

A STUDY OF DATA PROTECTION AND IMPLICATIONS FOR E-COMMERCE

Dr. Raj A. Soshte

Asst. Prof. N.S.S. College of Comm. & Eco. Tardeo, Mumbai

ABSTRACT

The emergence of the Global Economy, and with an ever-increasing percentage of consumers doing their business primarily via online or mobile devices, electronic commerce, e-commerce, is fast being regarded as the way to go global at the touch of a button. Hence, developing an effective E-Commerce model is becoming vital for any modern business. However, a company must address different new security challenges and be certain to maintain the highest standards of e-commerce security, to protect both themselves and their customers. A failure to adhere to stringent ecommerce security can result in lost data, compromised transaction information, as well as the release of the customer's financial data. This can lead to legal and financial liability, as well as a negative impact on the company's reputation. This new security challenges are the results of the use of the new technology and communication medium, and the flow of information from enterprise to enterprise, from enterprise to consumers, and also within the enterprise. In this research project the researcher has tried to discuss data protection and e-commerce and also implications of data protection law on e-commerce in India. The researcher discusses the different types of security challenges and their impacts on the e-commerce systems. Finally give a summary and a conclusion.

Keywords: *Data Protection, Right to Privacy, information Technology Act. E-commerce security etc*

1. INTRODUCTION:

E-commerce is defined as the buying and selling of products or services over the Internet. E-commerce offers the opportunity to integrate external and internal processes and to lower transaction costs, thus expanding distribution channels and increasing sales and profits. E-commerce has been applied to many areas of business. The two main areas in which it is applied are Business-to-Business (B2B) and Business-to-Consumer (B2C). The B2B area is older and has grown faster than the B2C area because of the introduction of Electronic Data Interchange (EDI) in the early 80's. The B2C area is expanding now in parallel with the expansion of the Internet use and growth.

Data Protection and right to privacy are correlated to each other. Data Protection refers to the set of privacy laws, policies and procedures that aim to minimize infringement right to privacy caused by the collection, storage and dissemination of personal data. Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency. Right to privacy is a fundamental right under the Constitution of India. In the current scenario, the data protection provisions do not extend beyond the territories of India. Within the territory of India, Sections 43A and 72A of the Information Technology Act provides protection for data. Even data which is outsourced to India gets protection under these Sections. However, when data is sent outside the territories of India, one cannot seek protection under these Sections. India has no jurisdiction in such cases and there is no obligation cast on the countries to which India sends sensitive personal information for processing to have an acceptable data protection mechanism.

2. OBJECTIVES OF THE STUDY

The research report is based on following objectives:-

1. To study E-commerce and Data Protection laws in India.
2. To highlight the provisions of different data protection law with Information Technology Act, 2008.
3. To study the implications of data protection on e-commerce in India.

3. DATA PROTECTION UNDER INDIAN LAW

Our constitution has provided the law relating to privacy under the scope of Article 21. Its interpretation is found in sufficient to provide adequate protection to the data. In the year 2000, effort has been made by our legislature to embrace privacy issues relating to computer system under the purview of IT Act, 2000. This Act contains certain provisions which provide protection of stored data. In the year 2006, our legislature has also introduced a bill known as 'The Personal Data Protection Bill' so as to provide protection to the personal information of the person.

3.1 Under IT Act, 2000

(a) Section 43

This section provides protection against unauthorized access of the computer system by imposing heavy penalty up to one crore. The unauthorized downloading, extraction and copying of data are also covered under the same penalty. Clause 'c' of this section imposes penalty for unauthorized introduction of computer viruses of contaminants. Clause 'g' provides penalties for assisting the unauthorized access.

(b) Section 65

This section provides for computer source code. If anyone knowingly or intentionally conceals, destroys, alters or causes another to do as such shall have to suffer a penalty of imprisonment or fine up to 2 lakh rupees. Thus protection has been provided against tampering of computer source documents.

(c) Section 66

Protection against hacking has been provided under this section. As per this section hacking is defined as any act with an intention to cause wrongful loss or damage to any person or with the knowledge that wrongful loss or damage will be caused to any person and information residing in a computer resource must be either destroyed, deleted, altered or its value and utility get diminished. This section imposes the penalty of imprisonment of three years or fine up to two lakh rupees or both on the hacker.

(d) Section 72

This section provides protection against breach of confidentiality and privacy of the data. As per this, any person upon whom powers have been conferred under IT Act and allied rules to secure access to any electronic record, book, register, correspondence, information document or other material discloses it to any other person, shall be punished with imprisonment which may extend to two years or with fine which may extend to one lakh rupees or both.

3.2 Law of Contract

These days' companies are relying on the contract law as a useful means to protect their information. The corporate houses enter into several agreements with other companies, clients, agencies or partners to keep their information secured to the extent they want to secure it.

3.3 Indian Penal Code

It imposes punishment for the wrongs which were expected to occur till the last decade. But it failed to incorporate within itself the punishment for crimes related to data which has become the order of the day.

3.4 The Personal Data Protection Bill, 2006

Upon the footprints of the foreign laws, this bill has been introduced in the Rajya Sabha on December 8th 2006. The purpose of this bill is to provide protection of personal data and information of an individual collected for a particular purpose by one organization, and to prevent its usage by other organization for commercial or other purposes and entitle the individual to claim compensation or damages due to disclosure of personal data or information of any individual without his consent and for matters connected with the Act or incidental to the Act.

4. METHODOLOGY OF THE STUDY

The present study is an attempt to aware data protection laws in India and implications for E-commerce. An attempt has been made to collect experiences of people through empirical study (Questionnaire Method) with an objective to highlight ground realities. To peruse this research primary as well as secondary data have been used. Data from primary sources has been collected from a 'Short Survey' of various users of Internet (online shoppers) by using a well structured Questionnaire. Sources of secondary data include reports of Government departments in Consumer Protection Affairs, Reserve Bank of India, Books, Law

Journals, Articles, Law Magazines, Newspapers and various websites. The researcher has visited libraries and documentation centers for collecting literature from commercial and legal viewpoints.

5. ANALYSIS OF STUDY

The random sampling method has applied for collection of the data from the respondents. There were total 51 samples taken for the survey method. The data (questions) have been analyzed with the help of percentage method as a statistical technique and presented by way of chart.

Figure 1.1 Information of Online shopping through Internet



From the figure 1.1 above nearabout 90.2 per cent of respondents are opted online shopping through internet.

Figure 1.2 Percentage of respondents benefited from online shopping

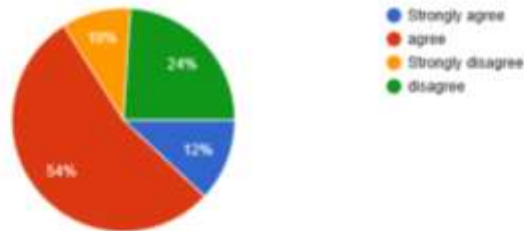


Source: 1. Analysed Primary data

From the figure 1.2 above it is inferred that near about 84 per cent of respondents are benefited from online shopping.

Figure 1.3 Percentage of respondent's opinion towards varieties of goods online vs physical market

It true that Internet offers a wide range of varieties of goods with comparison of features which are not available in physical market
(50 responses)

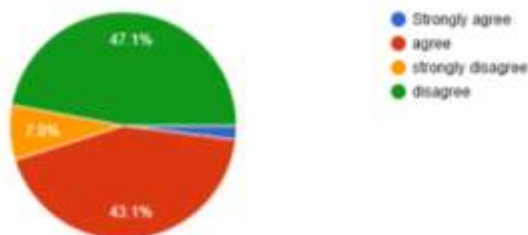


Source: 1. Analysed Primary data

From the above figure 1.3 it inferred that 54 per cent of the respondents are agree and 12 per cent are strongly agree with that internet offers a wide range of varieties of goods with comparison of features which are not available in physical market. Whereas the percentage of respondent 24 per cent of respondents are disagree and 10 per cent strongly disagree with this.

Figure 1.4 Percentage of respondent's opinions towards violation of consumer rights in internet shopping

As a consumer your rights are violated in Internet Shopping (51 responses)

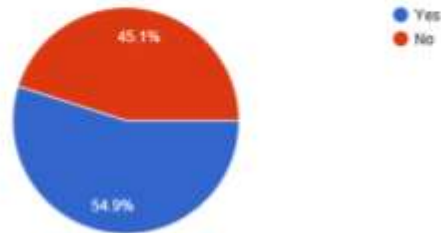


Source: 1. Analysed Primary data

From the above figure 1.4 it inferred that 43 per cent of the respondents are agree with that consumer rights are violated in Internet Shopping. Whereas the percentage of respondent 47.1 per cent of respondents are disagree and 7.8 per cent strongly disagree with this which is comparatively higher than percentage of respondents who have agreed.

Figure 1.5 Percentage of respondent's opinion towards opting for online shopping and online Banking transactions

Do your fear while opting for online shopping and online Banking transactions?
(51 responses)

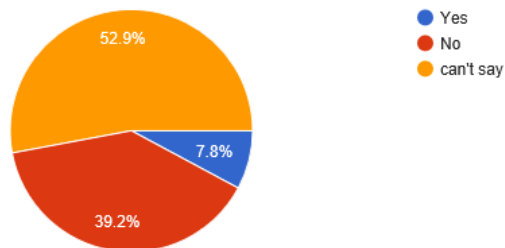


Source: 1. Analysed Primary data

From the above figure 1.5 it inferred that 54.9 per cent of the respondents are agree and 45.1 per cent are having fear while opting for online shopping and online banking transactions.

Figure 1.6 percentage of respondent's opinions towards Indian cyber laws

Do you think Indian cyber law is adequate and satisfactory? (51 responses)

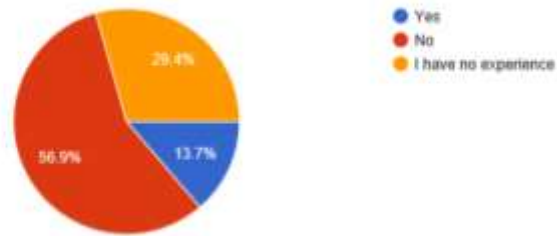


Source: 1. Analysed Primary data

From the above figure 1.6 it inferred that 7.8 per cent of the respondents are agree that Indian cyber law is adequate and satisfactory whereas 39.2 per cent are not agree and nearby 52.9 per cent of respondents are not able to answer this question.

Figure 1.7 Percentage of respondents opinion towards loss during e-Banking

Have you ever suffered any loss during e-Banking ? (51 responses)

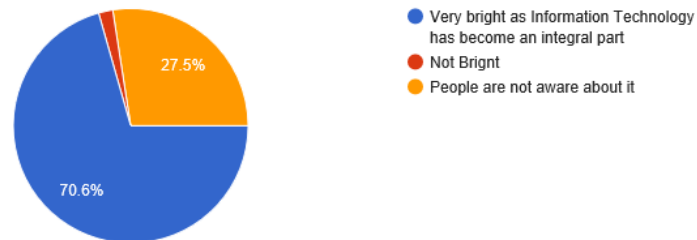


Source: 1. Analysed Primary data

From the above figure 1.7 it inferred that 13.7 per cent of the respondents are suffered from loss during e-Banking and 56.9 per cent respondent are not suffered any kind of loss during e-Banking whereas 29.4 per cent do not have any experience.

Figure 1.8 Percentage of respondents towards future of E-commerce

What is the future of E-commerce? (51 responses)



Source: 1. Analysed Primary data

From the above figure 1.8 it inferred that 76.6 per cent of the respondents are say that there is very bright future of E-commerce as information technology has become an integral part whereas 27.5 per cent of respondent are not shared any information about future of e-commerce.

6. LIMITATION OF THE STUDY

1. Due to time constraints only urban area covered for the study.
2. This study limited to the selected sample.

7. CONCLUSION:

As E - commerce in India is growing at very high rate, these competition issues may arise in the near future. E commerce may become a platform for the anti competitive agreements between the companies. There are some international cases where anti - trust issues have come up with E - commerce as a platform. Use of electronic process in business is growing at a fast rate. Indian e-commerce space percentage is getting higher as more as more online retailers enter the market. Although this level of entry in the Ecommerce market is good from a long term perspective. The challenge is that most entrepreneurs don't

have the resources or capital to wait for years before they can get profits. The past two years have seen a rise in the number of companies embracing E-commerce technologies and the internet in India.

8. SUGGESTIONS

1. Before online shopping, it is very important for e-Consumer to make sure the web-site or the company has a phone number and physical address. Call the company back. Check the information to see if the phone number actually belongs to that company.

2. Online shoppers must always ask for references and check them carefully. A reputable company will be pleased to send additional information for satisfaction of consumers.

3. Before finalizing any deal, particularly online, make it confirm that company is providing a strong guarantee. Ask the company either by e-mail or telephone that what will happen if anyone wants to return the product. Read all instructions very carefully.

4. Beware of promoters who try to sell things using anonymous email address such as anon12345@anon.company.com, user@domain.com, etengred@btinternet. com or owen_jones2010@inmail.cz., dr.johnsmith32@john.com. etc., etc.

Never respond back to e-mails that says that CONGRATULATIONS!!! You have won a Prize. Always refuse the prize and alluring offers.

5. After having studied literature on cyber crime it is suggested that online shoppers must make payment by credit card because it is much safer than payment by other modes. It gives recourse in case of problem. If consumer pays by credit card and faces a problem, he/she can call the concerned bank and do "charge back". It is also very important to carefully check credit card statements regularly.

6. It is recommended to do business only with those online merchants and financial institutions that are popular, known and trustworthy. Watch out for copycats that 21 N.C. Jain, 2008, pp. 37- 40. may try to look like original merchants. Always log off completely and close browser when work is finished with a secure session.

7. Be skeptical of offers that use LOTS OF CAPITAL LETTERS AND PUNCTUATION!!! Emails that shout at any person specifically are often bogus, such as "Discover how you can make BIG \$\$\$\$\$\$ MONEY IN NO TIME AT ALL!!!" and "You ARE LUCKIEST PERSON IN THE WORLD" etc.

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