

21 April 2023



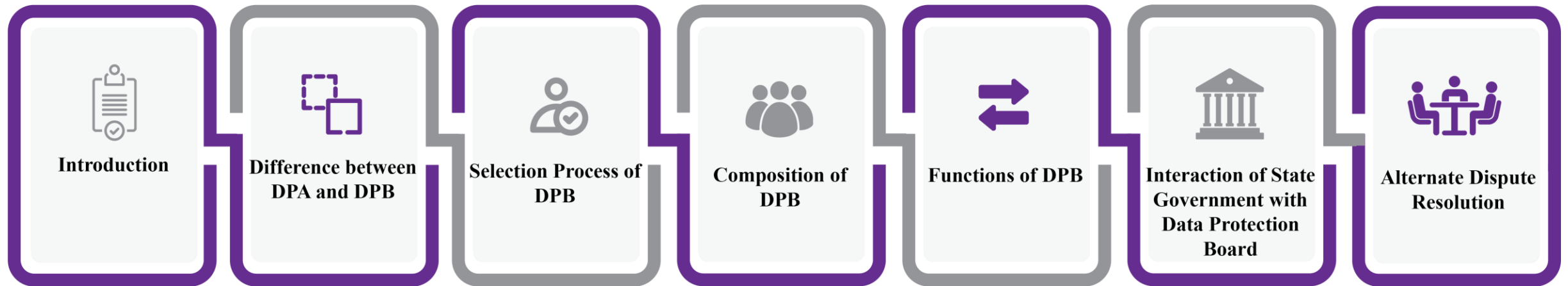
The Dialogue™

INFORM ENGAGE IDEATE

Data Protection Board

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Outline

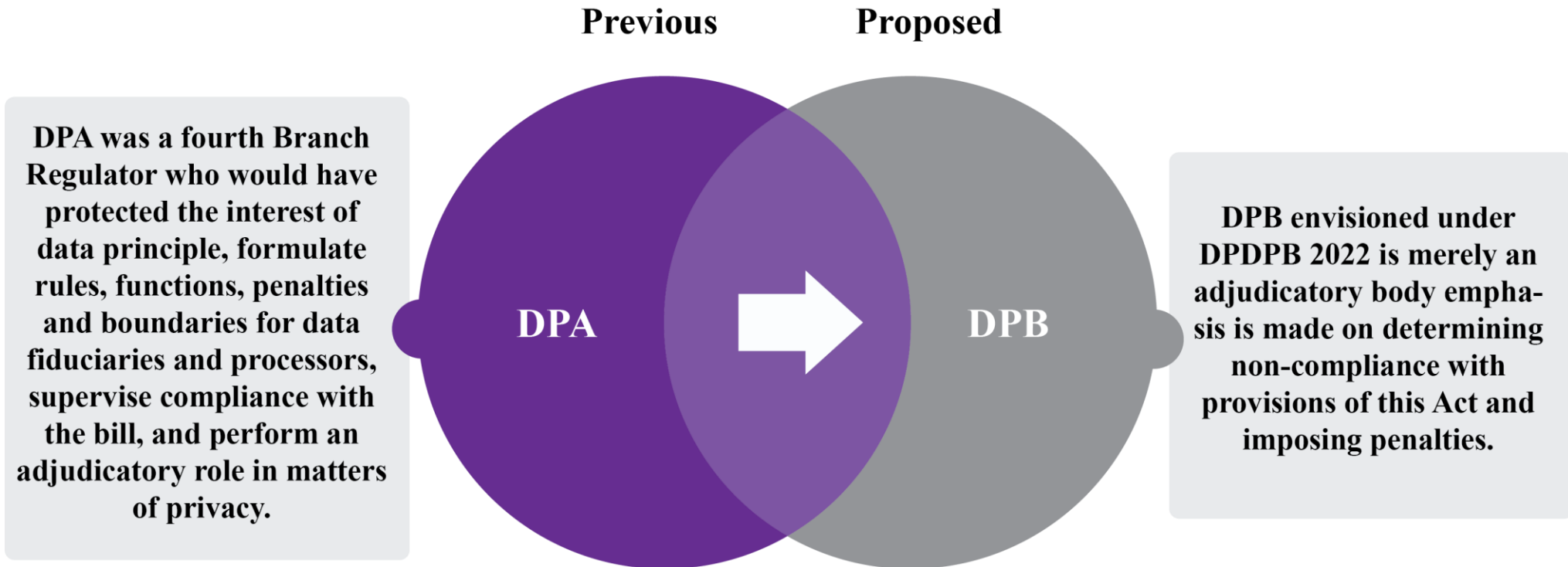


Introduction

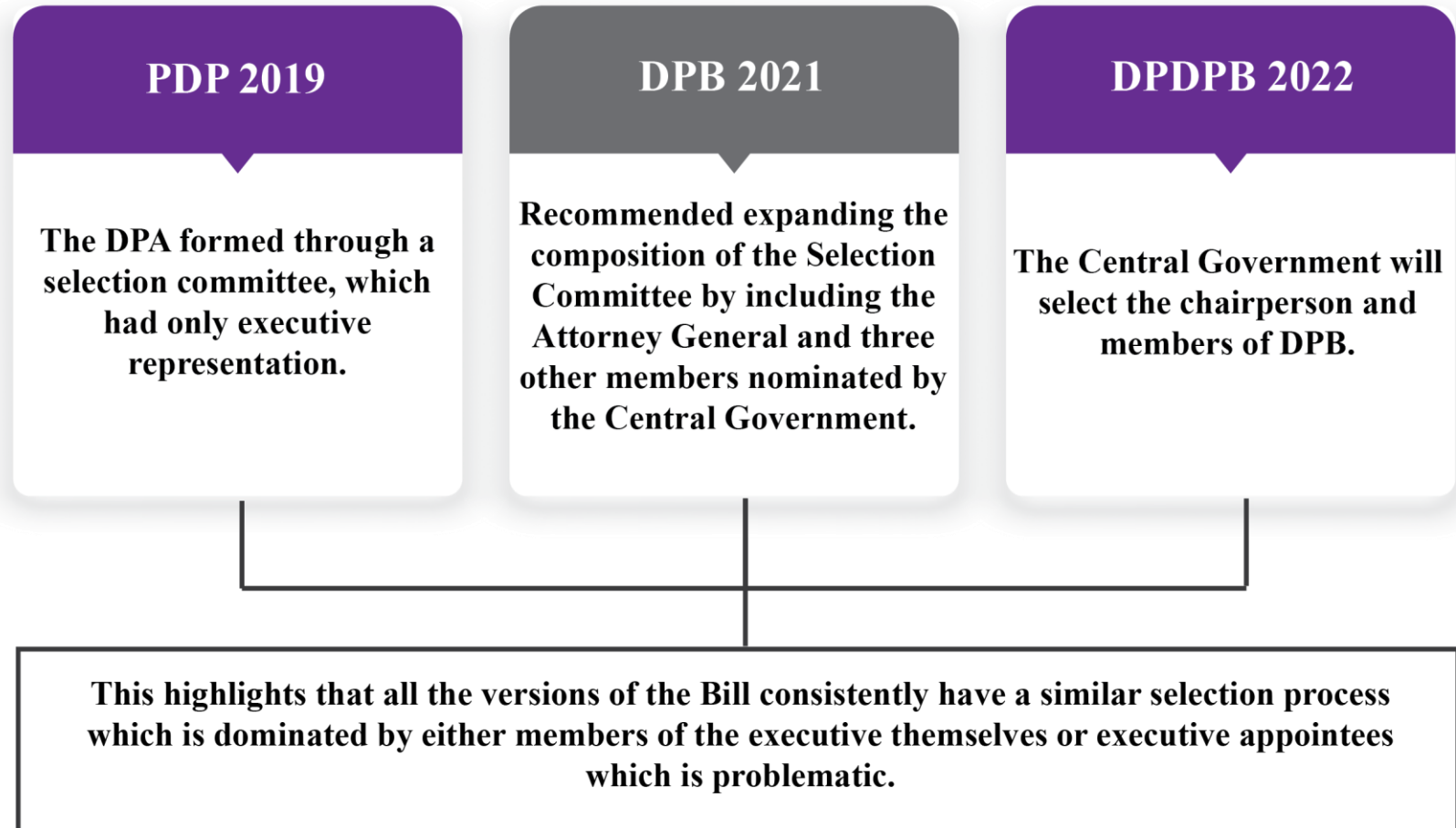
- The previous version of the data protection bill had a provision for establishing a Data Protection Authority, which would have been the cornerstone of India's data governance endeavours.
- The DPA would have been responsible for regulating domestic and cross-border data flows and approving data portability requests, among several other crucial duties.
- However, the Digital Personal Data Protection Bill 2022 has removed provisions for establishing a Data Protection Authority (DPA). The Bill replaced it by provisioning for establishing the Data Protection Board (DPB) which would be an adjudicatory body to determine non-compliance and impose penalties under the provisions of this Act.
- While the selection and composition aspects of the DPA and DPB might remain the same however these two entities are functionally different servicing individuals



Difference between DPA and DPB



Selection Process of DPB



Composition of DPB

As per clause 19(2), the Central Government will prescribe the strength and composition of the Board, terms and conditions of appointment and service of its Chairperson and other Members. It is important to have the below aspects intact while prescribing rules for composition.



Functions of DPB



Proposed Function

Data Protection Board (DPB) which would be an adjudicatory body to determine non-compliance and impose penalties under the provisions of this Act.

Clause 20 (1)(b) mentions the Central Government may notify certain functions on the board to enforce the provisions of this Act or under any other law by an order published in the Official Gazette.



Removed Function

Promoting awareness and understanding of the risks, rules, safeguards and rights in respect of the protection of personal data amongst data fiduciaries and data principals.

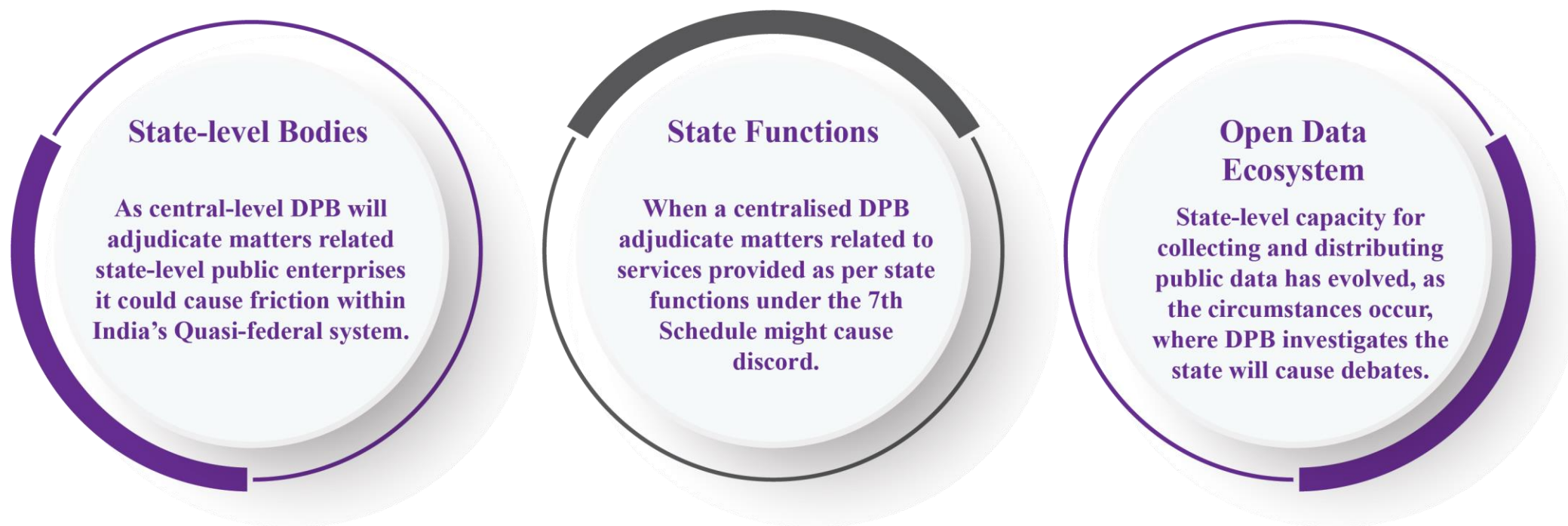
Promoting measures and undertaking research for innovation in the field of protection of personal data.

The advisory role that the authority play to the Central Government, State Government and any other authority to ensure measures are taken to promote the protection of personal data in consistency with the application and enforcement of data protection regime.

Examine any data audit reports and take any action pursuant thereto. Also certifying the registration of the Data Auditor.

Interaction of State Government with DPB

While DPDPB 2022 brings consistency and parity as both public sector data and private sector data are kept on the same pedestal, however, enforcement of DPDPB 2022 on the public sector would cause friction and seamlessness at the State-level due to the following challenges.



Alternate Dispute Resolution

- The DPDPB 2022 has incorporated the alternate dispute resolution mechanism, where if the DPB believes that any complaint may more appropriately be resolved by mediation or other dispute resolution processes, the Board may direct the same.
- This is a step in the right direction where from an individual perspective, the introduction of alternate dispute resolution for solving grievances would aid individuals in having an agile response to the grievances.
- However, it would be important to have a calibrated grievance system where individuals can voice their concerns accordingly for fair and appropriate redressal.



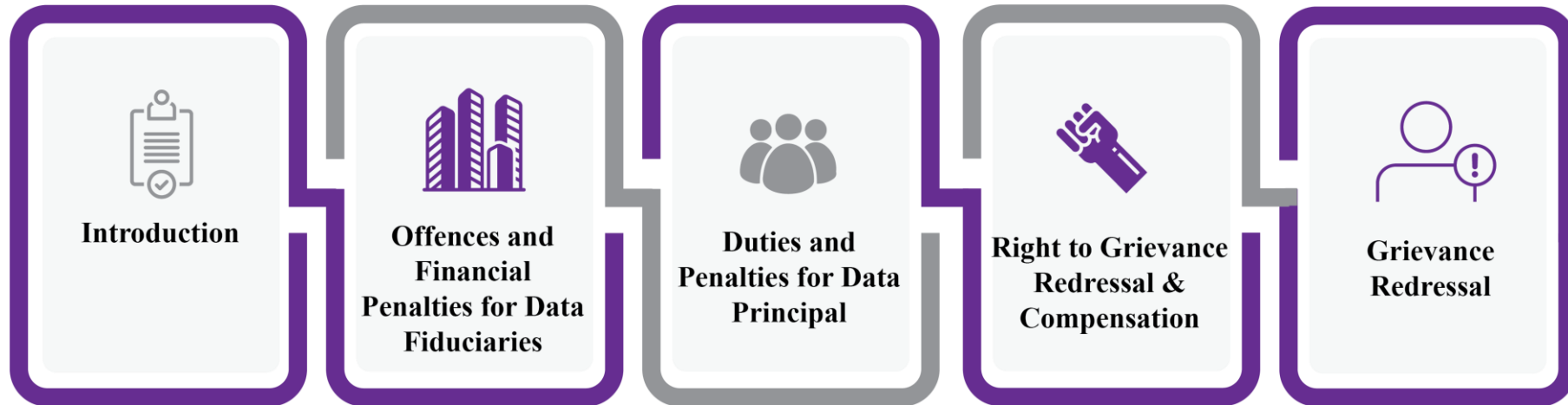
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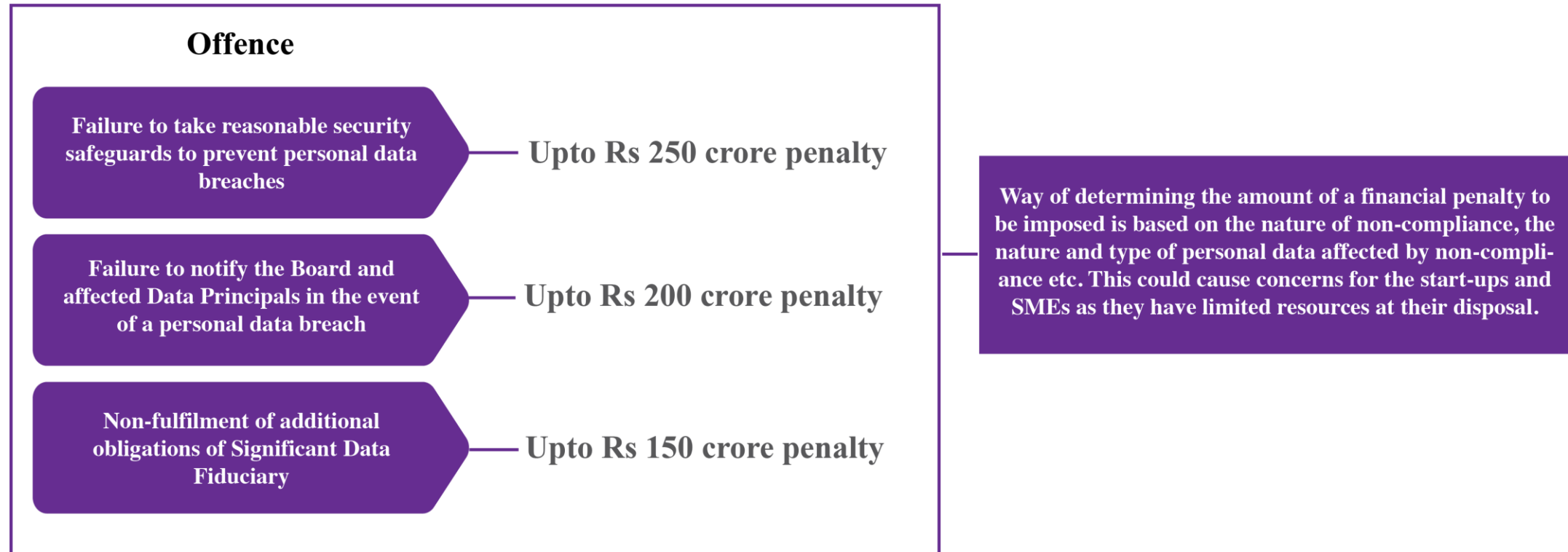
Penalties and Offences, Grievance Redressal

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Outline



Offences and Financial Penalties for Data Fiduciaries



Duties and Penalties for Data Principal

- Chapter 3 of the DPDPB, 2022 also incorporated ‘Duties of Data Principal’. It can literally mean that any breach of any provisions in chapter 3 will disqualify the Data Principal from exercising its rights, even in situations where there may not be a nexus between the right sought to be exercised and the non-compliance involved.
- The clauses impose a duty on the Data Principal by placing restrictions on not registering a false or frivolous grievance or complaint with a Data Fiduciary or Board and not furnishing any false particulars while applying for any document or service, or suppressing any material information or impersonating another person.
- The clause also mentions that the Data Principal shall furnish only verifiable and authentic information while exercising the right to correction or erasure under the provisions of this act. Non-compliance with this section will attract a penalty of up to Rs. 10 thousand.



Right to Grievance Redressal & Compensation



New Right

The right to grievance redressal is incorporated into the bill. Under this clause, if the Data Principal is not satisfied with the response of a Data Fiduciary to a grievance or receives no response within seven days or such a shorter period as may be prescribed, they can register a complaint with the Board.



Removed Right

The right to seek compensation by individual and through class action is removed from DPDPB 2022.

Grievance Redressal Mechanism

