

Panelists

- Syed Junaid Imam - Member IT, Ministry Of IT & Telecom
- Saifullah Khan - Managing Partner, S.U.Khan Associates Corporate & Legal Consultants and Member of P@SHA Legal Committee
- Nighat Dad - Founder at Digital Rights Foundation
- Badar Khushnood - Co-Founder Bramerz (Pvt.) Ltd.

Moderator

- Mujeeb Zahur, MD S&P Global & VC P@SHA

Summary

In a world where data is now one of the most powerful assets to exist, the threat of its breach rings even louder. In a complex scenario like this, the first party to get affected is always the data subject, the person(s) to whom this data belongs to. The Personal Data Protection Bill 2020 intends to empower and bring into confidence the individuals whose data is used by the commercial, non-commercial and government agencies. The bill is also designed to ensure that the organizations making use of this data abide by International guidelines and processes set in place so they can benefit from it within ethical boundaries and knowledge of the data subject.

According to MoITT, the first step towards the formation of Personal Data Protection Bill is creating an Act which will then be made into a set of regulations upon discussing it with the relevant stakeholders and making the required changes.

A Data Protection Authority will be formed which will be incharge of making these regulations and creating SoPs, specific processes and micro-level details. In the world of tech where businesses are already operating 24/7 and making continuous use of data, a big challenge would be striking the right balance between benefits for the businesses and the protection of individuals' data this bill will come to provide.

For these ease of our audience, below are the definitions for some of the terms used in the bill followed by the suggestions and concerns raised by the panelists:

Data Subject: A natural person who is the subject of the personal data.

Data Controller: A natural or legal person or the government, who either alone or jointly has the authority to make a decision on the collection, obtaining, usage or disclosure of personal data.

Data Processor: A natural or legal person or the government who alone or in conjunction with other(s) processes data on behalf of the data controller.

Panel Discussion Points

- **Building the Capacity:** The Panelists suggested that in times of cloud and complex data structures, it is hard to interpret how data travels especially in the case of small businesses who will be acting as data subjects as well as data controllers. If reasonable time is not provided for capacity building, a lot of SMEs are feared to go out of business because of compliance overhead and unclear penalties mentioned in the proposed bill which need to be re-considered. It is also unclear which institutions (govt and non-commercial) will be able to provide support in these matters.

- **Autonomy of Government Institutions:** Although these laws have been told to be applicable on the government institutions which hold the most (sensitive) data, the proposed bill also enables the Federal government to provide exemption for whichever government institution(s) it decides. This can create problems if the regulations are not consulted properly with stakeholders. The more autonomous different government authorities are, the more this initiative will become person-dependent instead of being process oriented.
- **Awareness and Education:** In a country like Pakistan where the individuals/ data subjects are not well educated on the subject of privacy, it is very important to embed large and long-term awareness campaigns as a part of the culture instead of putting out short-lived sessions or seminars which do not trickle down to the common user.
- **Simplified Learning for the General Public:** Thorough explanation to individuals about their rights and what to do when they experience a violation/ breach of these rights should be the top priority. To make this easier for the data subjects, it is highly important to use layman terms in all communication instead of using complex legal/tech nomenclature. The most important stakeholder should be the data subjects and consideration towards basic human rights for everyone with special attention for women, minors and marginalized groups who are more vulnerable with respect to data protection.
- **Replication of Foreign Laws in Basic Structure:** The basic structure of Data protection Laws across most countries of the world is very similar which is what Pakistan should be adhering to as well. This will also help in the transfer of data between countries if enforced properly, which means more business.

- **Consistency in all aspects of the Bill:** Though the proposed bill covers several aspects, some of them are not properly clarified e.g clarity on the government institutions being a part of the bill, while others are too detailed such as the requirement of International firm(s) to have a presence in Pakistan. There is a need for a balanced, holistic view on all aspects which ensures consistency and zero bias-ness so it does not skew any decisions made under the future regulations.
- **Recruiting relevant people in the Data Protection Authority:** The capacity building issue should also be considered at the Data Protection Authority level; competent people with a strong background and a sound knowledge base of technologies, complexities of the data processing, handling and protection.
- **Awareness at the Judicial Level:** Judiciary would also need to be apprised about technicalities of it so they have a clear understanding of the complexities of the potential grievances. Otherwise, the situation will be like that of Cyber security cases.
- **Give the Proposal time for Improvement:** The panelists agreed that it is very important not to rush the proposed bill or the decisions around it during a global pandemic when the stakeholders can have a conflict of priority. The regulations require adequate homework and fact-checking which should be done once the calamity has passed.
- **Committee of Stakeholders:** A working group or a committee consisting of all stakeholders with the ability of critical evaluation should be formed to help draft the regulations and create long term engagement with the MoITT. This should

include stakeholders from the private sector/IT industry, legal and human right advisors. P@SHA, being the representative of the IT industry, also intends to play an integral part in this working group.

- **Prioritize Data Globalization & Data Transfer:** Provisions like Data globalization and Transfer of Data are very crucial and should be made a part of the statute instead of leaving the framework to be made by the Data Protection Authority in the future. These provisions can be inspired from other countries' data protection laws and customized as needed with the input of the stakeholders.
- **Phased Implementation & Exemptions for SMEs:** The Implementation of Data Protection laws should be phased; it should start with the public sector organizations such as NADRA as they have resources to implement and review data security. Any possible penalties on these organizations will be a learning point for the private sector, which should come second in the implementation phase. SMEs should come last in the implementation since they do not have that legal and financial support to defend themselves against any charges. Some or all of the laws can also be deferred for the SMEs which is done at International level as well.
- **International Firms in Pakistan:** Clarification on the implications and compliance costs towards International firms operating or planning to operate in Pakistan is very important to be made in this bill. Ambiguity in whether there should be a point of contact for the international firm(s) or actual Representative of the firm(s) in Pakistan also needs to be explained further in order to assess his/her level of liability against the liability of the organization(s).

- **Intermediary Liability Protection:** Consideration for Intermediary Liability Protection in the proposed bill to protect innovation, freedom of expression, privacy and other user rights is also an important point which needs further elaboration in the bill. As discussed by the panelists with the example of Social Media platforms, the liability resides with the commenter/ content creator(s) and not the Social media company itself and they should not be held accountable for a violation made by the former.
- Classification and definition of Critical Data in the proposed bill.

To watch the complete panel discussion, please view the links below.

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