

Digital Personal Data Protection Act 2023

A Tectonic Shift in the Data Protection Landscape in India

23 August 2023



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DIGITAL PERSONAL DATA PROTECTION ACT 2023 | JOURNEY SO FAR

24 August 2017

Supreme Court, in the case of K.S. Puttaswamy v. Union of India, recognised privacy as fundamental right

27 November 2017

Justice B N Srikrishna Committee released White Paper on Data Protection Framework for India

27 July 2018

Srikrishna Committee submitted Draft Personal Data Protection Bill 2018 (**2018 Bill**) to Ministry of Electronics and Information Technology (**MeitY**)

11 December 2019

Personal Data Protection Bill 2019 (**2019 Bill**) was tabled in Lok Sabha

18 November 2022

Draft of Digital Personal Data Protection Bill 2022 released for public consultation till 17 December 2022

3 August 2022

2019 Bill (with recommendations suggested by JPC) withdrawn from Parliament

16 December 2021

JPC tabled its report along with suggested revisions to the 2019 Bill in the Parliament

17 December 2019

2019 Bill was referred to a Joint Parliamentary Committee (**JPC**)

5 July 2023

Cabinet approved Digital Personal Data Protection Bill 2023

3 August 2023

Latest draft of Digital Personal Data Protection Bill 2023 tabled in Parliament

**7 August and
9 August 2023**

Latest draft of Digital Personal Data Protection Bill 2023 passed by Lok Sabha (7 August 2023) and Rajya Sabha (9 August 2023)

11 August 2023

Digital Personal Data Protection Bill 2023 received Presidential assent and published in Official Gazette

DIGITAL PERSONAL DATA PROTECTION ACT 2023 | KEY DEFINITIONS

Personal data

- any data about an individual who is identifiable by or in relation to such data

Data Fiduciary

- any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data

Data Processor

- any person who processes personal data on behalf of a data fiduciary

Data Principal

- the individual to whom the personal data relates and where such individual is— (i) a child, includes the parents or lawful guardian of such a child; and (ii) a person with disability, includes her lawful guardian, acting on her behalf

Processing

- in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction

INDIA AND EXTRA-TERRITORIAL SCOPE*

Processing of **PERSONAL DATA within India** when:

- personal data is collected in digital form
- personal data is collected in non-digital form but is then digitized subsequently

Processing of **PERSONAL DATA outside India**, if personal data processing is in connection with:

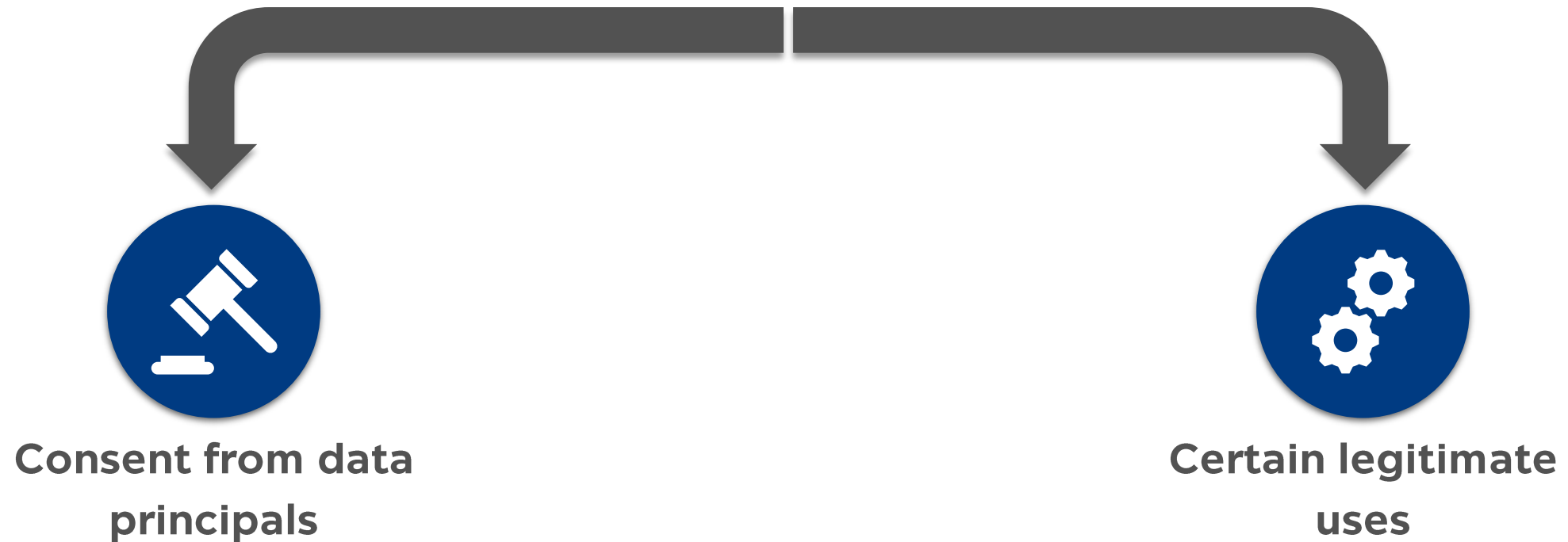
- activity of offering goods or services to data principals within India

Excluded from applicability:

- personal data processed by individual for personal / domestic purpose
- **personal data made public** by (i) data principal; (ii) any other person under legal obligation to make such data publicly available

****Processing of personal data outside India if such processing is in connection with any profiling of data principals within India has been deleted***

GROUNDS FOR PROCESSING PERSONAL DATA



- Privacy notice to accompany or precede consent request
- **For legacy data, fresh privacy notice to be issued as soon as reasonably practicable**
- Notice to include:
 - personal data collected
 - Specified purpose
 - How to exercise right to withdrawal of consent
 - How to exercise right of grievance redressal
 - manner of complaining to Board
- Option to access privacy notice in English or languages enlisted in Eighth Schedule to Indian Constitution



CONSENT REQUEST

Consent of data principal to be **specific, informed, unconditional and unambiguous, with clear affirmative action, and limited for specified purpose**



Option to **withdraw consent** at any time



Provide **contact details of Data Protection Officer** (for significant data fiduciaries) **or any authorised person for responding to communications from data principals for exercising their rights**



Option to access consent request in **English or any language specified under Eighth Schedule to Indian Constitution**

LEGAL BASES FOR PROCESSING OF PERSONAL DATA | CERTAIN LEGITIMATE USES (KEY EXAMPLES)

1

For specified purpose for which data principal has voluntarily provided her personal data to data fiduciary, and in respect of which she has not indicated to data fiduciary that she does not consent to use of her personal data

2


For employment or for safeguarding employer from loss or liability, such as prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information or provision of any service or benefit sought by data principal who is an employee

3

For responding to medical emergency

4

For compliance with any judgment or order issued under any law, for fulfilling obligations under law



To act as single point of contact to enable data principal to give, manage, review and withdraw consent

01

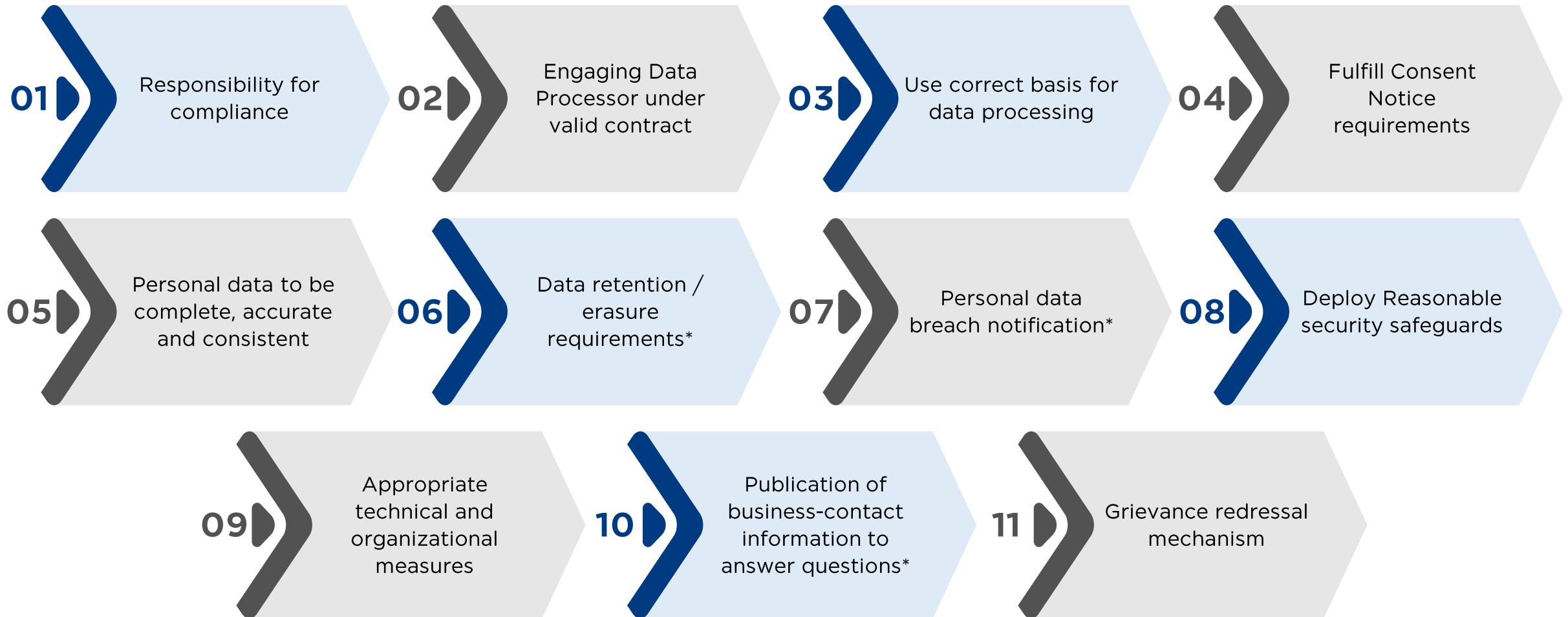
Consent to be managed through an accessible, transparent and interoperable platform

02

To be registered with Data Protection Board of India

03

DPDP Act | Key compliances for data fiduciaries



*Central Government to notify rules

DPDP Act | Additional compliances for significant data fiduciaries

Certain Data Fiduciaries may be classified by the Central Government as '**Significant Data Fiduciary**' based on factors such (a) as the volume and sensitivity of personal data, (b) risk to the rights of Data Principal, (c) risk to electoral democracy, etc.

*Central Government to notify rules

Additional Obligations



Appoint a Data Protection Officer based in India who shall be responsible to the Board of Directors or similar governing body of SDF



Appoint an Independent Data Auditor to evaluate compliance of SDF with provisions of the Act



Other Measures: (a) Periodic Data Protection Impact Assessment* (b) periodic audit (c) such other measures in relation to the objectives of the Act*

DPDP Act | Additional obligations for children's data



CHILD



Individual who has not completed the age of 18 years

Obtain verifiable parental consent* for child & person with disability



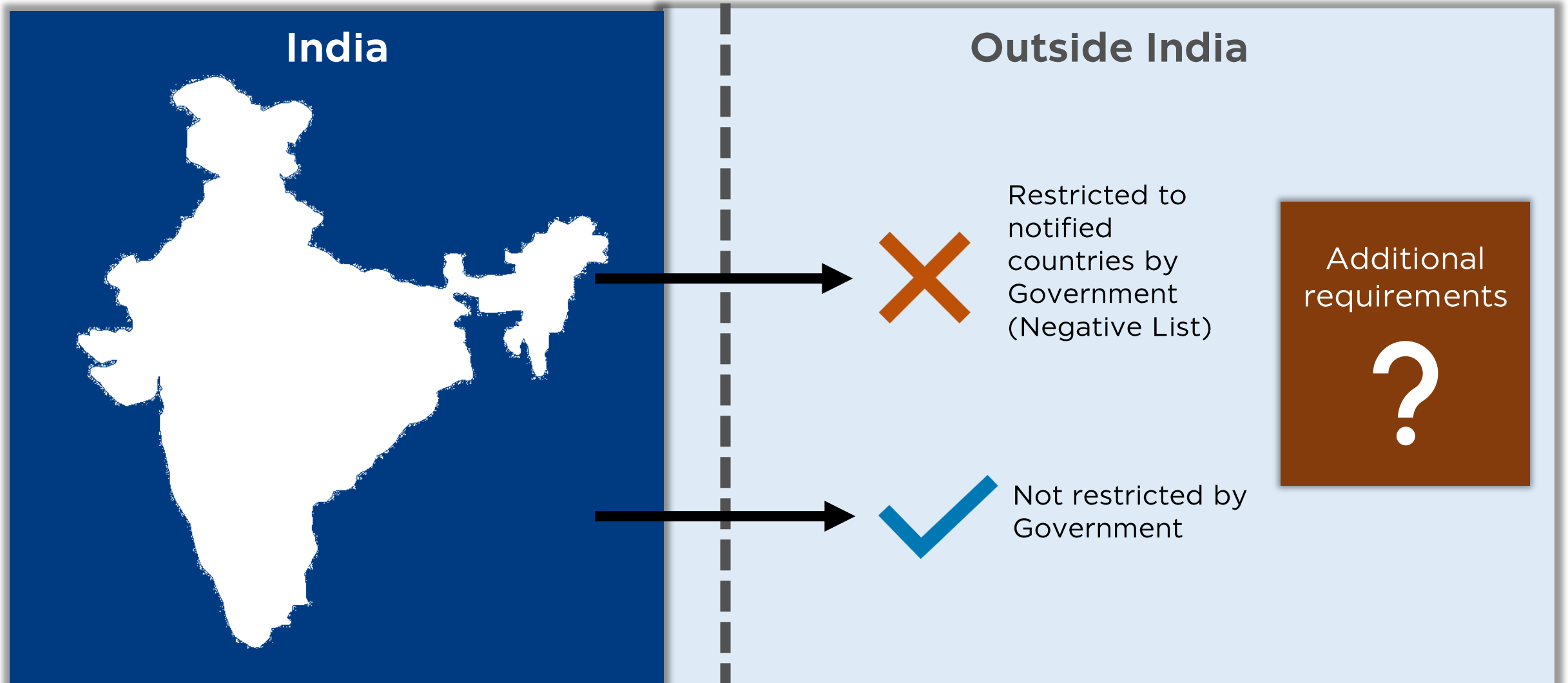
No processing that is likely to cause detrimental effect on well-being of child

No tracking or behavioural monitoring of children or targeted advertising directed at children

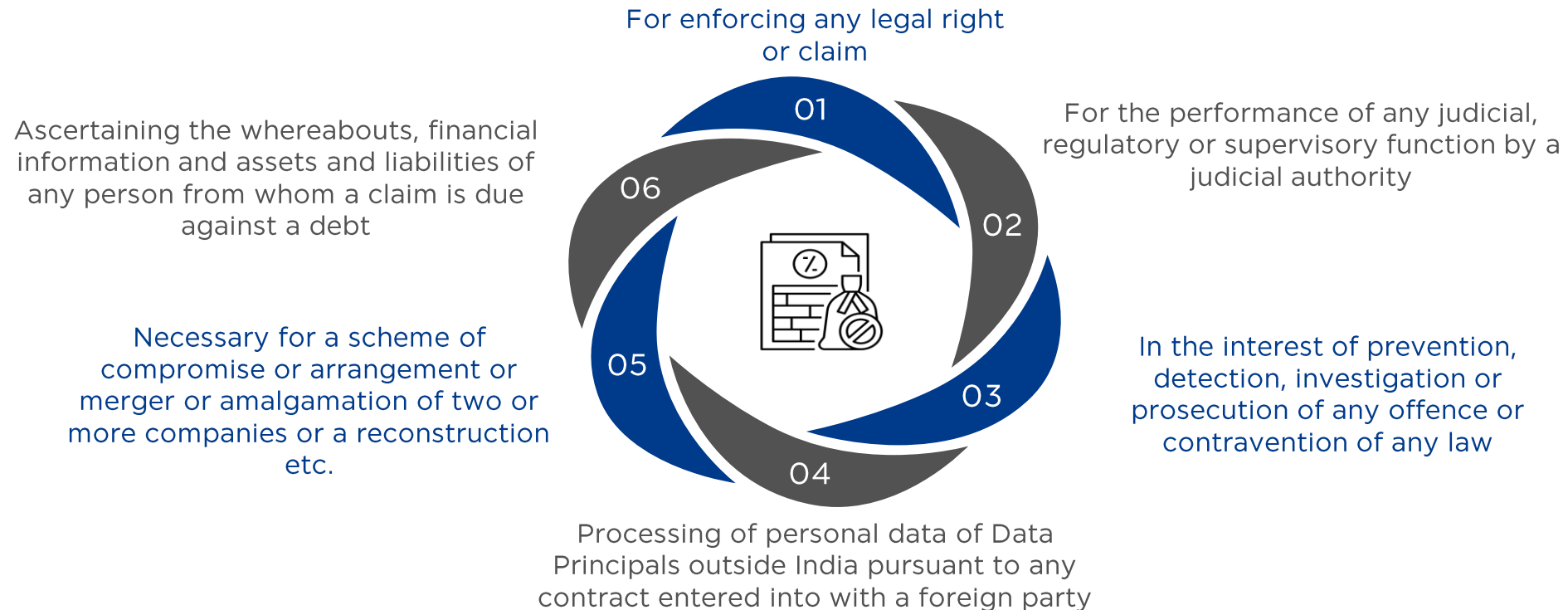


Exempted from processing restrictions:
(a) for purposes to be prescribed
(b) where processing is verifiably safe
Government may specify age

*Central Government to notify rules



Certain provisions of the DPDP Act are exempted under the following circumstances:

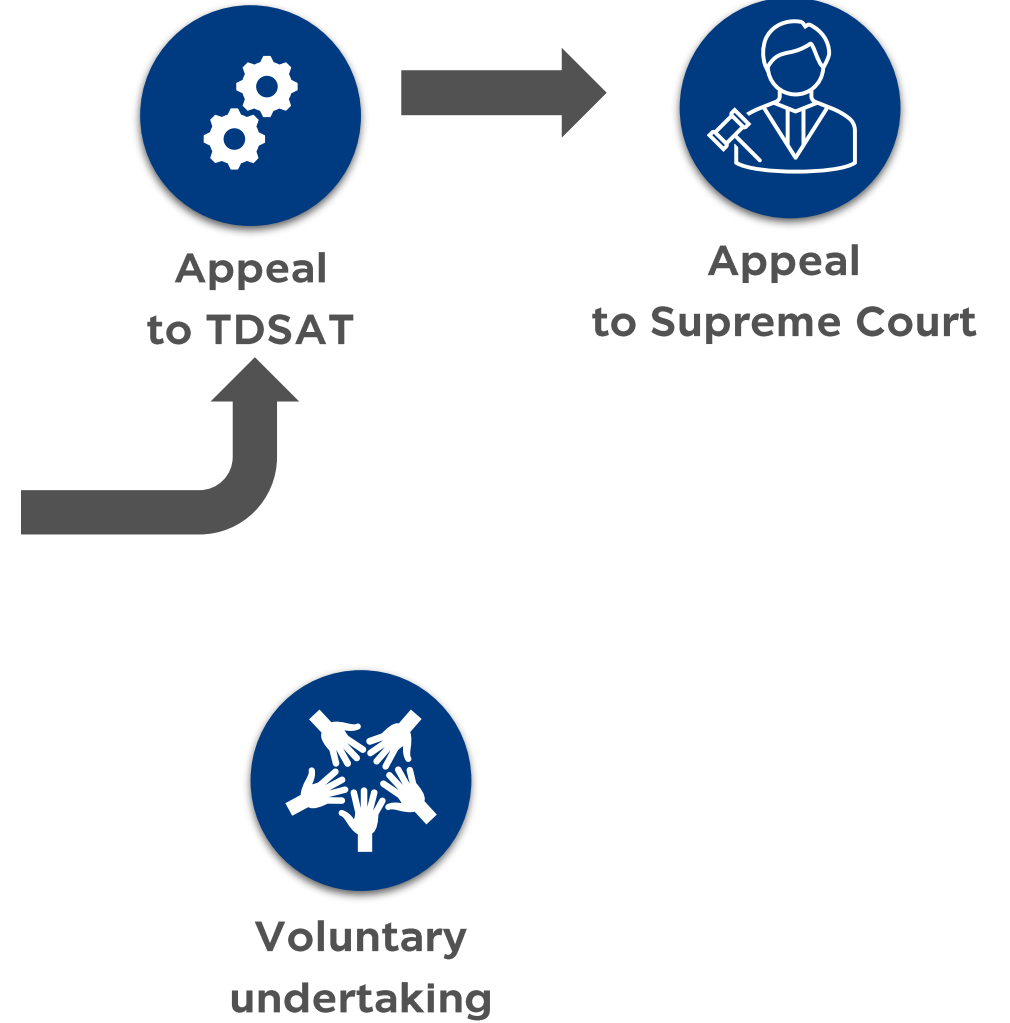
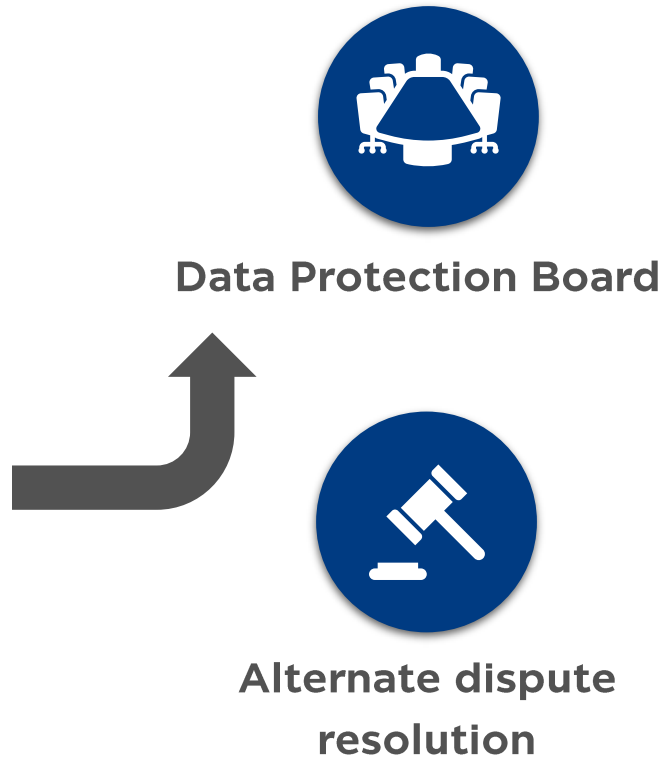


Government Exemption

Exemptions for Start-ups

Other Exemptions

DPDP Act | Oversight mechanism



PENALTY	SUBJECT MATTER OF PENALTY
May extend to INR 250 crores (approx. USD 30 million)	Failure of data fiduciary to take reasonable security safeguards to prevent personal data breach
May extend to INR 200 crores (approx. USD 24 million)	Failure to notify Data Protection Board of India and affected data principals in case of personal data breach
May extend to INR 200 crores (approx. USD 24 million)	Non-fulfilment of additional obligations in relation to personal data of children
May extend to INR 150 crores (approx. USD 18 million)	Non-fulfilment of additional obligations by significant data fiduciaries
May extend to INR 10,000 (approx. USD 120)	Non-compliance with duties of data principals
May extend to INR 50 crores (approx. USD 6 million)	Residuary penalty

*** For breach of voluntary undertaking, up to the extent applicable for breach**

Digital Personal Data Protection Act 2023 | Key highlights

Covers **digital** personal data only

01

02

No non-personal data coverage

No categorization of personal data into sensitive / critical personal data

03

04

Transfer of personal data allowed to all jurisdictions (**unless specifically prohibited**); **law providing higher degree of protection or restriction on personal data transfer to prevail**

No specific obligations on **data processors**, **with compliances largely on data fiduciaries**

05

06

Enhanced obligations for children's personal data, e.g. bar on targeted advertisements, tracking/monitoring children; age of consent – 18 years with **possibility of lowering age**

No materiality or risk-based threshold for notifying personal data breaches; **obligation on data processors to notify for breaches removed**

07

08

High financial penalties (based on certain parameters); no criminal sanctions; penalty cap of **INR 500 crores** for **significant** non-compliances **removed**

Q&A



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