

Practical Mechanisms to Protect Children's Data

Thursday, 22 July 2021, 1300 – 1430 IST

Background Note

Introduction

In 2019, 41% of India's 503 million internet users were estimated to be below the age of 19 years. This number would have surely gone up by now. While the pandemic surely provided a boost towards digitalization over and beyond the normal course, it also brought out the inequities and digital divide into sharper focus such as by forcing children to learn online notwithstanding the lack of access to devices and services with little choice or agency.

All such endeavours inevitably entail collection, storage, processing and often sharing of children's data, something that must be debated and discussed in more detail in view of the specific provisions for children's data under the Personal Data Protection Bill 2019 (PDPB),¹ which is currently pending with the Joint Parliamentary Committee (JPC) since 2019.² Hence, CUTS is organising this multi-stakeholder webinar with panellists representing lawmakers, law enforcement, civil society, research and business, to deliberate upon the following key issues.

Binary Age Threshold of Children & Parental Consent (S.3(8) & S.16(2))

The PDPB defines a child as a person under 18 years of age, and requires data fiduciaries to obtain parental consent before processing their data. Personal data protection laws of other jurisdictions have adopted lower age thresholds for defining children. For instance, European Union's General Data Protection Regulation (GDPR) has fixed 16 years as the age threshold,³ while United States Children's Online Privacy Protection Act, 2000 (COPPA) has laid 13 years as the age threshold.⁴ Notably, California Consumer Privacy Act (CCPA) classifies a child as under 16 years of age, although they are held to be competent to provide consent if they are over 13 years old.⁵

Furthermore, one needs to appreciate that children are digital natives, while their parents are likely to be digital migrants, especially in India; thereby making children more digitally aware and literate. Also, it remains to be checked, as to what practical mechanisms will need to be implemented for transferring the right of providing consent from parents to children, once they attain maturity.

¹ Personal Data Protection Bill 2019, available at:

http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/373_2019_LS_Eng.pdf

² Joint Parliamentary Committee on the PDPB, details available at:

http://loksabhaph.nic.in/Committee/CommitteeInformation.aspx?comm_code=73&tab=1

³ Refer Article 8 of the GDPR, available at: <https://gdpr-info.eu/art-8-gdpr/>

⁴ COPPA, available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=4939e77c77a1a1a08c1cbf905fc4b409&node=16%3A1.0.1.3.36&rgn=div5>

⁵ California Consumer Privacy Act, available at: <https://oag.ca.gov/privacy/ccpa>

Blanket prohibitions on tracking and behaviour monitoring of children (S.16(5))

Experts have argued that such prohibitions may hinder child safety measures being implemented by data fiduciaries, since it may restrict the use of software for identifying Child Sexual Abuse Material (CSAM), as well as online predatory behaviour.

Implementation Gaps/Challenges in Age Verification (S.16(2))

The PDPB requires data fiduciaries to verify the age of children, before processing their personal data, while the manner for such age verification would be specified by regulation. The proposed Data Protection Authority (DPA) will specify Codes of Practice (CoP) in this regard. However, there is a lack of clarity on how age verification would be practically implemented. There is a need to explore global technological developments, frameworks, and standards in this regard.

Agenda

Time (IST)	Description	Speakers
1300–1303 hrs	Welcome Address	Amol Kulkarni , Director Research, CUTS
1303–1308 hrs	Setting the Context	Deepak Maheshwari , Distinguished Fellow, CUTS
1308–1400 hrs	Panel Discussion, Moderated by Deepak Maheshwari , Distinguished Fellow, CUTS	Amar Patnaik , Hon'ble MP, Rajya Sabha, and Member of JPC on PDPB'19 Gaurav Gogoi , Hon'ble MP, Lok Sabha, and Member of JPC on PDPB'19 Brijesh Singh , Inspector General, Maharashtra Police Deepak Tewari , Founder & CEO, Privately SA, Switzerland Janice Verghese , Manager, Cyber Peace Foundation Aditi Chaturvedi , Head of Legal, Koan Advisory Group
1400–1420 hrs	Q&A Session	Moderated by Deepak Maheshwari , Distinguished Fellow, CUTS
1420–1425 hrs	Closing Remarks	Deepak Maheshwari , Distinguished Fellow, CUTS
1425–1430 hrs	Vote of Thanks & Way Forward	Sidharth Narayan , Assistant Policy Analyst, CUTS

Register for the webinar at: <https://bit.ly/36MkeWU>

The webinar would also be casted live on CUTS YouTube channel.