

Discussion Paper

Community Rights Over Non-Personal Data: Perspectives from Jurisprudence on Natural Resources

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I. Introduction

The Report by the Committee of Experts on Non-Personal Data Governance Framework (“**NPD Report**”) released in July 2020 kicked off a contentious debate on the data regulation framework in India. The NPD Report proposes a detailed and comprehensive regime for the sharing of non-personal data, including regulation of privately held non-personal data, unlike existing and proposed regimes in other jurisdictions. Among the many novel recommendations in the NPD Report is the proposal to grant community rights over non-personal data.

Interestingly, the NPD Report draws a parallel to natural resources in making a case for community rights. It is worth noting that the NPD Report is not the first policy document to draw such a parallel. The Draft National E-Commerce Policy (2019) also sought to treat the data of Indian nationals as natural resources. While the merits of these proposals continue to be debated, it is important to understand the existing regime governing natural resources and community rights in India. This report examines the legal framework governing natural resources in India with a view to test the natural resource analogy and its applicability to data.

In Section I, we trace the basis of the exercise of ownership rights over natural resources in the public trust doctrine and the Indian Constitution. In Section II, we explore the concept of “Community Property Resources” and the different models of community rights in environment legislation.¹ The exercise of community rights involves the participation of local and self-governance bodies as well as the central and state government. In Section IV, we

¹ Many legislations and policies in fields such as intellectual property deal with the concept of ‘community rights’. For instance, community rights over traditional knowledge have been recognized in the 2008 Intellectual Property Rights Policy for the State of Kerala. However, for the purposes of this Report, we have opted to limit our analysis to legislations dealing with questions of ownership and community rights in the context of the environment and natural resources. This is because the NPD Report attempts to draw an analogy between non-personal data and natural resources, particularly in relation to ‘economic rights to natural resources arising from a community’. Our analysis is limited to the most relevant environment legislations in the context of the proposals in the NPD Report. Hence, our analysis is limited to the following legislations:

- Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,
- Biological Diversity Act, 2002,
- Wildlife (Protection) Act, 1972,
- Protection of Plant Varieties and Farmers’ Rights Act, 2001, and
- Mines and Minerals (Regulation and Development) Act, 1957.

examine the manner in which community rights are enforced along with criticisms of these regimes.

Finally, in Section V, we evaluate the proposals in the NPD report in the context of the existing community rights regime. We highlight key learnings as well as the possible hurdles in extending a community rights regime to non-personal data.

II. Role of the State in the Ownership of Natural Resources

Before examining the manner in which community rights can be exercised over natural resources in the Indian context, it is necessary to understand the legal basis for the grant of such rights to the community. In other words, we must first ascertain how ownership over natural resources is recognised in the Indian context in order to understand how communities can claim rights over natural resources.

This section will explore how ownership of natural resources is interpreted by Indian Courts and viewed by the Constitution. We first outline the prevailing doctrines of ownership over natural resources developed through case law.²

1. State as a Trustee under the ‘Public Trust Doctrine’

The Supreme Court of India has typically relied upon the ‘public trust doctrine’ while discussing ownership over natural resources and the manner and methods through which natural resources are to be distributed.

Recognised as a part of Indian legal jurisprudence, the ‘public trust doctrine’ provides that the State is the trustee of all natural resources which are, by nature, meant for public use and enjoyment.³ As held in the case of *M.C. Mehta v. Kamal Nath & Ors.* (1997), the public at large is the beneficiary of such natural resources, which include the seashore, running water, air, forests and ecologically fragile lands, and the State as a trustee is under a legal duty to

² The Supreme Court, in cases such as *Centre for Public Interest Litigation & Ors. v. Union of India & Ors.* (2012) (2G Spectrum Case) and *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* (2010), noted that the ownership of natural resources in international law rests upon concepts such as sovereignty and permanent sovereignty (of peoples and nations) over (their) natural resources (PSO NR). However, we have opted not to explore international law concepts in our discussion on the ownership of natural resources in India. Instead our examination is limited to concepts that have been recognised as a part of Indian legal jurisprudence, such as the ‘public trust doctrine’.

³ *M.C. Mehta v. Kamal Nath & Ors.*, (1997) 1 SCC 388, at ¶27, December 13, 1996 (Supreme Court of India).

protect the natural resources. Further, the Court also held that these resources meant for public use cannot be converted into private ownership.⁴

While the ‘public trust doctrine’ was initially examined in the context of environmental jurisprudence by the Supreme Court in the matter of *M.C. Mehta*, it was subsequently upheld and expanded by critical Supreme Court judgments beyond natural resources, such as the *2G Spectrum Case* (2012).⁵

In the *2G Spectrum Case*, petitioners had questioned the procedure utilised by the Department of Telecommunications to grant certain telecommunication licenses to private parties. The Supreme Court in the *2G Spectrum Case* expanded on the public trust doctrine to hold that “natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as natural assets.”⁶ Thus, according to the Court, the State is the legal owner of natural resources as a trustee of the people. Hence, the Court held that the State is empowered to distribute such natural resources. The Court added that the process of distribution must be guided by constitutional principles such as the doctrine of equality and larger public good.^{[7][8]}

Another critical judgement of the Supreme Court where the ‘public trust doctrine’ in respect of natural resources was upheld is *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* (2010),⁹ which was relied on by the Court in the *2G Spectrum Case*. The *Reliance* case related to contracts entered into between the Government and private parties to explore the exclusive economic zone for natural gas and subsequently, extract and supply the same.

⁴ *M.C. Mehta v. Kamal Nath & Ors.*, (1997) 1 SCC 388, at ¶34, December 13, 1996 (Supreme Court of India).

⁵ *Centre for Public Interest Litigation & Ors. v. Union of India & Ors.*, (2012) 3 SCC 104, February 2, 2012 (Supreme Court of India).

⁶ *Ibid.*, at ¶63.

⁷ *Ibid.*, at ¶72.

⁸ As noted by Sudhir Krishnaswamy, it is unclear how the Court relied on the ‘public trust doctrine’ in the *2G Spectrum Case* to validate the transfer of a natural resource (such as radio spectrum) to private parties, since the doctrine places an implicit embargo on such transfers. *See also*, Sudhir Krishnaswamy, *The Supreme Court on 2G: signal and noise*, Seminar 642, February 2013, available at <https://www.sudhirkrishnaswamy.com/wp-content/uploads/2019/05/The-Supreme-Court-on-2G-Signal-and-Noise-Sudhir.pdf>.

⁹ *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, (2010) 7 SCC 1, May 07, 2010 (Supreme Court of India).

In particular, the Court in *Reliance* made an observation regarding the scope of the ‘public trust doctrine’ which is relevant for the purposes of this discussion. The Court noted that even though the ‘public trust doctrine’ “has been applied in cases dealing with environmental jurisprudence, it has its broader application.”¹⁰ However, the Court did not lay down any parameters on the basis of which the application of the ‘public trust doctrine’ can be expanded.

Despite the Supreme Court’s observation in *Reliance*, it should be noted that there continues to be debate on whether the scope of the ‘public trust doctrine’ can be expanded beyond natural resources.

Following the judgement in the *2G Spectrum Case*, the Supreme Court in *In Re: Special Reference No. 1 of 2012 (2012)*¹¹ was asked for an advisory opinion on the allocation of natural resources through a Presidential reference. Differing from the abovementioned view on expanding the scope of the public trust doctrine, the Attorney General of India contended before the Supreme Court that the subject matter of the ‘public trust doctrine’ is limited in scope, i.e., the applicability of the doctrine is restricted to certain common properties pertaining to the environment, like rivers, seashores, forest and air, meant for free and unimpeded use of the general public.^{[12][13]} While the Court did not record a specific finding on this issue, it observed that the ‘public trust doctrine’ is a specific doctrine with a particular domain and has to be applied carefully.¹⁴

2. Constitutional Mandate on Ownership of Natural Resources

While the *M.C. Mehta* case is considered to have introduced the ‘public trust doctrine’ in Indian environmental jurisprudence, the Supreme Court in *M.C. Mehta* did not attempt to situate the ‘public trust doctrine’ in the Constitution of India. Instead, the Supreme Court

¹⁰ *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, (2010) 7 SCC 1, at ¶84, May 07, 2010 (Supreme Court of India).

¹¹ *In Re: Special Reference No. 1 of 2012*, (2012) 10 SCC 1, September 27, 2012 (Supreme Court of India).

¹² *Ibid.*, at ¶85.

¹³ In *In Re: Special Reference No. 1 of 2012 (2012)*, the Attorney General of India also argued that the nature of restrictions imposed by the ‘public trust doctrine’ on common properties pertaining to the environment is limited in scope, i.e., the restriction is in terms of a complete embargo on any alienation of such resources for private ownership.

¹⁴ *Ibid.*, at ¶90.

traced the ‘public trust doctrine’ to English common law, and held that the Indian legal system includes the ‘public trust doctrine’ as part of its jurisprudence since it is based on English common law.¹⁵

Unlike *M.C. Mehta*, subsequent landmark cases have discussed Constitutional provisions in the context of the ‘public trust doctrine’. In the *2G Spectrum Case*, for instance, the Supreme Court recognised that the State holds natural resources on behalf of its people and that like any other State action, “constitutionalism must be reflected at every stage of the distribution of natural resources”, such as the principles enshrined in Article 39(b) of the Constitution of India.¹⁶

Article 39(b), falling under Part IV of the Constitution, is a Directive Principle of State Policy. Contrary to fundamental rights under Part III of the Constitution which are enforceable by Courts, the provisions of Part IV are not enforceable by any Court. Instead, it is the duty of the State to apply these principles in making law,¹⁷ and such Directive Principles of State Policy, along with fundamental duties, play a significant role when “testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition.”¹⁸

Article 39(b) provides that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good. The term “material resources” has been interpreted by Indian Courts to cover not only natural or physical resources but also moveable or immovable property and private and public sources of meeting material needs.¹⁹ Further, the term “distribute” under Article 39(b) has been considered to have a wide amplitude, encompassing all manners and methods of distribution

¹⁵ *M.C. Mehta v. Kamal Nath & Ors.*, (1997) 1 SCC 388, at ¶27, December 13, 1996 (Supreme Court of India).

¹⁶ *Centre for Public Interest Litigation & Ors. v. Union of India & Ors.*, (2012) 3 SCC 104, at ¶63, February 2, 2012 (Supreme Court of India).

¹⁷ Article 37, Part IV, Constitution of India, 1950.

¹⁸ *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors.*, (2005) 8 SCC 534, at ¶25, October 26, 2005 (Supreme Court of India).

¹⁹ *Mafatlal Industries Ltd. & Ors. v. Union of India & Ors.*, (1997) 5 SCC 536, at ¶307, December 19, 1996 (Supreme Court of India); See also, A. David Ambrose, *Directive Principles of State Policy and Distribution of Material Resources with Special Reference to Natural Resources – Recent Trends*, 55(1) *Journal of the Indian Law Institute* 1 (2013), available at <https://www.jstor.org/stable/43953624>.

which includes classes, industries, regions, private and public sections, etc.²⁰ “Common good” is the sole guiding factor under Article 39(b) for distribution of natural resources and if a policy subserves the “common good”, such policy is in accordance with the principle enshrined in Article 39(b), irrespective of the means of distribution adopted.²¹

The Supreme Court in the *2G Spectrum Case* also briefly mentioned Article 297 of the Constitution of India by quoting the discussion in the *Reliance* judgement.

In the *Reliance* judgement, along with its observations on the ‘public trust doctrine’ being a part of Indian law, the Supreme Court discussed the ‘public trust doctrine’ in the context of Article 297 of the Constitution of India. In brief, Article 297 outlines that things of value within territorial waters or continental shelf and the resources of the exclusive economic zone “shall vest in the Union and be held for the purposes of the Union.”²²

The Supreme Court in the *Reliance* matter held that the term “shall vest” implies a deliberate act by a body, i.e., the people as a nation who are the true owners, to vest in the Union potential resources in geographic zones in an act of trust and faith.^{[23][24]} According to the Court, such vesting of resources in the Union is being done with a specific set of instructions, viz., to “be held for the purposes of the Union.”²⁵ The core purport of the word ‘hold’ is to conserve, to preserve and to keep in place, and it only secondarily means ‘use’ or ‘disposal’.²⁶

Thus, as observed in the *Reliance* matter, it is the constitutional mandate that natural resources belong to the people of India and the nature of the word “vest” must be seen in the

²⁰ In Re: Special Reference No. 1 of 2012, (2012) 10 SCC 1, at ¶115-116, September 27, 2012 (Supreme Court of India).

²¹ *Ibid.*

²² Article 297, Part XII, Constitution of India, 1950.

²³ *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, (2010) 7 SCC 1, at ¶181-182, May 07, 2010 (Supreme Court of India).

²⁴ In the *Reliance* matter, the Supreme Court – while discussing the interpretation of the term ‘shall vest’ in Article 297 of the Constitution – also mentioned that the concept of PSONR well-established principle of jurisprudence, i.e., the true owners of natural wealth and resources are the people as a nation; *See also*, *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*, (2010) 7 SCC 1, at ¶181, May 07, 2010 (Supreme Court of India).

²⁵ *Ibid.*

²⁶ *Ibid.*

context of the ‘public trust doctrine’.²⁷ In other words, “natural resources are vested with the Government as a matter of trust in the name of the people of India.”²⁸

3. Other Models of Ownership over Natural Resources

Despite the fact that Indian Courts have generally upheld the ‘public trust doctrine’ in relation to natural resources, it is not the only framework applicable to natural resources in practice.²⁹ In particular, an examination of frameworks applicable to specific natural resources indicates that resources such as ground water and minerals may be subject to private ownership.

In the context of water, while private ownership in the case of ground water has formal backing in the law, ownership with reference to flowing surface waters and other surface water-bodies is not definitive or universal.³⁰ While surface water is considered to be held by the State by virtue of the ‘public trust doctrine’, ground water or water beneath the surface is considered to be owned by the owner of the land in accordance with the Indian Easements Act, 1882.³¹

In a similar vein, in the case of sub-soil or minerals, the Supreme Court has held that the ownership of mineral wealth and sub-soil should follow the ownership of the land unless such owner is deprived of the same by some valid legal process, and there is nothing in the law which declares that all mineral wealth and sub-soil rights vests in the State.^{[32][33]}

²⁷ Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1, at ¶84, May 07, 2010 (Supreme Court of India).

²⁸ Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1, at ¶91, May 07, 2010 (Supreme Court of India).

²⁹ There also exist State-level laws which appear to extend claims of State Government ownership (as opposed to trusteeship) over various types of natural resources, without accounting for the ‘public trust doctrine’ or notions of community ownership over resources. Section 20 of the Maharashtra Land Revenue Code, 1966 provides that, *inter alia*, all standing and flowing water – which are not the property of persons legally capable of holding property – and rights in or over the same are declared to be the property of the State Government. Similar language can be found in Section 2 of the Tamil Nadu Land Encroachment Act, 1905.

³⁰ Ramaswamy R. Iyer, Keynote Address at the ‘Water, Law and the Commons’ Workshop organised by the International Environmental Law Research Centre (IELRC), December 8-10, 2006, available at http://www.ielrc.org/activities/workshop_0612/content/d0623.pdf.

³¹ Report of the Committee on Allocation of Natural Resources, Cabinet Secretariat, Government of India (2011), pg. 128, available at http://www.cuts-ccier.org/pdf/Report_of_the_Committee_on_Allocation_of_Natural_Resources.pdf.

³² Threesiamma Jacob & Ors. v. Geologist, Dept. of Mining and Geology & Ors., (2013) 9 SCC 725, at ¶57, July 08, 2013 (Supreme Court of India) (*Threesiamma Jacobs Case*).

III. Community Rights Over Natural Resources in India

The legislative grant of rights to specific communities does not strictly conform to conventional conceptions of ownership. The extension of these rights may take a range of forms which varies according to the characteristics of the resources in question, their connection to an identified community, and extent of conferment of rights intended under individual legislations.

1. Common Property Resources (“CPRs”)

Before analysing the extension of community rights under individual legislation, it is important to recognise the concept of CPRs in relation to natural resources. In general, CPRs include resources meant for the common use of villagers, such as pastures, village forests, grazing grounds, etc. Individuals cannot claim ownership over CPRs.³⁴

As we shall subsequently see, the notion of ‘ownership’ in the context of statutes outlining community rights over forest resources is typically understood as a bundle of rights that may be exercised by the community over such resource. In particular, the Panchayats (Extension to Scheduled Areas) Act, 1996 (“PESA”) directed State Legislatures to ensure that the Gram Sabha is endowed with, *inter alia*, ownership of minor forest produce.³⁵ Similarly, the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act,

³³ In the *Threesiamma Jacobs Case*, the dispute before the Supreme Court was over *jenmom* land in the Malabar area and whether the owners of the *jenmom* lands are the proprietors of the soil and the minerals underneath the soil. The Court examined the various systems of tenure applicable in the Old Madras Province in the pre-colonial and colonial era. Since Article 294 of the Constitution provides for succession by the Union of India / corresponding State of the property vested in the British Crown, the Court sought to examine whether the British claimed proprietary rights over the soil in such lands. Among other conclusions, the Court noted that the British never claimed any proprietary rights in the relevant lands and therefore, *jenmis* (among others) are proprietors of the subsoil rights / minerals until deprived if the same by some legal process. It should also be noted that the Court did not examine or decide the question of whether private landowners are required to pay royalties to the State Government under mining leases for the extraction of minerals from private lands. A decision on this particular question would shed some light on the extent of private ownership rights over minerals and sub-soil in the face of the State’s exercise of power.

³⁴ Mahesh Kumar Gaur et al., *Common property resources in drylands of India*, International Journal of Sustainable Development and World Ecology (2018), available at <https://doi.org/10.1080/13504509.2018.1423646>.

³⁵ Section 4(m)(ii), Panchayats (Extension to the Scheduled Areas) Act, 1996.

2006 (“**FR Act**”) grants a right of ownership of minor forest produce, among other rights, to forest dwelling scheduled tribes and other traditional forest dwellers.³⁶

An expert committee of the Ministry of Environment and Forests (“**MoEF**”) recommended that “ownership means revenue from sale of usufructuary rights, i.e. the right to net revenue after retaining the administrative expenses of the department, and not right to control.”³⁷ In contrast, other expert committees have observed, on the basis of traditional notions of ownership, that the relevant communities are free to collect and sell the produce as they please, subject to existing laws.³⁸

Thus, there exists a lack of clarity regarding the scope of the right to ownership over minor forest produce. This confusion is further exacerbated by the obstacles faced by communities in exercising the right in practice. Expert committees have observed that although the ownership of minor forest produce vests with Gram Sabhas legally, in actual practice, access of the people to such minor forest produce remains contested.³⁹ Nonetheless, a distinction between usage rights and ownership is seemingly drawn under the FR Act.⁴⁰

2. Models of Community Rights

The identified legislations for the purpose of this paper extend rights to communities to varying degrees. The following is a discussion on the features of these legislations divided into three categories: (i) A Comprehensive Bundle of Community Rights, (ii) Benefit Sharing Arrangements, and (iii) Community Rights in Decision Making.

i. A Comprehensive Bundle of ‘Community Rights’

The most comprehensive conferment of rights among these laws exists under the FR Act. Here, community rights are provided to members of Schedule Tribes residing in, and

³⁶ Section 3(1)(c), The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

³⁷ Sanjoy Patnaik, *PESA, the Forest Rights Act, and Tribal Rights in India*, International Conference on Poverty reduction and Forests, Bangkok, September 2007, available at <https://lib.icimod.org/api/files/dbe48f24-ddcc-4b28-8af7-8d42d0646cb9/4946.pdf>.

³⁸ Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, Ministry of Panchayati Raj, Government of India, May 2011, at pg. 10, available at http://www.westbengalforest.gov.in/upload/forest_of_wb/ntf3.pdf.

³⁹ *Ibid.*, at pg. 26.

⁴⁰ *Ibid.*, at pg. 210.

dependent on, forests, and to members of other traditional forests dwelling communities which have historically resided in these forests.⁴¹ The power to vest these rights in the forest dwelling communities is provided under law to the Central Government. By declaration, it may vest these rights in communities which have been declared as either Schedule Tribes or other traditional forest dwellers in respect of the abovementioned forest rights. Although the rights vested remain heritable, they cannot be alienated or transferred by members of these communities⁴².

The ‘bundle of rights’ in the FR Act covers a range of their traditional activities. Traditional forest dwellers are provided with clearly specified entitlements including the right to live and hold forest land under common occupation, rights over traditionally collected minor forest produce, usufructuary rights, community rights of use and entitlement over fish and other water body products, community tenures of habitation, right to protect, regenerate and conserve community forest resources, right of access to biodiversity, and community rights to intellectual property and traditional knowledge.⁴³ The community rights recognised here relate directly to a traditional usage of the forest resources which has been historically utilised in that particular manner for many generations. Thus, the FR Act enumerates a specific list of rights embedded in the historical context of these forest dwellers. In fact, the rights under this law extend to protect other traditional rights, not explicitly specified, yet have been customarily enjoyed by these communities.⁴⁴

This notion of community rights is in contrast to a broad conception of ownership over natural resources for these communities. As discussed above, the term ‘ownership’ is used only in respect of the rights of these communities over ‘minor forest produce’ (in reference to all non-timber plant origin forest produce such as bamboo, honey, cocoons and wax) which have been traditionally collected by them.⁴⁵ The origins of this concept may be traced back to

⁴¹ Section 2 & 3, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁴² Section 4(4), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Section 3(c), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

the National Forest Policy of 1988, which specified that the domestic requirements of these tribal communities be the first charge on forest produce.⁴⁶ However, as previously noted, the lack of clarity in the scope of such ownership has resulted in some confusion.

ii. Benefit Sharing Arrangements

Other legislations provide communities with a benefit sharing mechanism of some form, rather than conferring a bundle of rights in biological or natural resources. One example is the benefit sharing mechanism provided under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (“**PPV&FR Act**”). Under this law, the rights of the community in the development of any plant variety are secured through the grant of compensation to the appropriate community. Unlike the mechanism under the FR Act, where the Central Government recognises the claims of forest communities, a community must first establish the existence of its claim under the PPV&FR Act to access benefits. Such a claim must identify an attributable contribution of the people of that village or local community in the evolution of the plant variety.⁴⁷

In a similar manner, the Biological Diversity Act, 2002 (“**BD Act**”) provides for a mechanism of equitable benefit sharing arising from the utilisation of biological resources. The National Biodiversity Authority under the BD Act is required to ensure that the terms and conditions for granting approval for utilisation, or transfer, of biological resources or knowledge secures equitable benefit sharing for the concerned local bodies.⁴⁸ In determining the quantum of such benefit sharing, the National Biodiversity Authority is required to engage in consultation with the local bodies and benefit claimers, aside from persons applying for approval.⁴⁹

Although not directed as specific communities, the Mines and Minerals (Regulation and Development) Act, 1957 (“**MMDA**”) framework also provides for a compensation mechanism for people in mining affected districts through the establishment of District

⁴⁶ Paragraph 4.3.4.3., National Forest Policy 1988, Government of India, at pg. 5, available at <http://asbb.gov.in/Downloads/National%20Forest%20Policy.pdf>.

⁴⁷ Section 41, Protection of Plant Varieties and Farmers' Rights Act, 2001.

⁴⁸ Section 21(1), Biological Diversity Act, 2002.

⁴⁹ Rule 20(5), of the Biological Diversity Rules, 2004.

Mineral Foundations as non-profit bodies by State Governments.⁵⁰ These bodies utilise royalties received in respect of mining leases towards welfare and schemes for mining affected populations.⁵¹

iii. Community Rights in Decision Making

Under the MMDA framework, power is provided to the State Governments to make rules in respect of minor minerals (such as building stones, ordinary clay, and ordinary sand).⁵² However, this power is tempered by the PESA Act, 1996, which mandates the recommendation of the Gram Sabha or Panchayats at the appropriate level prior to the grant of a prospecting licence or mining lease for minor minerals in these Scheduled Areas.⁵³

Another law that may be mentioned in this respect is the Wildlife (Protection) Act, 1972 (“**WP Act**”). State Governments are empowered under the WP Act to declare community land as a ‘community reserve’⁵⁴ for the conservation of local faun, flora and traditions.⁵⁵ Such declaration may be made only where the community has volunteered to conserve the wildlife and habitat.⁵⁶ Once a declaration of a community reserve is notified, changes in the land use pattern within the reserve must be as per resolution passed by the Community Reserve Management Committee (“**CRMC**”) and approved by the State Government. The CRMC is also empowered to regulate its own procedure for the conservation and management of the reserve.

IV. Enforcement of Community Rights

The legislations discussed above create different models for the realisation of community rights. Below, we discuss the governance framework that enables the enforcement of community rights over natural resources. We also highlight criticisms of the framework, especially in relation to poor implementation.

⁵⁰ Section 9B, Mines and Minerals (Regulation and Development) Act, 1957.

⁵¹ Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY), available at <https://mines.gov.in/writereaddata/UploadFile/PMKKKY%20Guidelines.pdf>.

⁵² Section 15, Mines and Minerals (Regulation and Development) Act, 1957.

⁵³ Section 4(k), Panchayats (Extension to the Scheduled Areas) Act, 1996.

⁵⁵ Section 36C, Wildlife (Protection) Act, 1972.

⁵⁶ The specific land must also not be within a pre-existing National Park or Sanctuary. *See also*, Section 36D, Wildlife (Protection) Act, 1972.

1. Local and Self-Governance Bodies

Local and self-governance bodies play an important role in the enforcement of community rights under the FR Act, BD Act and the WP Act.

For instance, Gram Sabhas⁵⁷ and village level institutions play a significant role in the enabling the exercise of community rights over naturally occurring resources. These bodies have several responsibilities under the FR Act including the regulation of access to community forest resources.⁵⁸ The Gram Sabhas are also empowered to make a determination of the nature and extent of community forest rights within the limits of their jurisdictions.⁵⁹

The Gram Sabha's powers in this respect are not unrestricted. Its resolutions determining the extent of forest rights must be forwarded to the Sub-Divisional Level Committees constituted under the FR Act. Persons aggrieved by a Gram Sabha resolution may also file a petition to the Sub-Divisional Level Committee. A further appeal may be made to the District Level Committees constituted under the FR Act. The decision of the District Level Committees in considering and approving forest rights are however final.⁶⁰

Additionally, under the FR Act, Gram Sabhas are also made responsible for monitoring and controlling the committees which prepare the conservation and management plans for the community forest resources. This is to be done equitably for the benefit of the forest dwelling communities.⁶¹

The Biodiversity Management Committees (“**BMCs**”) under the BD Act are also established by the institutions of local self-governance to implement specific provisions under its framework. BMCs are required to be constituted by every local body (Panchayat or

⁵⁷ Gram Sabhas under the FR Act are defined as a village assembly consisting of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women. *See also* Section 2(g), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁵⁸ Section 5(d), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁵⁹ Section 6, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁶⁰ *Ibid.*

⁶¹ Rule 4(f), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.

Municipality) for promoting conservation, sustainable use, and documentation of biological diversity.⁶² The ‘People’s Biodiversity Register’ prepared by these committees enable the identification of the appropriate BMC where from the biological resources have been accessed. Hence, benefits from use of a specific biodiversity resource may be provided directly to the appropriate Local Biodiversity Fund maintained by the appropriate BMC.

Similarly, in the case of the MMDA framework, the Gram Sabha or Panchayats are viewed as the appropriate representative of the community for approval of mining licenses and leases. This is in contrast to a model where consent for decision making regarding community rights would be sought from individual members of the community.

In the case of the WP Act, it is the voluntary decision making of the local community, which is enforced by the State Government through the creation of community reserves. Even after the community reserve is notified, community participation is secured through the CRMC to be constituted by the State Government, for management of the reserve. Here as well, the Village Panchayats and Gram Sabhas have a significant role to play in the nomination of members of the CRMC.⁶³

In essence, self-governance mechanisms with local level representation help implement and regulate community rights. Through these systems, legislations can enable some degree of decisional autonomy or consent from a community in the decision-making process surrounding their rights.

2. Role of Central and State Governments

The FR Act, BD Act and PPV&FR Act, all mandate the establishment of State Level Monitoring Committees, National and State level Statutory Authorities to regulate their respective rights. The role of the State is pronounced in determining the extent of community rights as well. For instance, under the FR Act, the Central Government may modify the forest rights or divert forest land under specific conditions, once these rights are vested in the

⁶² Section 41, Biological Diversity Act, 2002.

⁶³ Section 36D, Wildlife (Protection) Act, 1972.

communities.⁶⁴ The Central Government is also empowered to resettle these communities in order to create inviolate areas for the purpose of wildlife conservation. However, the rights of such forest dwellers must first be recognised and vested under the Forest Rights Act prior to resettlement from such National Parks or Wildlife Sanctuaries.⁶⁵

In the case of the PPV&FR Act, the Central Government is empowered to prescribe limits on the quantum of compensation that may be paid to a community which successfully establishes a compensation claim under the Act.⁶⁶ A similar provision exists under the BD Act, which empowers the National Biodiversity Authority to frame guidelines on benefit sharing in consultation with the Central Government.⁶⁷ In case of the WP Act, the approval of the State Government is necessary for making any changes to the land use patterns under a notified community reserve.

3. Criticisms of the Community Rights Framework

The centrality of government bodies in implementation of community rights has been subject to criticism. Despite the wide powers granted to such agencies for realisation of community rights, issues of implementation have continued to plague these legislations.

The National Committee on FR Act for instance noted that the number of applications received in regard to community forest rights was very low and acceptance rates abysmally lower.⁶⁸ A subsequent case study of the implementation of this law in Madhya Pradesh and Chhattisgarh indicated greater focus by the administration on addressing individual user rights claims as opposed to community claims and low levels of overall community engagement.⁶⁹

⁶⁴ Section 3 & 4, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁶⁵ See Guideline (iv)(d), Guidelines on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁶⁶ Section 41(3), Protection of Plant Varieties and Farmers' Rights Act, 2001.

⁶⁷ Section 21(4), Biological Diversity Act, 2002.

⁶⁸ Report of National Committee on Forest Rights Act, Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, December 2010, at pg. 86, available at https://www.thehinducentre.com/the-arena/current-issues/article26862787.ece/binary/FRA%20COMMITTEE%20REPORT_FINAL%20Dec%202010.pdf.

⁶⁹ Samarthan, *Recognition of Community Rights under Forest Rights Act in Madhya Pradesh and Chhattisgarh: Challenges and Way Forward*, Final Report 2011, at pg. 67, available at

The National Committee Report also found that there were significant delays in assessing community forest rights claims. The Report also found that claims were often rejected without clear justification and without an opportunity for appeal.⁷⁰ These issues gained significant attention before the Supreme Court in 2019, when an order was passed by the Court for the eviction of thousands of tribal and forest dwelling communities whose claims had been rejected. In this case, the issue improper procedure for rejection of claims were later taken into consideration by the Court.⁷¹

In the case of the BD Act, the access and benefit sharing guidelines issued by the Central Government reportedly involved in significant legal interpretation issues and have resulted in a large amount of litigation.⁷² Issues have also been faced by implementing agencies in convincing panchayati raj institutions that the BMCs would not compete with them over the exercise of powers over forest produce, in the interest of conservation of biodiversity.⁷³ Additionally, benefit sharing models such as the one proposed by the BD Act, in pursuance of the Convention on Biological Diversity (“CBD”), have also come under criticism from the scientific community for placing substantial barriers in the way of scientific research in genetic resources which could enhance conservation efforts.⁷⁴ While local communities under the BD Act are exempted from the intimation procedure under the law, other persons and

<https://www.undp.org/content/dam/india/docs/DG/recognition-of-community-rights-under-forest-rights-act-in-madhya-pradesh-and-chhattisgarh-challenges-and-way-forward.pdf>.

⁷⁰ Report of National Committee on Forest Rights Act, Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, December 2010, at pg. 92, available at https://www.thehinducentre.com/the-arena/current-issues/article26862787.ece/binary/FRA%20COMMITTEE%20REPORT_FINAL%20Dec%202010.pdf.

⁷¹ *Wildlife First v. Union of India*, Writ Petition (Civil) No. 109 of 2008, February 28, 2019 (Supreme Court of India).

⁷² Balakrishna Pisupati & Shyama Kuriakose, *Biodiversity Act: A jungle of confusion*, Hindu BusinessLine, 17, August, 2019, available at <https://www.thehindubusinessline.com/opinion/columns/biodiversity-act-a-jungle-of-confusion/article29112025.ece>. See also, *Divya Pharmacy v. Union of India*, Writ Petition (M/S) No. 3437 of 2016, December 21, 2018 (High Court of Uttarakhand).

⁷³ Kanchi Kohli, Shalini Bhutani, *Biodiversity Management Committees: Lost in Numbers*, Volume XLIX, Number 16, Economic & Political Weekly, 2014, at pg. 19, available at https://www.researchgate.net/publication/279919632_Biodiversity_Management_Committees_Lost_in_Number_S.

⁷⁴ Zhiwei Liu, *When the cure kills—CBD limits biodiversity research*, 29 June 2018, Science 360, at pg. 1406, available at http://research.amnh.org/users/lorenzo/PDF/Prathapan_et_al_2018.pdf.

entities must provide intimation to State Biodiversity Board prior to obtaining biological resources for various kinds of utilization.⁷⁵

Under the WP Act, the community reserve system has seen limited adoption. As of March 2020, 163 community reserves have been notified under the WP Act, the vast majority of which (158 reserves) are located in a specific region of India, the North-Eastern States of Nagaland and Meghalaya. As a result, community reserves cover a mere 0.03 percent of the country's geographical area.⁷⁶ Given the difficulties in enforcing community rights, in Section IV below we highlight the possible pitfalls in creating a community rights regime based on a natural resources analogy.

V. Extending the Natural Resources Analogy to Data

The NPD Report relies on analogies to natural resources in proposing a framework for the regulation of non-personal data, particularly in relation to community ownership. The NPD Report also envisions the State acting as a trustee of an individual's data in certain cases. In the preceding section, we have examined the jurisprudence on the ownership and exercise of community rights over natural resources. Below we discuss some key areas of divergence between data and natural resources which highlight the difficulties in extending the natural resources analogy to non-personal data.

1. Clear, narrow definition of 'community' enables the exercise of community rights

One of the main criticisms of the NPD Report with respect to community non-personal data is the vague definition⁷⁷ of a 'community'.⁷⁸ Before a regulatory framework surrounding

⁷⁵ Section 7, Biological Diversity Act, 2002.

⁷⁶ 17 years after the introduction of these provisions, the total area covered by these reserves is 833.34 square kilometres. See also, Community Reserves, National Wildlife Database, available at https://wii.gov.in/nwdc_community_reserves.

⁷⁷ Mozilla's Submission to the Public Consultation on the 'Report of the Committee of Experts on Non-Personal Data Governance Framework' in India, September 10, 2020, at pg. 10, available at <https://blog.mozilla.org/netpolicy/files/2020/09/Mozilla-Non-Personal-Data-Consultation-Submission-India.pdf>; See also, Prakhar Misra, Sharmadha Srinivasan, *The definitions of community and community data are too broad*, Financial Express, August 14, 2020, available at <https://www.financialexpress.com/opinion/the-definitions-of-community-and-community-data-are-too-broad/2054456/>.

⁷⁸ The NPD Report defines a community as "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

community non-personal data can be implemented, it becomes imperative to identify who forms a part of the ‘community’ and consequently, has the right to exercise and benefit from economic and other privileges over the community non-personal dataset. Any clarity on this aspect would also allow the other players in the non-personal data eco-system, such as the data custodian, data trustee, etc., to carry out their obligations toward a particular community with respect to the community’s non-personal data.

An examination of various statutes pertaining to environment and natural resources in Section III indicates that a clear understanding of who forms a part of the ‘community’ is necessary to assign rights and benefits over community resources. For instance, in the FR Act, community rights over and benefits arising from forest resources, community tenure, intellectual property and traditional knowledge, etc. can be accessed by forest dwelling Scheduled Tribes and other traditional forest dwellers on forest lands. The FR Act provide narrow definitions for ‘forest dwelling Scheduled Tribes’⁷⁹ and ‘other traditional forest dwellers’⁸⁰. Similarly, in statutes which provide communities with benefit sharing mechanisms (as opposed to explicit rights in biological or natural resources as provided in the FR Act), the identification of who can claim the benefit arising from the resource precedes the granting of benefits over the natural resource. For instance, the BD Act defines ‘benefit claimers’⁸¹ in relation to the biological resources which such benefit claimers conserve or hold traditional knowledge in. Once such benefit claimers have been identified, they may enjoy the various benefits arising from the use of biological resources, such as intellectual property rights as well as monetary and non-monetary compensation.

virtual community”; *See also*, Report by the Committee of Experts on Non-Personal Data Governance Framework, Ministry of Electronics and Information Technology, Government of India, at pg. 14-15.

⁷⁹ “forest dwelling Scheduled Tribes” means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities, Section 2(c), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁸⁰ “other traditional forest dweller” means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs, Section 2(o), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁸¹ “benefit claimers” means the conservers of biological resources, their by-products, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application, Section 2(a), Biological Diversity Act, 2002.

In contrast to natural resources, defining narrow communities that can exercise community rights over datasets is a much harder task.⁸² The fluid nature of the underlying data as well as the ‘community’, loosely defined categories in the NPD Report⁸³ and difficulties in identifying the members of a ‘community’⁸⁴ would further complicate the task of enabling community ownership of non-personal data.⁸⁵

2. Difficulties in enforcing community rights over natural resources

As discussed in Section IV, proper implementation of community rights provided in various environmental statutes continues to be a cause for concern, despite the fact that such legislations have been in effect for decades. Issues in implementation can be attributed to, *inter alia*, poor administration of claims submitted by communities to agencies implementing the statutes and ambiguous legal interpretation in subordinate legislation resulting in litigation.

The single biggest lacuna in the implementation of the FR Act, in particular, has been attributed to the slow progress of implementation of community forest rights.⁸⁶ Lack of awareness among communities, exclusion of certain communities from the process and lack of clarity regarding evidence needed to support the claims of the community are some of the

⁸² Mozilla’s Submission to the Public Consultation on the ‘Report of the Committee of Experts on Non-Personal Data Governance Framework’ in India, September 10, 2020, at pg. 10, available at <https://blog.mozilla.org/netpolicy/files/2020/09/Mozilla-Non-Personal-Data-Consultation-Submission-India.pdf>.

⁸³ Response to the Report by the Committee of Experts on Non-Personal Data Governance Framework released by the Ministry of Electronics and Information Technology in July 2020, Dvara Research, September 13, 2020, at pg. 9, available at <https://www.dvara.com/research/wp-content/uploads/2020/10/Our-Response-to-the-Report-of-the-Committee-of-Experts-on-Non-Personal-Data.pdf>.

⁸⁴ Divij Joshi, Anouk Ruhaak, Too Many Questions Remain Unanswered in India’s Proposal to Regulate Non-Personal Data, The Wire, August 11, 2020, available at <https://thewire.in/tech/india-non-personal-data-regulation-amazon-facebook>.

⁸⁵ This is only a limited criticism of the definition of a ‘community’ in the NPD Report. We have referred to these criticisms to highlight the fact that legislations granting community rights over natural resources may be explored in order to develop a definition of ‘community’ for the purposes of non-personal data.

⁸⁶ Report of National Committee on Forest Rights Act, at pg. 86, Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, December 2010, available at https://www.thehinducentre.com/the-arena/current-issues/article26862787.ece/binary/FRA%20COMMITTEE%20REPORT_FINAL%20Dec%202010.pdf

obstacles that have been faced by communities in their attempt to exercise community rights under the FR Act.⁸⁷

While the inability of communities to claim rights over forest resources may be linked to the sociological and historical context surrounding rights over forests and other environment resources, it is not implausible to assume that similar obstacles may appear in the context of data and community rights over non-personal data.

In addition to the fact that data is more fluid in its conception in comparison to natural resources, the proposals in the NPD Report regarding how community rights should be exercised are plagued with ambiguities. For instance, the NPD Report proposes that ‘data trustees’ will manage the non-personal data of a specific community and would have the ability to recommend soft obligations for ‘data custodians’ processing such data.⁸⁸ However, there is limited clarity regarding how such ‘data trustees’ will be identified and how they will operate.⁸⁹ Datasets of non-personal data could end up reflecting the interests of multiple communities, thereby potentially leading to a plurality of trustees for a particular dataset.⁹⁰ Ambiguities over which community’s rights will prevail in such a situation would hinder the meaningful exercise of community rights over such non-personal data.

Thus, it becomes necessary to be mindful of the difficulties faced in other regulatory frameworks, such as those pertaining to the environment and natural resources, while developing a framework for the exercise of community rights over data.

3. The Role of Data Custodians

In the case of environmental legislation, Gram Sabhas and local bodies play an important role in the enforcement of community rights.⁹¹ As discussed in Section III, the involvement of

⁸⁷ *Ibid.*, at pg. 87-88.

⁸⁸ Report by the Committee of Experts on Non-Personal Data Governance Framework, Ministry of Electronics and Information Technology, Government of India, at pg. 21.

⁸⁹ Trilegal, India: *Report by the Committee of Experts on Non-Personal Data Governance Framework*, MONDAQ, September 08, 2020, available at <https://www.mondaq.com/india/corporate-and-company-law/980142/report-by-the-committee-of-experts-on-non-personal-data-governance-framework>.

⁹⁰ *Ibid.*

⁹¹ Section 5(d) & 6, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

local and self-governance institutions by design is meant to represent and enforce the interests of communities.

By contrast, the NPD Report proposes that the ‘best interest’ of the community shall have to be channelled and communicated by the ‘data trustees’ to the ‘data custodians’.⁹² This may take the shape of advice, recommended data practices, or even guidelines.⁹³ Large data sets often contain millions of specific data points collected from individuals. Therefore, data trusts may struggle to understand the ‘best interests’ of their community, as compared local self-governance bodies. The particular case of the data trusts also being large government entities is discussed subsequently.

The ultimate responsibility of implementing community interests in the proposed NPD framework is placed on the data custodians. The largest data custodians on whom such responsibility is thrust are likely to be corporate entities and their interests may not always be aligned with those of the community. For instance, companies under the Companies Act, 2013 would have a parallel, competing obligation to operate in the best interest of its employees, shareholders and the broader community.⁹⁴ Such entities are not inherently structured to look out for the interests of communities whose data they collect and access. In order to realise the objectives of this proposal, significant points of conflict between communities and data custodians would need to be identified and addressed in a more substantive manner.

Additionally, the method of implementation of ‘best interest’ and ‘duty of care’ through the data trusts is yet to be clarified by the NPD Report. The lack of clarity regarding the nature of ‘duty of care’ could create ambiguity in implementation, which would be further complicated by the difficulty in defining and identifying the appropriate community.

4. State as the Representative of the Community

Drawing on the public trust doctrine, the NPD Report also proposes that, in the case of a large portion of community data, the corresponding government entities may be in a position

⁹² Report by the Committee of Experts on Non-Personal Data Governance Framework, Ministry of Electronics and Information Technology, Government of India, at pg. 19.

⁹³ *Ibid.*

⁹⁴ Section 166, Companies Act, 2013.

to act as the appropriate data trustee.⁹⁵ For instance, under this proposal, the Union Ministry of Health and Family Welfare would be the appropriate data trustee for the health non-personal data on diabetes among Indian citizens. This raises additional concerns on implementing community rights, with high-level government entities entrusted with crucial decision-making powers in relation to the data of local communities.

Such a model would be in stark contrast to the FR Act, in which the function of representation for decision making was allocated to institutions of local self-governance, as highlighted in Section III. This would also be a departure from the models under the PPV&FR Act and the WP Act, which grant enhanced agency to local community to create representative bodies of their own initiative, for the enforcement of their rights under law.⁹⁶

5. Government Access to Community Data

A final proposal under the NPD Report worth highlighting relates to the access of community non-personal data by the government itself. The NPD Report proposes that, in case of certain important community data that is pre-identified, the government may directly seek access to such community data from the private entities holding it. Such data may then be placed in appropriate data infrastructure to make it available to relevant parties.⁹⁷

This proposal has the potential to enhance State power and control over community data on the pretext of community rights. The vagueness of the scope of ‘community non-personal data’, previously noted, may lend even greater flexibility to the State in accessing data under the abovementioned proposal. In the manner that State control was extended to common property in the last century through the declaration of ‘reserved’ or ‘protected’ forests⁹⁸, this proposal raises the concern of exclusion of communities from exercising agency over their own non-personal data.

⁹⁵ Report by the Committee of Experts on Non-Personal Data Governance Framework, Ministry of Electronics and Information Technology, Government of India, at pg. 20.

⁹⁶ Section 41, Protection of Plant Varieties and Farmers’ Rights Act, 2001. *See also* Section 36C, Wildlife (Protection) Act, 1972.

⁹⁷ Report by the Committee of Experts on Non-Personal Data Governance Framework, Ministry of Electronics and Information Technology, Government of India, at pg. 35.

⁹⁸ Common Property Resources in India, Report No. 452, National Sample Survey Organisation Department of Statistics and Programme Implementation Government of India, 1999, at pg. 7, available at http://mospi.nic.in/sites/default/files/publication_reports/452_final.pdf.

As noted in the case of the BD Act (Section 7 of the Act), difficulties exist in striking the correct balance between the rights of the community and commercial interests. At present, the value chain of the data economy is predicated on the collection of large amounts of data and its eventual analysis, including by use of machine learning algorithms.⁹⁹ The success of these models has resulted in massive commercial interests and disproportionately large market capitalisations for firms operating in this space.¹⁰⁰ Such challenges in balancing the interests of the growing data economy and community rights are likely to be exacerbated with the introduction of a new and comprehensive regulatory framework with a high levels of government control¹⁰¹ and government access to community data.

⁹⁹ Hoi Wai Jackie Cheng, Marcelo LaFleur and Hamid Rashid, *Data Economy: Radical transformation or dystopia?*, Frontier Technology Quarterly, United Nations Department of Economic and Social Affairs, 2019, at pg. 2, available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/FTQ_1_Jan_2019.pdf.

¹⁰⁰ *Ibid.*, at pg. 3.

¹⁰¹ Anirudh Barman, Regulations Proposed by Draft Report on Non-Personal Data Need a Relook, Indian Express, July 30, 2020, available at <https://indianexpress.com/article/opinion/columns/licence-raj-data-protection-bill-regulation-6529852/>.