



YLAC



**FOSTERING A SAFE
AND ENABLING
ECOSYSTEM FOR
INDIA'S YOUNG
DIGITAL NAGRIKS**

**NAVIGATING CHILDREN'S PRIVACY AND PARENTAL CONSENT UNDER
THE DPDP ACT 2023**

RELEVANT PROVISIONS OF THE DPDP ACT 2023



SECTION	REQUIREMENT
9(1)	The Data Fiduciary shall, before processing any personal data of a child or a person with disability who has a lawful guardian obtain verifiable consent of the parent of such child or the lawful guardian, as the case may be, in such manner as may be prescribed.
9(2)	A Data Fiduciary shall not undertake such processing of personal data that is likely to cause any detrimental effect on the well-being of a child.
9(3)	A Data Fiduciary shall not undertake tracking or behavioural monitoring of children or targeted advertising directed at children.
9(4)	The provisions of sub-sections (1) and (3) shall not be applicable to processing of personal data of a child by such classes of Data Fiduciaries or for such purposes, and subject to such conditions, as may be prescribed.
9(5)	The Central Government may, if satisfied that a Data Fiduciary has ensured that its processing of personal data of children is done in a manner that is verifiably safe, notify for such processing by such Data Fiduciary the age above which that Data Fiduciary shall be exempt from the applicability of all or any of the obligations under sub-sections (1) and (3) in respect of processing by that Data Fiduciary as the notification may specify.

STEPS NEEDED TO SATISFY VERIFIABLE PARENTAL CONSENT UNDER THE DPDP ACT, 2023



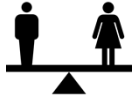
Before processing children's data, a Data Fiduciary must-

1. Provide accurate age of the user;
2. Ascertain the legitimacy of the relationship between the user and the parent or lawful guardian;
3. Verify the identity and consent of the parent or lawful guardian.

CHALLENGES WITH CURRENT PROPOSALS AROUND ID BASED VERIFICATION

- Reportedly, the Government is considering mechanism to authenticate the identity of parents and children through ID based verification.
- DigiLocker has only 200 million users as against 800 million internet users who will have to undergo age verification.
- There are issues of scalability, exclusion and potential circumvention with ID based verification.

INCLUSION



Rural-urban/ gender/ younger – older divide

54% of all Indian women had a mobile phone that they themselves used, but only 33% had ever accessed the internet. (NFHS 5)

Only **32%** women between 15-19 years own a phone that they themselves use. (India Inequality Report 2022)

Only **25%** people above age 15 had the ability to move or copy a file or folder. [NSO 78th Round (2020-21)]

EFFICACY



Parents' understanding of data privacy and issues with synchronisation

80% children reported that their parents seek help from them to access online platforms'

Difficulty in synchronization of consent collection leading to drop off/friction in accessing necessary information

Different outcomes for children with working parents vs parents at home + shared mobile usage and those with own phones

CHILDREN'S AGENCY



Impact on children's ability to explore and learn

Constant oversight and monitoring can lead to long term impact on overall development

Different outcomes for boys vs girls very likely; leading to same issues as online world

ICO fines TikTok £12.7 million for misusing children's data

Date **04 April 2023**

Type **News**

- More than one million UK children under 13 estimated by the ICO to be on TikTok in 2020, contrary to its terms of service.
- Personal data belonging to children under 13 was used without parental consent.
- TikTok "did not do enough" to check who was using their platform and take sufficient action to remove the underage children that were.

US & WORLD / POLICY / TECH

TikTok will pay \$5.7 million over alleged children's privacy law violations

DATA AND SECURITY

A third of GDPR fines for social media platforms linked to child data protection

TikTok and Instagram have amassed €765M in related fines

November 8, 2023 - 3:33 pm

Children easily bypassing age verification online, putting them at risk of abuse, eSafety commissioner says

**INTERNATIONAL
DEVELOPMENTS AROUND
AGE ASSURANCE**

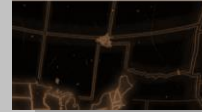


INTERNATIONAL DEVELOPMENTS AROUND AGE ASSURANCE

Australia will not force adult websites to bring in age verification due to privacy and security concerns

The eSafety commissioner is to work with industry on a new code to educate parents about how to access filtering software and limit children's access

Child safety bills are reshaping the internet for everyone



/ Lawmakers across the country are trying to protect kids by age-gating parts of the internet.

France approves law requiring parental consent for minors on social media

France approved a new law Thursday requiring social media platforms like TikTok to verify users' ages and obtain parental consent for those under 15 years in an effort to protect children online.

Issued on: 29/06/2023 - 14:33 - 2 min

Georgia kids will need parental consent to join social media if US Senate Republicans get their way

Arkansas, Texas and Utah also passed laws this year requiring parental consent for children to use social media. Some in Congress are also proposing parental consent for minors.

United States: FTC Seeks Comment On New Method To Obtain Parental Consent Under COPPA



**AN EXPLORATION OF ALTERNATIVE
METHODS OF GAINING
VERIFIABLE PARENTAL CONSENT**

Step 1: Alternative methods of age assurance

Age Assurance Mechanism	Accuracy	Privacy	Inclusivity	EoDB
Self Declaration	Low	High	High	High
Profiling	Moderate	Low	Moderate	High
Natural Language Processing	Moderate	Low	Moderate	Moderate
Facial Estimation/ Biometrics	High	Low	Moderate	Moderate
Capacity Testing	Moderate	Moderate	Moderate	Moderate
Account Holder Confirmation	Moderate	Moderate	Moderate	Moderate
ID based Hard Verification	High	Low	Low	Low

Step 2 & 3: Verifying relationship and getting parental consent

Hard Verification	Accuracy	Privacy	Inclusivity	EoDB
ID based Hard Verification	High	Low	Low	Low
Self declaration of relationship by child	Low	High	High	High

AGE ASSURANCE ACROSS DIGITAL VALUE CHAIN



DEVICE OR APP-STORE LEVEL



BROWSER LEVEL



PLATFORM LEVEL



- **May work for families where children have personal devices**
- **May remove friction while signing up on each platform**
- **A provision of app store level verification has been made in the Online Safety Act in the UK**

KEY TAKEAWAYS



- **Trade-offs:** Hard age verification v/s exclusion, equity, economic opportunities and privacy.
- **No One Size Fits All:** No technology solution that is universally accessible to people and is not reasonably prone to circumvention.
- **Research Gap:** Reasonable exploration of age assurance mechanisms, but lesser research on online habits and preferences of users across ages, establishing parent/guardian-child relationships, etc.
- **All-of-ecosystem approach:** Ensuring online safety of children through better platform design and education, shifting from over-reliance on parental consent.

WAY FORWARD



To satisfy the requirements under Section 9(1) of the DPDP Act, 2023, we recommend:

- **Code of Practice on age assurance mechanisms** corresponding to a data fiduciary's use-case and risk from their data processing.
- **Publication of self-assessment of risks** by data fiduciaries to increase transparency.
- **ID based Verification** for legally prohibited goods and services such as purchasing alcohol, cigarettes etc and **other Age Assurance mechanisms** for other use cases.
- **Consent Management Ecosystem** strengthened by engagement with international bodies such as ISO to develop standards for age verification and parental consent.
- **Consultative Group** consisting of data fiduciaries and civil society members especially those working on digital literacy and child development to deliberate the implementation of Section 9 of the DPDP Act, 2023.



THANK YOU