recommended clause 76 to be amended.	No comment	
83	Clause 85	The Committee has recommended that given that an offence may be attributable to a party of the business, and not the entire business of the company, renumbered clause 85(1) and (2) should be amended to reflect that change.	Agree	We agree with this recommendation.

84	Clause 85(3)	The Committee recommends that independent and non-executive directors of a violating company can be held liable if it is shown that the offending conduct had occurred with their knowledge, consent or due to lack of diligence.	Differ	We differ with this recommendation. Renumbered clause 85 provides for intention-based culpability. In that context, the liability would, in any case, extend to an "officer who is in default". This would not include the independent directors and non-executive directors since they are not involved in the day-to-day affairs of the company. The addition made is superfluous and will harm the possibility of attracting top-notch independent directors to companies which is a larger corporate governance objective.
85	Clause 86	The Committee has recommended shifting of the responsibility of offences committed under this law from the head of any governmental department, authority or body to an individual deemed responsible after an in-house enquiry by that head of governmental department, authority or body.	Differ	This recommendation dilutes this accountability by allowing an internal enquiry to determine a responsible person, which is a lesser incentive for institutional care regarding data security starting from the top. Further, under the previous formulation, the guilty officer was also liable to be punished under clause 85(3), PDP Bill, 2019. Effectively, this recommendation seeks to remove the accountability of the department head. Further, the concerns highlighted by the Committee regarding this accountability impeding decision-making processes owing to the vast volume of data collected by the government are counter-intuitive. It is necessary for these decision-making processes to model themselves around the core idea of data security, given the vast amount of data processed by the government, and if such modeling happens through holding the department head

				responsible, that formulation is beneficial for the primary goal of data protection. In our view, the previous formulation must be restored as that formulation ensured accountability and responsibility for data security at the level of the head of department.
86	Clause 87	The Committee has recommended an amendment to clause 86. Clause 86 provides that the Central Government can issue directions to the DPA on questions of policy, and the DPA is bound by such directions. However, the Committee is of the opinion that the DPA should not only be bound in matters of policy, but all matters.	Differ	We differ with this recommendation. A statutory regulator is created to maintain an arm's length distance from the government to ensure that there is no bias in the discharge of its regulatory functions, especially in the context of the DPA, which will regulate multitude of government entities also. The government should not control the day-to-day affairs of a regulator, and adherence to directions should be confined to policy matters alone. Moreover, the norm followed in other statutes is also to limit such directions to policy matters. Guidance in this matter can be obtained from section 25 of the TRAI Act, 1997; section 55 of the Competition Act, 2002 and section 16(1) of the SEBI Act, 1992.
87	Clause 92(1)	The Committee recommends amendment of renumbered clause 92(1) to remove specific reference to "personal data" to include both personal and non-personal data.	Differ	For our comments on the inclusion of non-personal data in general within the framework of this law, please refer to our comments in recommendation 2. Notwithstanding those points, it is superfluous to enable the central government to frame a policy regarding the handling of non-personal data, as such a policy need not

				only emanate from an enabling provision within the PDP Bill, 2019. Therefore, this addition is, in our view, superfluous.
88	Clause 92(3)	The Committee, with a view to ensuring greater accountability of the Central Government, recommends that the directions it issues under renumbered clause 92(1) should be laid before both Houses of the Parliament.	Agree	The disclosure of directions issued to data fiduciaries within the Annual Report presented before the Parliament is a positive change recommended by the Committee, as it enhances the accountability of the executive branch to both houses of parliament.
89	Clause 94	1. The Committee has recommended the requirement for previous publication prior to framing rules and regulations under the PDP Bill, 2019. 2. The Committee has recommended shifting the DPA's regulation-making power on the manner of registration of data auditors to a rule-making power to be prescribed by the central government.	Partially agree	1. We agree with this recommendation. Based on a reading of section 23 of the General Clauses Act, 1897, this requirement implies prior public consultation through the publication of draft rules, allowing for stakeholder inputs to be shared. 2. We differ with this recommendation. The Committee does not offer any reasons or factors that necessitate this change. In our view, this change is unwarranted as the DPA continues to be responsible for all other aspects and functions of data auditors under section 29, PDP Bill, 2019, and is ideally placed to prescribe regulations regarding the manner of registration of data auditors.

90	Clause 95	The Committee has recommended the requirement of 'being subject to the condition of previous publication' prior to framing regulations under the PDP Bill, 2019.	Agree	We agree with this recommendation. Based on a reading of section 23 of the General Clauses Act, 1897, this requirement implies prior public consultation through the publication of draft rules, allowing for stakeholder inputs to be shared
91	Schedule to the DP Bill, 2021	The Committee has recommended an amendment to Section 81 of the Information Technology Act, 2000 to make it concurrent with the DP Bill, 2021.	Agree	We agree with this recommendation.
92	None	The Committee has summarised all the drafting changes it has made to the PDP Bill, 2019.	Agree	We agree with this recommendation, subject to our comments above.
93	None	The Committee has recommended that the suggestions made by it should be incorporated in the Bill and it should be implemented in due course.	Partially agree	We agree with this recommendation, subject to our comments above.

www.vidhilegalpolicy.in
Vidhi Centre for Legal Policy
A-232, Ratan Lal Sahdev Marg,
Block A, Defence Colony
New Delhi 110024
011-43102767/43831699

vclp@vidhilegalpolicy.in