KHAITAN &CO

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DATA PRIVACY AND PROTECTION

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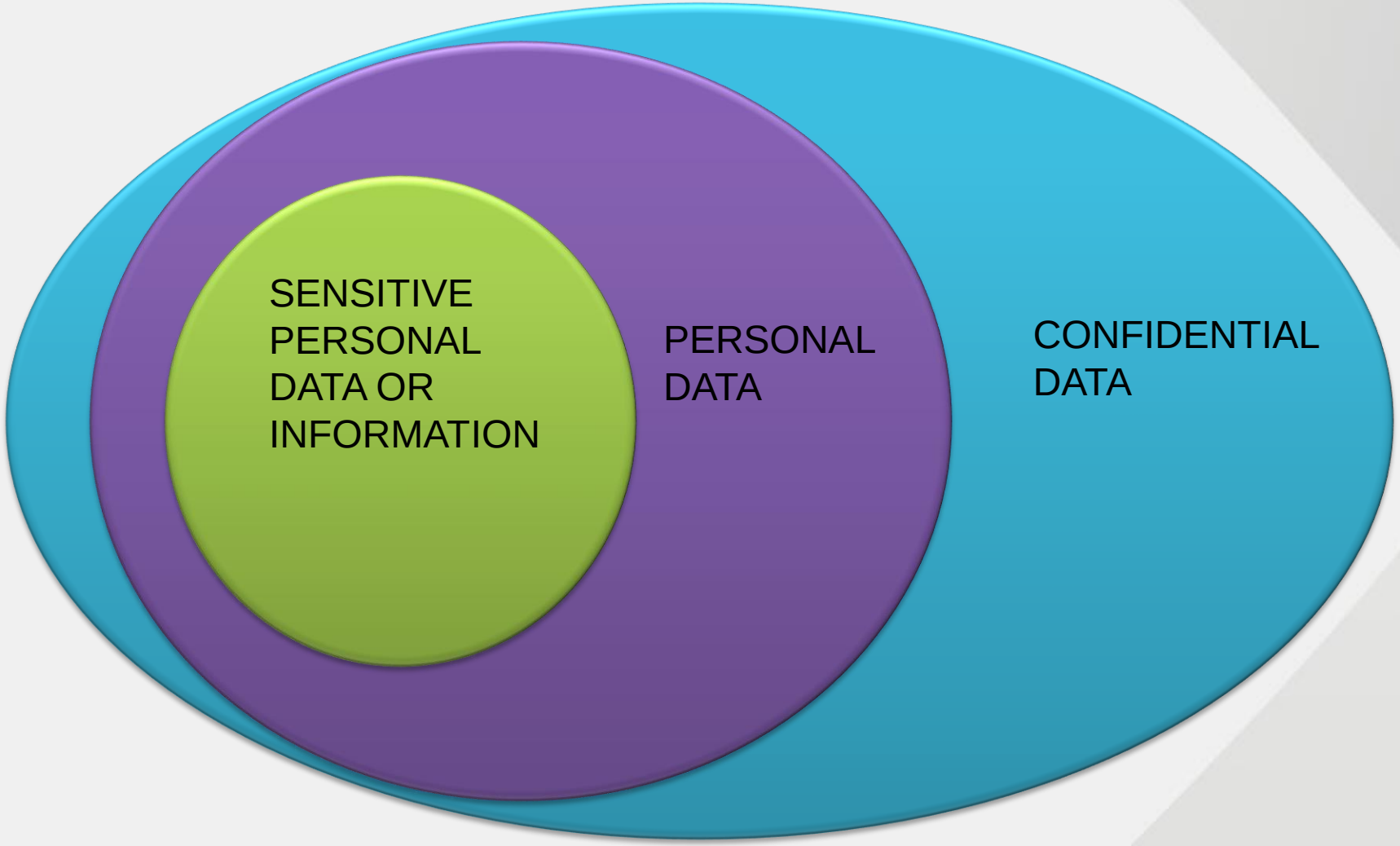
Route Map

Present Legal Framework in India

DATA PROTECTION LAW	• No exclusive legislation
RIGHT TO PRIVACY	• Fundamental Right under Article 21 of the Indian Constitution
PRIMARY LEGISLATION	• IT Act and the IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 ("**Privacy Rules**")
OTHER LEGISLATIONS	• The Indian Penal Code 1860, etc • Sectoral regulations

Privacy by Design

Data Privacy/ Protection from an Organization's Point of View



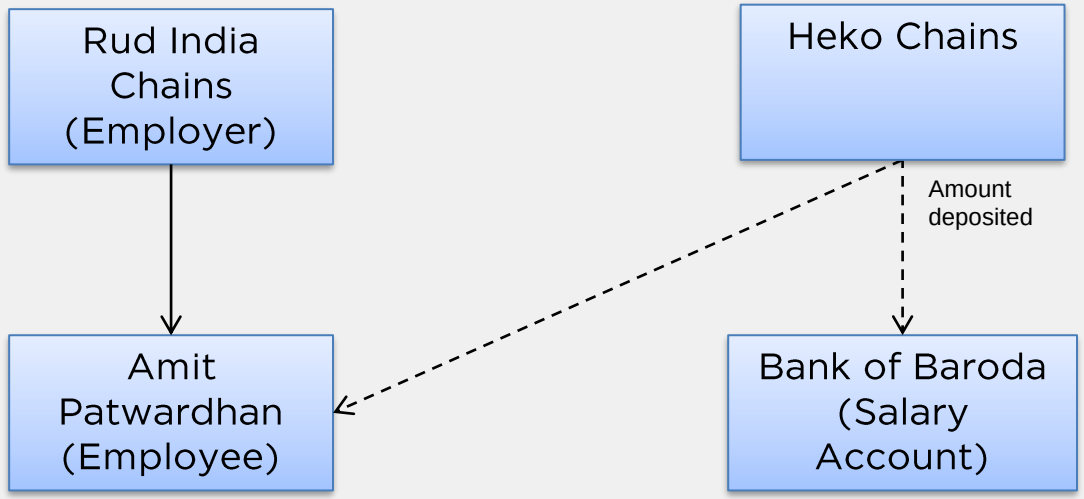
IT ACT | Few Relevant Sections

- Section 43 A:
  - Relates to any body corporate possessing, dealing or handling any **sensitive personal data or information** in a computer resource
  - Where such body corporate is negligent in implementing and maintaining **reasonable security practices and procedures**
  - Causes wrongful loss or wrongful gain to any person
  - Liable to pay **damages by way of compensation** to the affected person

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011

Personal Information: Information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person

Case Law | Amit Patwardhan v BOB



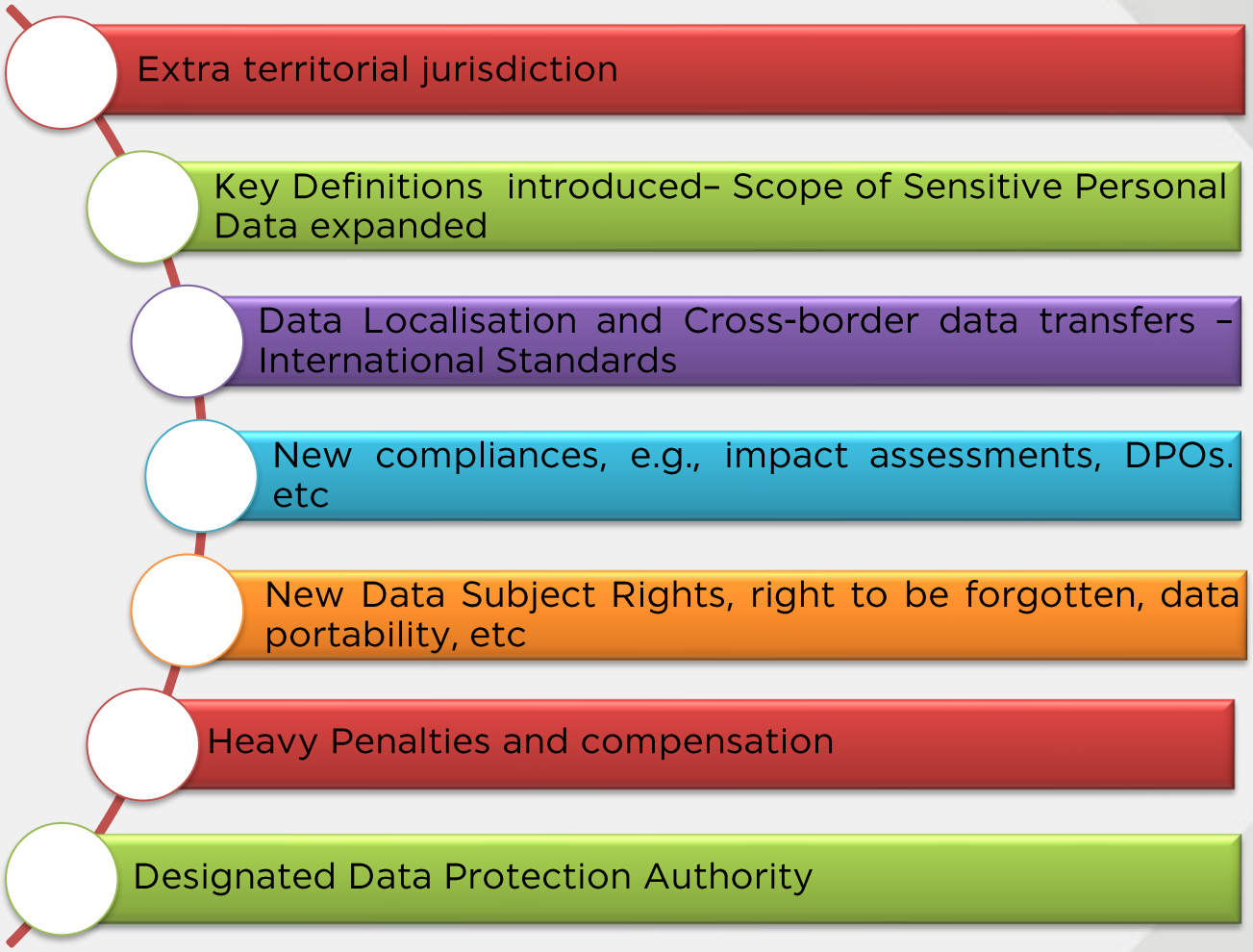
- Bank Account Statements held to be SPDI
- Amit Patwardhan not awarded any amount in the first case with his employer
- In the present case, Bank of Baroda asked to pay a token compensation of INR 5,000

Privacy Rules | Watch-Out Areas

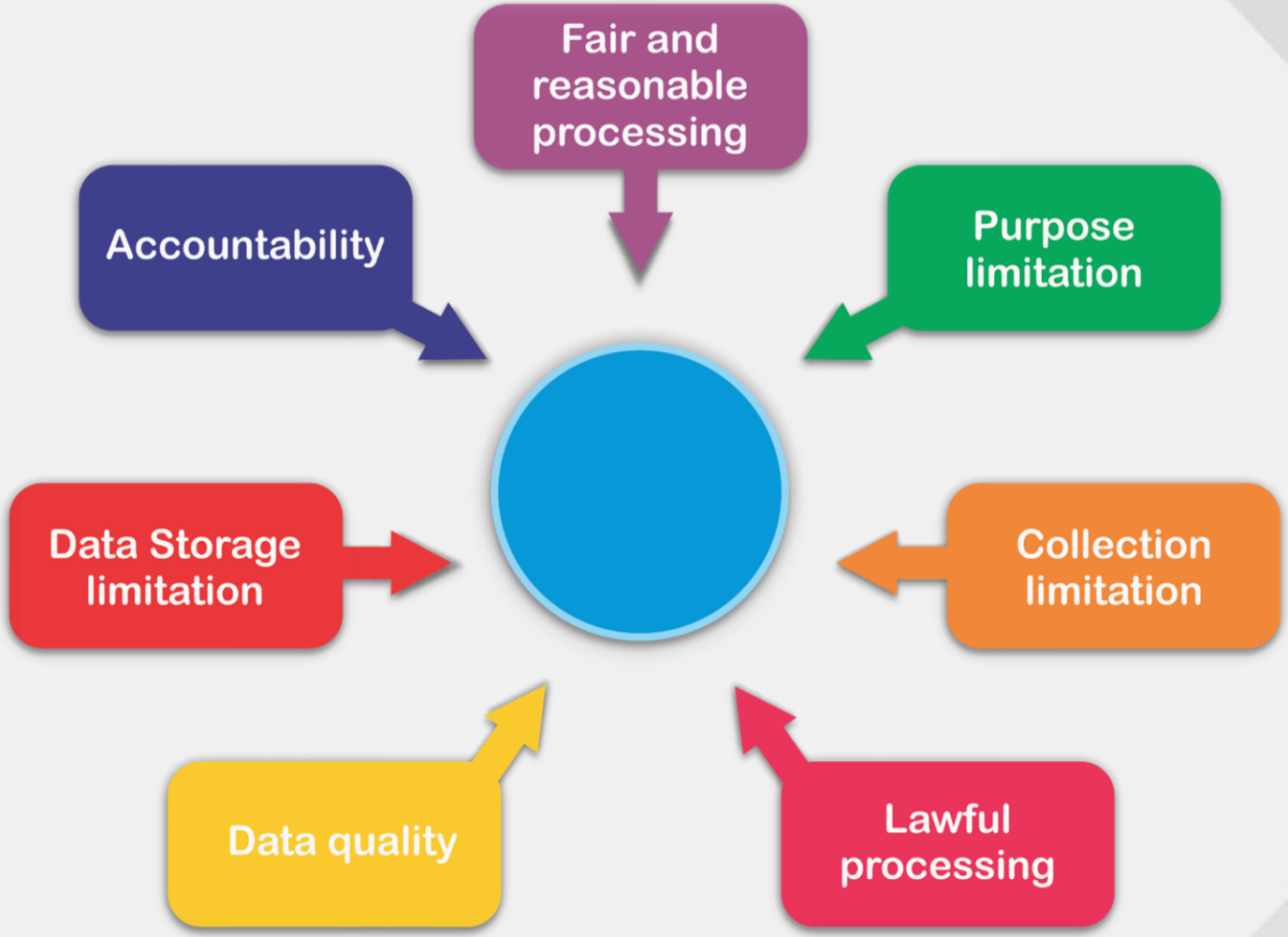
IT ACT | Few Relevant Sections

- Section 72 A:
  - Relates to any person providing **services under lawful contract** wherein personal information is accessed
  - There is intent or knowledge of wrongful loss or wrongful gain being caused through disclosure of such personal information
  - Disclosure is made **without the consent of the person** concerned **or in breach of a lawful contract**
  - Liable to be **punished with imprisonment** up to **3 years**, or with **fine** up to **INR 0.5 Million**, or with **both**

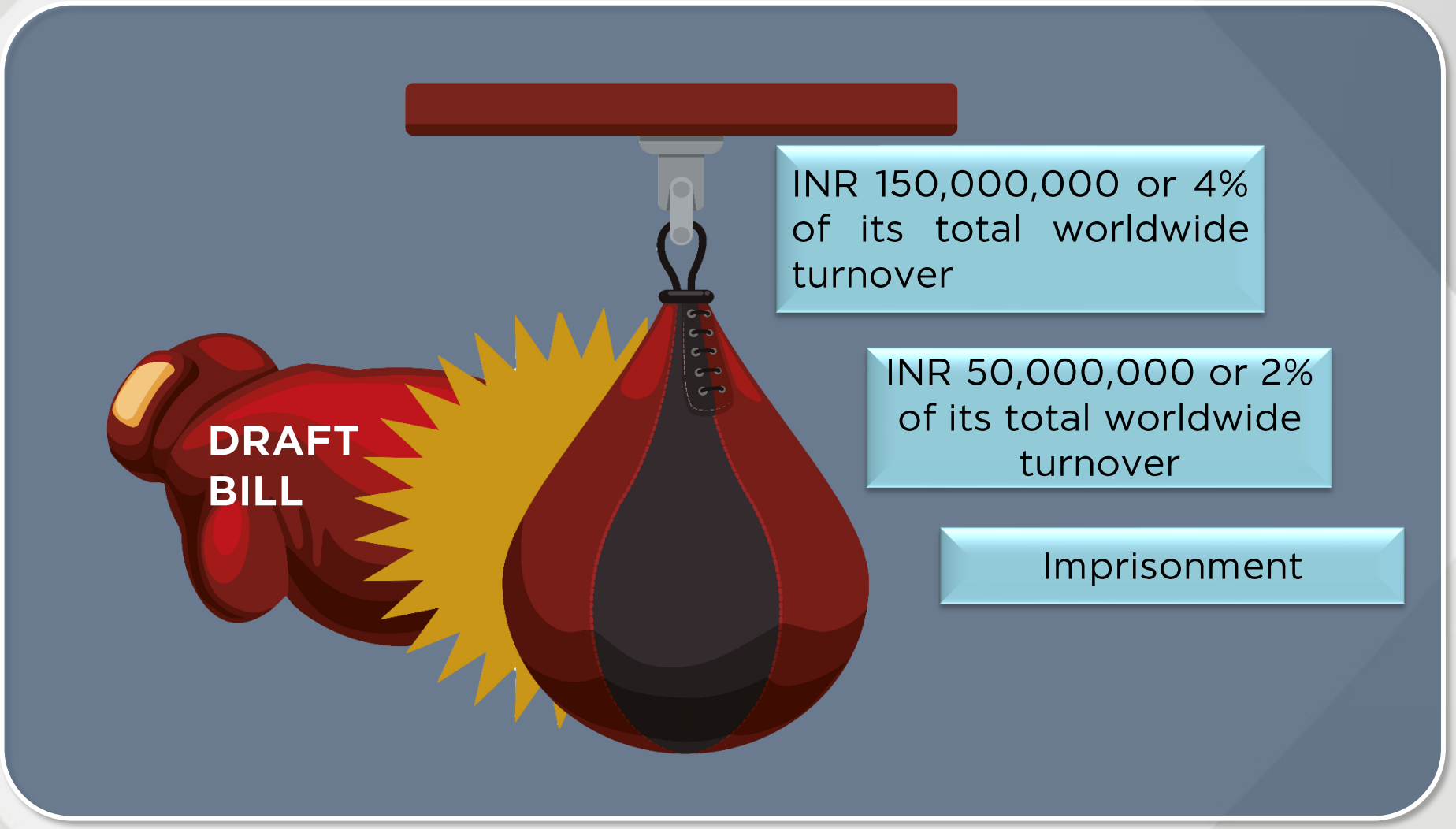
Personal Data Protection Bill 2018 (Draft Bill) | Overview



Quick Attention | Principles of Data Protection



Draft Bill | Penalties



Draft Bill | Key Definitions

Data Fiduciary

- Any person, including the State, a company, any juristic entity or any individual who determines the purpose and means of processing of Personal Data

Data Processor

- Any person, including the State, a company, any juristic entity or any individual who processes Personal Data on behalf of a Data Fiduciary but does not include an employee of the Data Fiduciary

Data Principal

- A natural person to whom the Personal Data relates

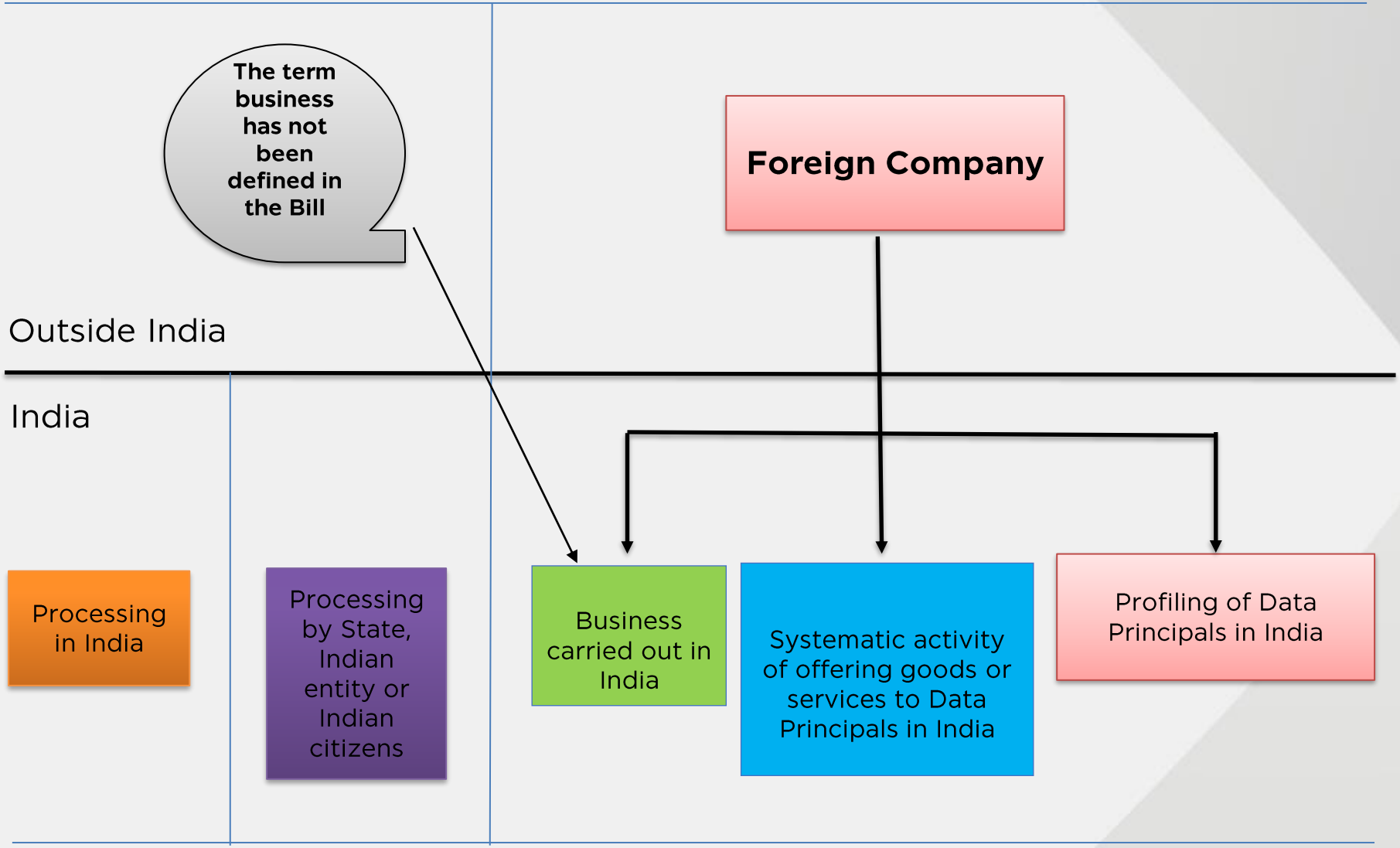
Personal Data

- Data about or relating to a natural person in relation to any characteristic, trait, attribute or any other feature of the identity of such natural person, or any combination of such features, or any combination of such features with any other information

Sensitive Personal Data

- Passwords, financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, religious political belief or affiliation, or any other category as may be specified by the Data Protection Authority of India

Draft Bill | Applicability



Draft Bill | Grounds for Processing of Personal Data

SENSITIVE PERSONAL DATA OR INFORMATION: NOW and LATER

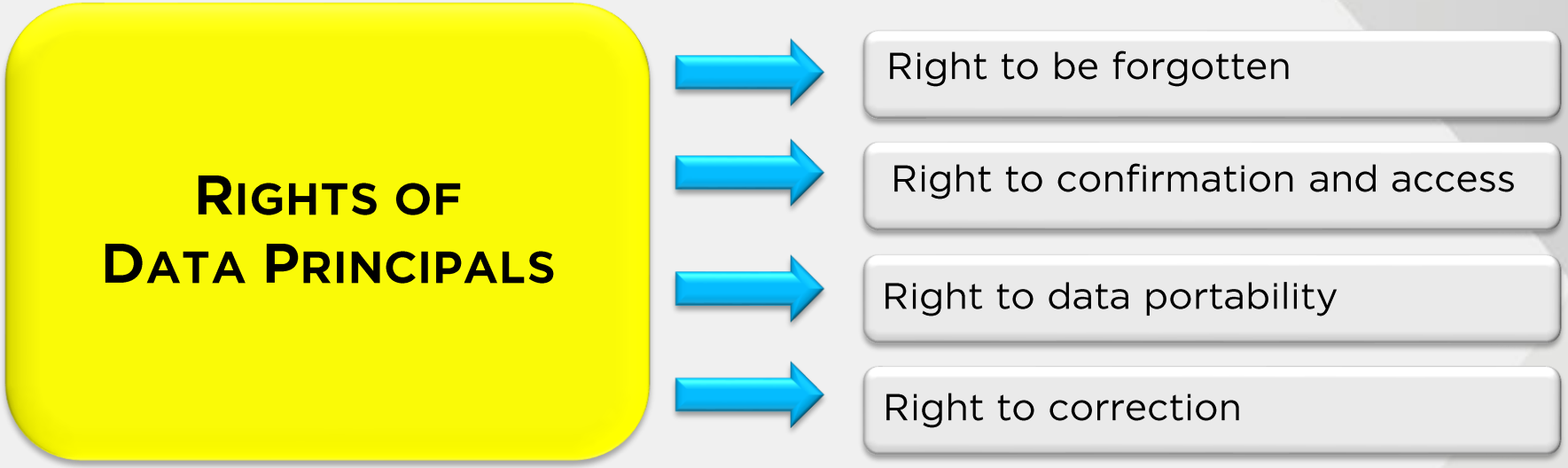
SPDI RULES

- Passwords
- Financial information such as bank account or credit card or debit card or other payment instrument details
- Physical, physiological and mental health condition
- Sexual orientation
- Medical records and history
- Biometric information

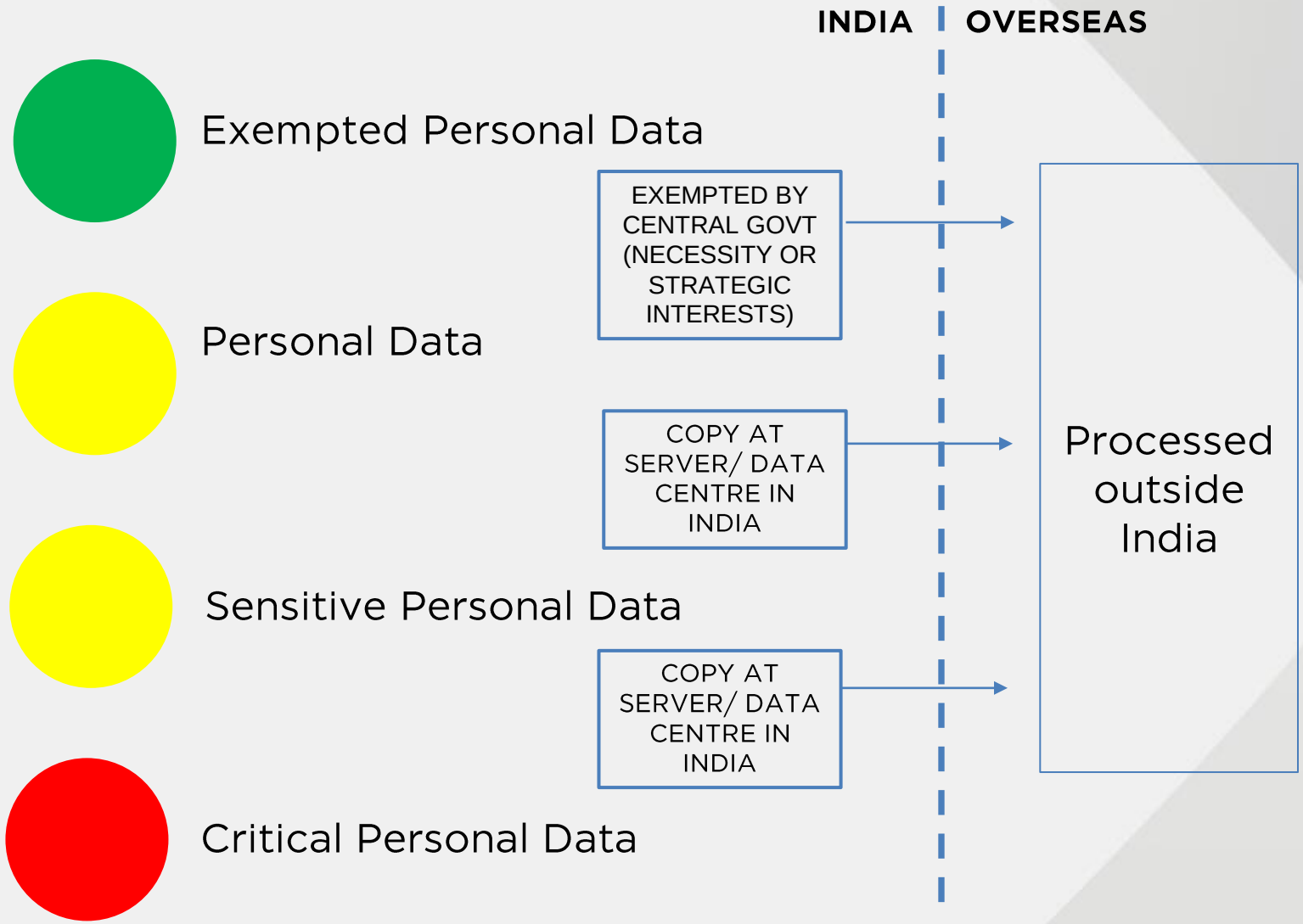
BILL

- Passwords
- Financial data
- Health data
- Official identifier
- Sex life
- Sexual orientation
- Biometric data
- Genetic data
- Transgender status
- Intersex status
- Caste or tribe
- Religious or political belief or affiliation
- Any other category of data specified by the Authority under Section 22

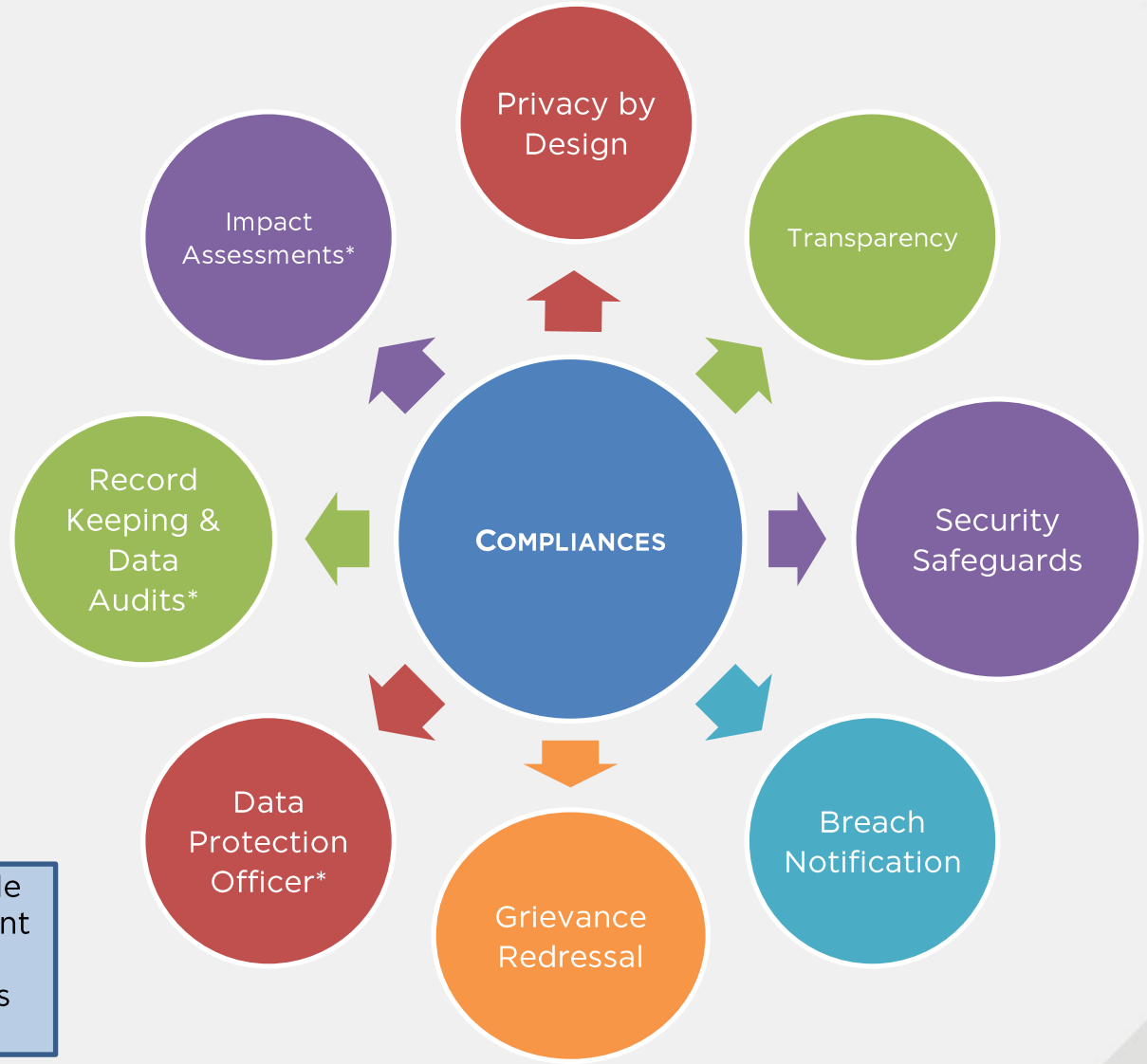
Draft Bill | Data Principal Rights



Restriction on Cross-border Data Transfer



Draft Bill | Key Compliances - Check The Boxes!



* Applicable to Significant Data Fiduciaries ('SDF')

First Step | Compile a Data Inventory

- What personal data do you collect?
- How do you store it?
- Why do you process it?
- How secure is it?

Consent

MUST BE	MUST NOT BE
-Obtained by a statement -Clear affirmative action	-Obtained through pre-ticked boxes -Inferred
-Freely provided -Specific, informed - Unambiguous	- Confusing - Ambiguous - Unclear Language
- Capable of being withdrawn	- Bundled with other terms and conditions

Quick Attention | Select Best Practices

Follow the 5 P's of Privacy

1. **P**rovider's agreement
2. **P**rivacy policy
3. **P**rocedures for information security
4. **P**ro-active monitoring
5. **P**urge the unnecessary

THANK YOU

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