

ENFORCEMENT & REDRESS

OF DATA PROTECTION
RIGHTS

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ADVOCATE



RIGHT & REMEDY

- ***UBI JUS IBI REMEDIUM***
- Where there is a right, there is a remedy (Or there ought to be a remedy)
- An elementary maxim of the equity of jurisprudence and *there is no wrong without a remedy* (Leo Feist v. Young, 138 F. 2d 97 (1943))
- A legal right can be - constitutional, statutory, or a common-law right recognized by our courts. (Distinct from a moral right or a contractual right)

RIGHT & REMEDY

- Applies only where the right exists and that right should be recognized by law;
- Action complained of must violate the legal rights of a person.
- If no legal injury has been caused then the maxim *damnum sine injuria* will be used which means damage without any legal injury.

INJURIA SINE DAMNUM

- *Ashby vs White* (1703 case) – Denial of the right to vote is an actionable legal injury even if your desired candidate won the elections and no damage or consequence was caused to the person whose vote was denied.
- Compared to *Damnum Sine Injuria* wherein there will be no liability on anyone even if you suffer losses if there is no legal injury i.e. a violation of a legal right. (eg. *Gloucester Grammar School* case (1410))

WHY IS ALL THIS IMPORTANT?

- Moving specific data protection rights – notice, consent, right of access, right of erasure and accuracy, the right of notification of a breach etc. from the sphere of contract to statute.
- To maintain an action and to remedy a violation even without having to prove damage or harm having been caused to you.

TYPES OF REMEDIES

- COMPENSATION
- INJUNCTION / RESTRAINT / OTHER SPECIFIC RELIEF
- RESTORATION
- PENALTIES – CIVIL
- CRIMINAL ACTION

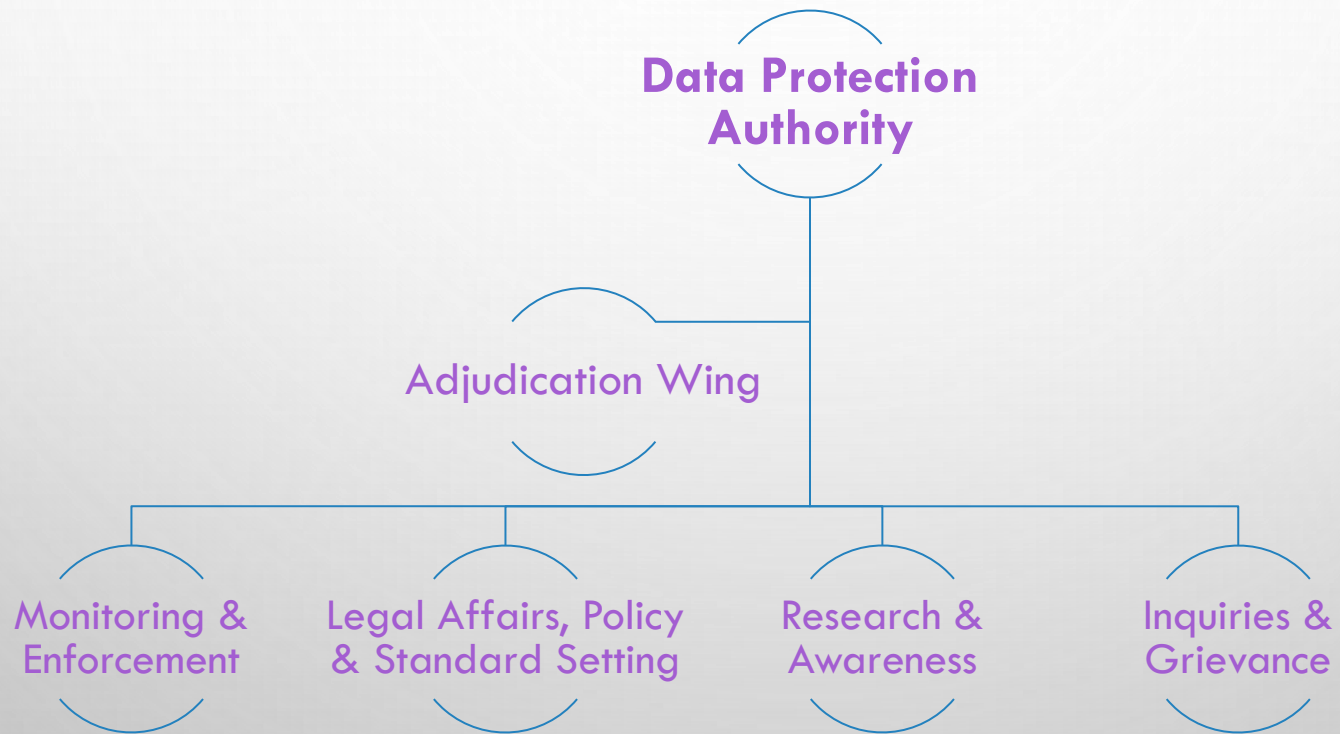
PENALTIES & COMPENSATION

- UPTO 5 CRORE RUPEES OR 2% OF WORLDWIDE TURNOVER – WHICHEVER IS HIGHER, FOR CERTAIN VIOLATIONS (SECTION 69)
- UPTO 10 CRORE RUPEES OR 4% OF WORLDWIDE TURNOVER – WHICHEVER IS HIGHER, FOR VIOLATION OF DATA PRINCIPAL RIGHTS.
- COMPENSATION – COMMENSURATE WITH THE HARMS

ARCHITECTURE OF REMEDIES UNDER GDPR

- ARTICLE 51 – AN INDEPENDENT SUPERVISORY AUTHORITY –
- POWERS UNDER ARTICLE 58 – INVESTIGATIVE POWERS, CORRECTIVE POWERS, REGULATORY & ADVISORY POWERS
- RIGHT TO LODGE A COMPLAINT WITH SA – ARTICLE 77
- RIGHT TO JUDICIAL REVIEW OF SA DECISIONS & AGAINST ACTIONS OF CONTROLLER AND PROCESSORS – ARTICLES 78 AND 79
- COMPENSATION – ARTICLE 82 (ALSO LIMITATION – IF THE CONTROLLER OR PROCESSOR CAN PROVE IT DID EVERYTHING IN ITS POWERS TO PREVENT MATERIAL OR NON-MATERIAL DAMAGE)
- PENALTIES – ARTICLE 84

DATA PROTECTION AUTHORITY (S 49)



ARCHITECTURE OF REMEDIES UNDER PDP BILL

- DATA PROTECTION AUTHORITY
- ADJUDICATING OFFICER OF THE AUTHORITY
- APPELLATE TRIBUNAL
- APPEAL FROM APPELLATE TRIBUNAL TO SUPREME COURT
- CRIMINAL COURTS

REQUESTS & COMPLAINTS

- EACH DATA CONTROLLER MUST ESTABLISH MECHANISMS FOR REQUESTS
 - DATA DOWNLOADS
 - DATA PORTING
 - DATA ERASURE
 - DATA UPDATION/MODIFICATION/CORRECTION
 - QUERIES (AM I AN AFFECTED PARTY IN THIS DATA BREACH?)
- COMPLAINTS TO THE DPA IN CASE DATA CONTROLLER VIOLATES ANY OF THE RIGHTS
- APPEALS FROM DECISIONS OF ADJUDICATING AUTHORITY OF DPA

Q & A