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Foreword

Tradition and Innovation – International Scientific Conference of (Agricultural) Economists
Szent István University, Gödöllő, 3-4 December, 2007

Tradition and Innovation – International Scientific Conference was held on December 3-6, 2007, in the frames of the anniversary programme series organized by the School of Economics and Social Sciences of the Szent István University. The aim of the conference was to celebrate the 50th anniversary of introduction of agricultural economist training in Gödöllő, and the 20th anniversary of the School of Economics and Social Sciences, which was founded in 1987.

The articles published in the special edition of Bulletin 2008 of the Szent István University were selected from the 143 presentations held in 17 sections of the conference and 30 presentations held at the poster section. The presentations give a very good review of questions of national and international agricultural economics, rural development, sustainability and competitiveness, as well as the main fields of sales, innovation, knowledge management and finance. The chairmen of the sections were Hungarian and foreign researchers of high reputation. The conference was a worthy sequel of conference series started at the School of Economics and Social Sciences in the 1990s.

Előszó

Tradíció és Innováció – Nemzetközi Tudományos (Agrár)közgazdász Konferencia
Szent István Egyetem, Gödöllő, 2007. december 3-4.

2007. december 3-6. között a Szent István Egyetem Gazdaság- és Társadalomtudományi Kara (SZIE GTK) által szervezett jubileumi rendezvénysorozat keretében került megrendezésre a Tradíció és Innováció – Nemzetközi Tudományos Konferencia, amelynek célja volt, hogy méltón megünnepelje a gödöllői agrárközgazdász képzés fél évszázada történt elindítását, s ugyanakkor a Gazdaság- és Társadalomtudományi Kar 1987-ben történt megalapításának 20. évfordulóját.

A Szent István Egyetem által kiadott Bulletin 2008 évi különszámában megjelentetett cikkek a konferencián 17 szekcióban elhangzott 143 előadásból, illetve a poszter szekcióban bemutatott 30 előadásból kerültek kiválasztásra. Az előadások jó áttekintést adtak a hazai és nemzetközi agrárközgazdaság, vidékfejlesztés, a fenntarthatóság és versenyképesség kérdései mellett az értékesítés, innováció, tudásmenedzsment, pénzügy fontosabb területeiről is. Az egyes szekciók elnöki tisztjét elismert hazai és külföldi kutatók töltötték be. A konferencia a Gazdaság- és Társadalomtudományi Karon az 1990-es években elkezdett konferencia sorozat méltó folytatása volt.

Dr. László Villányi
Dean / dékán

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OFFSHORE OUTSOURCING (OO) IN INDIA'S ITES: HOW EFFECTIVE IT IS IN DATA PROTECTION?

BHARTI, NALIN

Abstract

In the last few years India has become one of the leading offshore outsourcing (OO) centers in the area of ITES. This paper deals with the main problem of data protection in offshore outsourcing centers with special emphasis on the steps by the government of India to enable India's great business.

Keywords: information technology, data protection low, market changes of information

Introduction

The term offshore outsourcing in information technology enabled services (ITES) means that the service provider is not residing within the same boundaries as firms. The well-admired activity is going to be one of the most sort-after sectors of this newly emerging marketplace. There are many strong reasons that support the opinion of Offshore Outsourcing. Rapid advancements in information and communications technologies (ICT), along with reductions in barriers to cross-border trade and factor flows, have worked in tandem to promote cross-border production sharing. This slicing of the value added chain in manufactured goods has been going on for several decades in Asia and elsewhere. However, many service activities and processes are also becoming fragmented from the actual production process and are taking place in different geographical locations, both within and outside a country. The phenomenon whereby an entity located in one country might disperse some of its service activities (or parts thereof) to one or more other countries has been broadly termed "offshoring" or "outsourcing" (Policy Briefs**,** 2006). More recent outsourcing/offshoring has involved a noticeable spread in the direction of services. There could be three reasons for this: *first*, changes in the organisational structure of firms, which permit the dissociation of a growing set of service activities from the core operations of the entity; *second*, changes in technology which permit the remote delivery of an intermediate service, even though its production and supply must occur simultaneously and not sequentially; and, *third,* the growing global homogenisation of skills of certain kinds of service workers, partly because of capitalist development in the peripheral countries characterised by lower wage structures (Chandrasekhar and Ghosh,2006).From a global perspective, 2007 is a year of intense 'hyper disruption' in the IT industry, with major structural changes taking place along different industry vectors at once – all interacting with each other and, more important, accelerating each other. Small businesses are become big, more software become services, more services become software, business IT players become more 'consumer-ish', and consumer players become more business like. These disruptions, and others, will force most market leaders out of their comfort zones and open up new opportunities to those that choose to surf these disruptions rather than stand against them. These deep shifts in the global market place will surely have their implications on the Indian market, which when coupled with its high speed growth, will pose unique challenges. These challenges will be around managing the twin play of IT going deeper into already penetrated market segments and simultaneously exploring newer segments for growth to be sustained (IDC, 2007).

Material and methods

Material used in this paper is digital as well as non –digital. Since the topic is current in nature so the methods used for the research is based on two steps. A combination of Quantitative (which is based on testing theory especially on a larger scale) and Qualitative methods (which are based on ***interpretivism*****,** involves the study and allow social scientists to provide richer explanations and descriptions of economic phenomena, frequently on a smaller scale) are used as the research methodology in this paper. For Quantitative enquiry government document and international organizations' such as World Bank and WTO's document has been used and for Qualitative enquiry authentic websites has been very supportive. Using two or more approaches were needed for this paper to 'triangulate' findings and provide a more valid representation of the problems and issues in the Offshore Outsourcing (OO) in India's ITES.

Results

India or New India

The Indian economy today is completely different from what it was in 1990. Business was small, markets were small and exports were non-competitive. The reform process kicked off by Narsimha Rao and Manmohan Singh has pushed the walls around industry and business. India was just like a sandwich, and policy makers were at a loss in the different areas when it came to finding a way out. Surprisingly within few years India has reached the stage from where it can't look back especially in services. (Bharti, 2004).New India has enormous opportunities in this changing world. It has the authority of its great intellectual contributions, its demonstration of the returns to reforms, its size, its democracy and its international respect (Stern, 2004). 'Entrepreneurship driven and globally networked industrial enterprises are fast becoming the emblems of the new India'(Bharti,2004) .A most remarkable feature of the so-called "New Economy" is the role of the services sector (of which the Information Technology {IT} is a part) in generating growth of income and employment. The change in the image and role of services has been brought about by unprecedented and unforeseen advances in computer and communication technology in the last two decades. There are very few developing countries which are as well placed as India to take advantage of the phenomenal changes that have occurred in production technologies, international trade, capital movement and deployment of skilled manpower. India today has the knowledge and the skill to produce and process a wide variety of industrial and consumer products and services. The "death of distance" and the growing integration of global product, services and financial markets in recent years have also presented new challenges for management of the national economy not only in India but all over the world (Jalan.2002). The development of IT systems often takes the form of radical departures from how things have been done in the past (Mark and Smith, 2002). Such development has been seen in the past 15 years which has situated India on the top of the world especially in the outsourcing business. "The policy of restricting private investment has been abandoned in favour of active wooing of such investment on a much larger scale and no more liberal terms than was even considered in last four decades" (Vaidyanathan, 1996).Due to liberal economic environment .The Indian IT sector, having achieved a certain level of maturity, momentum and consolidation is now looking at moving to the next level. Having built its competitive advantage in the global markets through factors such as labor arbitrage, rightly skilled, industry-relevant, specialized manpower, robust infrastructure and a conducive regulatory environment, the IT industry is on the hunt for a new success mantra, an all new formula for sustaining its existing edge. The industry is also concerned about facing emerging challenges related to increasing competition from even lower-cost offshore outsourcing destinations and a slightly constrained talent

supply that is beginning to fall short of the immense demand. It is becoming obvious that going forward, India's edge will have to take a more imaginative and unconventional form (NASSCOM , 2006a). It is just because of those policies which has laid India to catch more than 1000 MNCs.

Offshore Outsourcing boom in India

1 India: Before takeoff

In May 1998, the Prime Minister of India formed a National Taskforce on Information Technology (IT) and Software Development to formulate a long term National IT policy for the country and also remove impediments for the growth of the infotech industry. The main objective of this was to help India emerge as an IT software superpower. The Taskforce submitted three key reports to the government - suggesting various measures to build India's infotech industry and proliferate use of IT in the country. In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000(Information Technology Act, 2000). In the last few years, 18 state governments have announced IT policies. These policies focus on the key issues of infrastructure, electronic governance, IT education and providing a facilitating environment for increasing IT proliferation in the respective states (NAASCOM, 2006b). The ITES 'OO' boom in India is the by product of the both new economic policies in 1991 and the announcement of the new Information technology law, 2000[1].

India: The takeoff

From the above table it is clear that the India's offshore Outsourcing in ITES landscape of today reflects a lot more maturity than it did years ago – and this is reflected in the behaviors of all the constituents. Buyer approaches have evolved from a focus on out-tasking economically inefficient and non-core tasks that could be easily separated without disturbing the internal workflows, to re-evaluating their internal processes and adapting them to offshore delivery. As a result, experienced buyers are increasingly placing greater emphasis on supplier capabilities to deliver on parameters of flexibility and innovation – in addition to cost, quality and security – which are now accepted as pre-requisites to compete. This maturity is also reflected in supplier behavior, with leading players stepping up to the challenges of process innovation, adopting an integrated global delivery approach – while ensuring service delivery at benchmark levels of cost and quality. Similar evolution is being observed in other aspects of their business relationships such as deal structuring, contracting and governance mechanisms (NASSCOM, 2006d). Success has granted attention and

[1] The term ITES is frequently used in relation to the *produced services* based on the legal and positive uses of information technology. In India at one end it includes what we commonly misunderstand as the call center business. In reality these could be *contact centers, service centers, customer centers, hotdesks, helplines, technical support centers, reservations operations, sales centers, cyber stores, e-commerce centers,* and much more. Beyond the well-known *GE Capital and Hughes tele.com*, several other key players also exist, including *Spectramind, Dell, iEnergizer*, and many more.
Beyond these customer-interactive services, ITES also includes back office operations for remote customers. Back-office operations within the ITES segment imply just that. British Airways has its reservation system running out of India. All the top international banks channel their data-churning needs to units in India. *American Express, HSBC, Standard Chartered,* and several more find value in data-analysis, reconciliation, and other services provided on their data from India. This segment is and will remain the highest growth segment within ITES.A new term, Business Process Outsourcing, or BPO, evolves from this. Experts feel that once clients feel comfortable and a relationship of trust is established, more value can be derived or generated in outsourcing further aspects of their standard business operations and practices to ITES companies.

National Association of Software and service Companies (NASSCOM 2006c), the government and others are working on providing incentives, venture funding, training and interaction. Good communication links are obviously important for the success of IT embalmed services (Singh, 2002).

Table: 1 India's recent performance in offshore outsourcing in ITES

India's percentage in the global market in offshore IT services *	65
India's percentage in the global BPO market**	46
Annual percentage growth of offshore IT services and BPO in FY 2004-05***	25
Annual percentage growth of offshore IT services and BPO in FY 2005-06****	37
Recorded Revenues*****	US$ 17.7 billion
US$60 billion by 2010 ******	US$60 billion by 2010

Source: * to *** Economic Survey- 2004-05, ****and *****NASSCOM c 2005-06, ****** Economic Survey 2004-05.

Inspired by the Indian IT success story, several other locations have been presented as alternate options for offshore outsourcing. However, feedback received from several MNCs having multi-country operations as well as syndicated analyses comparing the various sourcing locations has revealed that India continues to offer and deliver the best 'bundle' of benefits sought from global sourcing (NAASCOM,2006b). South-north wage differentials were and are large (John, 1999). In today's competitive world of business, gaining efficiency and staying profitable have become the corporate *mantras*. Most international law firms based in the US and Europe is taking the Legal Process Outsourcing (LPO) route to be lucrative. Several international law firms, legal departments of large corporations and also state and federal government agencies are increasingly outsourcing their legal work to India to reduce cost and increase efficiency (Dorothy, 2006).

In other words the approach seems to be that given a compelling reason why they should look to India for their offshore servicing most foreign players will take care o local political concerns on their own without needing any help from a strident media in India shouting "unfair." But beyond polemics lay performance: In a timely announcement, the Indian government used the Nasscom summit to assure visiting IT heads that it was aware of the growing concern about the security and confidentiality of data entrusted to outsourcing partners and had a Data Protection Act on the anvil for discussion in the coming winter session of Parliament. It was also setting up a "Common Criterion Lab" by December 2003, backed by an Information Security Technical Development Council (ISTDC) where intensive research in cryptography and product security would be undertaken. Once customer confidence was built up it would be time to increase the scope of offshore solutions that India could offer. Michel Janssen, President, Supplier Solutions, with the Dallas, Texas (U.S.)-based outsourcing consultants, the Everest Group, in his keynote at the Summit highlighted the fact and fiction of what kind of work could be outsourced. Not just transaction work but even high trust functions can be increasingly outsourced (Parthasarathy, 2003).

Data protection and challenges for offshore outsourcing in India's ITES

Data makes the world go round. Business is increasingly dependent on data and digital storage devices, and fast, easy access to live and historical data is essential to business success, adding value and reducing costs. More than 90% of the information generated by business today is in digital format, and 70% is never printed. Because digital devices are so intelligent and easy to use, people produce much more data, thus creating new problems for storage. The number of business emails sent every day was over 60 billion in 2006, with 60% stored in messaging systems. If companies can get their storage strategies right, they not only insure themselves against prosecution but also establish a technology foundation on which to build compliance and move towards future data management capabilities, such as information lifecycle management, in line with their corporate business objectives(Bharti,2007).

The economics of data protection in India is not in favour of the offshore outsourcing in ITES. Because of the small pie of the global business and the bigger pie of cost of protecting and the cases of data piracy which is skyrocketing. "Data protection -- the bugbear of the business process outsourcing industry -- has in the last one year become a critical factor for the 5,000-odd BPOs whose collective revenue is estimated at $ 5.8 billion annually. According to industry estimates, BPOs have suffered a loss of over $100 million in terms of lost business opportunity. This is around 2 per cent of the annual revenues of the industry. Most companies have re-worked their security apparatus and tripled their information security budgets" The 2004 Global Information Security Survey - which questioned info security managers from around 1,200 organisations, across 51 countries - found that only 20 per cent strongly agreed that security was perceived as a CEO-level priority. Around 70 per cent of respondents admitted that their board of directors did not receive quarterly status reports on info security (PL&B UK, 2004).

Data protection has become one of the most challenging tasks for any ITES units in the world in general and India's offshore business in particular. India's ITES will not be well conceived as long as the data pirates are caught and punished. Economic Survey too admitted the challenge of data protection in this sector for the further growth. Some of the key challenges which need to be overcome include documenting procedures and establishing performance benchmarks, addressing concerns around data security, improving the workforce quality and skills and continuously innovating and developing new service lines along with improved operational excellence (Economic Survey 2004-05).

Data (information) is generally costly and cheap to transcript (Cooter and Ulen, 2004). WTO's TRIPS agreement Article 10.2 clarifies that databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that it shall be without prejudice to any copyright subsisting in the data or material itself (WTO, 2006).

Sometimes data is used in ITES as the trade secretes. Trade secretes as a part of the Intellectual property needs protection for enriching efficiency in the market. Data in ITES is very costly and mostly it is the part of the contract which claims for protection. But in recent times the data protection has become foremost challenge in India's ITES.

Data Piracy: Some cases in India

India has some current cases related to the data stilling. The question of privacy is pressing hard to the new investor in India. In April 2005 three employees of Mphasis, a Bangalore-based outsourcing company, were arrested for allegedly stealing $350,000 from Citibank account holders in New York, by acquiring passwords to the holders' bank accounts. In June 2005 an IT employee in Delhi was reported by a UK newspaper, *The Sun*, to be prepared to sell confidential information on 1,000 banking customers to one of its reporters. In August 2005 the Australian current affairs program, "Four Corners," reported that one of its journalists had been offered personal data about 1,000 Australians (Wright and Hodgkinson 2006).

"The recent case of an HSBC's BPO employee, who sole bank's UK customers' credit card data and passed it on to co-fraudsters, has hurt India's image further. And it is not the first time that a thing like that has happened. The mobile phone data can be had for asking. A hacker in Indian state Uttar Pradesh showed recently how he could hack into an operator's website and asses' data on some key security personnel, including the Delhi police commissioner" (Kalra,2006). There has been only a single conviction under the IT Act in the past six years of its existence: *Sate of Tamil Nadu vs Suhas Katti*. India enacted the IT Act in 2000 and became part of a select group of countries which have put in place cyber laws. Even six years down in line, law enforcement agencies are still grouping in the dark on how to use the Act effectively (Business Today, 2006). Despite the growing rate of cyber crime cases has been register under the IT Act. Having such inside challenges it is too difficult for India to attract more opportunities in ITES.Darryl Mountain , sated recently on India's ITES like LPO in a roundtable discussion that 'while the quality of work offered by some of the better LPOs is as good as that offered by any law firm in India, the downside is legal issues hampering the growth of LPO include Bar Council of India advertising restrictions, data protection laws in the United States and the EU, and security standards and confidentiality'(Mountain**,**2006).

As Australian businesses follow a global trend to outsource jobs to call centres offshore, the theft of 1000 British bank and credit card details from a call centre in Gurgaon, a suburb of Delhi, posed a new problem for data security. Currently, the Australian-run operations of American Express, AXA and Citigroup use call centres or data processing bureaus offshore for their local customers. Telstra, Optus and some banks such as NAB are also making the move to outsourcing, although services are limited so far to information technology, data processing or some customer sales work (Rebecca, 2005).

Ex-Minister of Communication and information Technology, Gov. of India , too admitted that the major cyber crimes reported, in India, are denial of services, defacement of websites, SPAM, computer virus and worms, pornography, cyber squatting, cyber stalking and phishing. The intrusion originates both from within the country as well as outside the country. 55% of the intrusions are by the external hackers and 45% are from the internal hackers. The cyber intrusions from outside the country are largely being noticed from the USA, China, Pakistan and Middle East. Websites with the addresses - .CO.IN and .GOV.IN are the major targets. About 1500 websites were reported to have been attacked in 2005 and about 1400 in the first half of the year 2006. The signs are that criminal abuse of computer networks is a substantial problem and that it is increasing rapidly (Maran, 2006).

Why a data protection law in India?

In India, the Information Technology Act, 2000 governs the cyberspace. The act tries to cover the issues relating to electronic transactions, digital signatures, hacking and network service

providers. The act further tries to resolve the issues relating to cyber jurisdiction and also applies to offences and contravention committed outside India by any person irrespective of his nationality. The act is silent on the issues relating to access and sharing of personal information as is applicable under data privacy laws of many countries. There are no specific provisions, in the current act, which relate to data privacy of individuals. With advancement in technology, the circumstances and transactions as mentioned in the IT Act 2000 may not be able to provide protection and remedy to the companies and individuals carrying on their business activities relating to personal data. Thus it is left to the freewill of the parties to get into data privacy agreements. This primarily affects the outsourcing / BPO companies from America and Europe, where they have a law providing protection to personal data. The Government of India has shown its concern over the issue and has very recently established a committee to suggest amendments in the IT Act 2000 with a focus on data privacy and protection. The law as expected would be based on EU's Data Protection Directive. The committee is expected to submit its report to the government by the end of this year. It is further estimated that the law governing data protection would be in place early next year.

Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the Government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred Act also talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking.

The UK's Data Protection Act 1998 (the "Act"), governs the processing of personal data by data controllers. "Personal data" is any data, or combination of data, from which a living individual can be identified. A business' staff records, customer details and supplier details would all amount to personal data. The Act imposes obligations on "data controllers" who determine the purposes for which, and the manner in which, personal data will be processed. A business will be the data controller in relation to its staff, customer and supplier personal data. If that business decides to outsource some of its functions, whether they be IT or business process activities, personal data will probably be transferred to the outsource vendor as part of that transaction. In most circumstances, the business transferring its data will remain the data controller which means that even though the data will be processed by the outsource vendor, the business will remain responsible, under the Act, for how those data are processed (Treacy, 2006). In view of the provisions of the Data Protection Act 1998, the contract and practical arrangements will need to address the implications of trans -border data flows (Wragge & Co, 2002).

Today, data protection provisions are usually written into India's service contracts for offshore outsourcing deals. Legal experts say India's data protection and privacy policy are critical for the country to keep the trust and confidence of foreign clients, and competition for offshore business should give the law teeth in Indian courts (Information Management Journal, Nov/Dec 2003).The asses and availability that the Internet and new communications technologies provide are two way streets –interconnectedness allows us to reap mutual benefits, but also forces us to bear common risk to critical infrastructure (Glaessnar,2004).

India does not currently have a data protection law in place, although the government may address the problem through amendments to existing legislation. Instead, most of the current safeguards are industry led. Some of the top Indian service providers already conform to BS 7799 info security standards, and now the Nasscom project aims to increase the number of service providers being audited for security. The audits will be carried out this year by consultancy and audit firms PricewaterhouseCoopers, Ernst & Young, and Deloitte & Touche and forms part of Nasscom's '4e' security framework (PL&B UK, 2004). The framework is based around four key principles:

1. Engaging security experts, think tanks and academia.
2. Educating industry professionals on best practice, service level agreements and model contracts.
3. Enacting regulatory controls through amendments to India's 2000 IT Act, establish background checks for staff, and conducting security audits.
4. Establishing more effective enforcement through cooperation with Indian police.

When the European Union Data Protection Directive came into force in 1998, doubts were raised as to whether India met the requirements regarding the Article 25 prohibition on the transfer of personal data from the EU to a country outside the EU with a less stringent data protection than the EU. The U.S. met this prohibition by negotiating the *Safe Harbor agreement*. The Indian government, despite being lobbied by NASSCOM to update its data protections laws, did not act, in the hope that the problem would go away. However the Indian government reversed this policy with the announcement of Prime Minister Manmohan Singh that he had directed the Department of Information Technology to revise the current data protection laws. In late August 2005, the Ministry's Expert Committee issued its recommendations. Rather than enact a new law, the Expert Committee has proposed amending the existing Indian Information Technology Act 2000. The amended Act will require BPO firms to implement and maintain reasonable security practices and appropriate procedures to protect sensitive personal data. Any BPO contractor who negligently fails to comply with the above will be liable to pay compensation of up to 10 million rupees (approximately £100,000 at current rates) to any person who suffers harm as a result. The amended Act will also render liable employees who dishonestly remove data without permission from a database to imprisonment for up to one year and/or a fine of up to 200,000 rupees (approximately £2,000). Existing provisions of the Act provide that persons who remove data from databases without permission are liable to pay compensation of up to ten million rupees to those persons harmed by such removal (Wright and Hodgkinson, 2006).

The preferred approach is to negotiate a safe harbour agreement with the EU, along the lines of the safe harbour agreement that currently exists between the EU and the US. Under that safe harbour deal, US companies can voluntarily adhere to a set of data protection principles recognized by the Commission as providing adequate protection and thus meet the requirements of the Directive as regards transfers of data out of the EU.Although participation in the safe harbour is optional, its rules are binding for those companies that decide to join, and compliance with the rules is regulated, in the US, by the Federal Trade Commission and (for airlines) of the US Department of Transportation(Kierkegaard **,**2005)**.**It is also important to note here that because of very limited training of the Indian police very few data pirates have been caught. The case made against him is not under the IT act but general crime act. It is true that India need a new IT act but before that it is also important to inforce the law which is still in the position to help the LPO or BPO service providers. "The ultimate solution to any problem is not to enact a plethora of statutes but their rigorous and dedicated

enforcement. The courts must apply the exiting laws in a progressive, updating and purposive manner" (Dalal, 2006).

Initiatives in data protection in India

Indian Government has announced its intention to enact a new data protection regime which will help European and US companies when outsourcing to the sub-continent. Particularly with reference to provisions related to data protection and privacy in the context of BPO operations, liabilities of network service providers, computer related offences, regulation of cyber cafes, etc. He observed that the field of cyber laws, being a nascent area, experience of its formulation and implementation are still evolving worldwide and more so in India. With an objective to review the Information Technology Act, 2000, in the light of the latest developments and to consider the feedback received for removal of certain deficiencies in the Act, the Government of India has set-up an '*Expert Committee* (Maran, 2006), which has completed its deliberations and submitted recently its report to Minister for Communications and Information Technology. The Committee has, during its deliberations, analysed some of the relevant experiences and international best practices. The Committee has, while formulating its recommendations, kept in view the twin objectives of: (i) using the IT as a tool for socio-economic development and employment generation, and (ii) further consolidation of India's position as a major global player in IT sector. In view of recent concerns about the operating provisions in IT Act related to "Data Protection and Privacy", in addition to contractual agreements between the parties, the existing sections have been revisited and some amendments / more stringent provisions have been provided for. Notably amongst these are:

(a) Proposal related to handling of sensitive personal data or information with reasonable security practices and procedures thereto;

(b) Gradation of severity of computer related offences, committed dishonestly or fraudulently and punishment thereof; and

(c) Additional section for breach of confidentiality with intent to cause injury to a subscriber.

Emergence of electronic evidence as a new discipline for handling computer related offences and its uses thereof in the judiciary has been recognized through a new provision in the IT Act.

Government of India has invited the comment from the different sourecs to work upon the amendment of the IT act or to introduce a new data protection act.But does India need a new law? If a company is established in the EU (the company is called a "Data Controller" to use the correct data protection jargon) and the supplier of call centre services (the "Data Processor") is in India, there are strong arguments that there is no need for an Indian law. The Indian Data Processor is not in control of personal data and can only process personal data under instructions of the Data Controller. If the Data Processor does something untoward (e.g. it has poor security, misuses the personal data in some way, or fails to follow the procedures specified in the contract for the disclosure of personal data), the Data Controller in the EU takes the blame. In other words, if the Indian Data Processor makes any mistake in the processing of personal data, the Data Controller in the EU can be sued, prosecuted or otherwise made liable for the consequences.Additionally, all rights and freedoms granted to individual customers under EU Data Protection law are protected because the Data Controller is established in the EU. So, for example, if rights of access are exercised by a customer, the Data Controller has to retrieve the personal data from any Data Processor irrespective of where that Processor is located. That is the same for all rights – and that is why the UK's

privacy commissioner says there is a presumption of adequacy for any transfer to Data Processors outside the EU.So why does India need a Data Protection Act? It's certainly not to meet the needs of call centre Data Processors – it is because India wants to attract Data Controllers. And what does this mean? Rather than limit itself to being a supplier of services to corporate America and Europe, India sees itself as the place where such corporations can establish themselves. By wanting a European standard of Data Protection law, India has announced ambitions which extend well beyond being a mere supplier of services to the world's multi-national corporations. In effect, it wants to establish corporate India (Out-Law News, 2004).

In June 2004, NASSCOM officials launched a 'Trusted Sourcing Initiative.' Further to this initiative, NASSCOM released a survey benchmarking Indian corporate security practices with their counterparts in the UK and U.S. The survey showed that levels of data security in Indian companies compare favorably with their foreign counterparts. In July 2004, the industry reported a 40% increase in network and employee security spending from 2003. In August 2004, NASSCOM announced that it had engaged Ernst &Young and PricewaterhouseCoopers to perform an industry-wide security audit of its 860 member companies, especially those processing banking, credit card, insurance and health information. Furthermore, companies are working together to compile a national database of employees in the outsourcing industry to help them monitor their BPO workforce. In addition, NASSCOM has provided training for Indian police officers in cyber crime fighting tactics (Wright and Hodgkinson, 2006).

Indian government promises of tighter laws to boost data privacy and intellectual property protection for western companies that have outsourced IT and call centre operations to the country are still in limbo - some seven years after first being mooted. UK firms that offshore IT and customer service call centre operations to countries such as India are required to treat these operations with the same data protection and regulatory process they would if they were based in the UK. But while they are accountable to UK regulators there is currently little in the way of protection under Indian law. Industry analyst Gartner warned just last month that security and privacy concerns are fast becoming the biggest issue for companies considering outsourcing to lower cost offshore locations. Other measures aimed at improving security and reassuring western businesses have also failed to get off the starting blocks, although the recent Citibank account thefts by Indian call centre agents has re-ignited proposals for a national register of Indian software professionals and call centre agents to ease the vetting and tracking of employees by firms (McCue, 2005).

Offshoring is not inherently more risky than outsourcing domestically provided that there is suitable risk monitoring. There is no evidence to suggest consumer data is at greater risk in India than in the UK (Financial Services Authority, 2005)UK firms that offshore IT and customer service call centre operations to countries such as India are required to treat these operations with the same data protection and regulatory process they would if they were based in the UK. But while they are accountable to UK regulators there is currently little in the way of protection under Indian law (McCue, 2005).NASSCOM is initiating an employee registry program, the National Skills Registry, to compile a national database of employees in the outsourcing industry. It is administered by a third party through a professional reference checking company who conducts background checks on workers, rendering referral checks more stringent, and assisting major BPO companies to monitor their workforce NASSCOM states that this registry currently contains 70% of the IT workforce. Furthermore, NASSCOM has announced its intention to set up a code of conduct and an independent regulatory body, modeled on the Irish Institute of Chartered Accountants, to establish security guidelines and monitor any breaches. This independent body will receive initial funding of $300,000,

thereafter membership dues will cover its ongoing operating costs, and ensure its independence. It will be run by a CEO, whom NASSCOM hopes to hire within the next 6 months, and a board of members from across the industry. Sunil Mehta, vice-president of NASSCOM, said that the independent body would have the unique mandate to audit its members as well as to punish those not compliant with regulations. Such punishments will include expelling members, or law enforcement currently, some 1,050 companies (representing 98% of the Indian IT industry) have agreed to become members of the new independent body (Wright and Hodgkinson 2006).

Conclusion

An uncertain and insecure business environment is a major deterrent to investment and entrepreneurship. Even when investment occurs in such an environment, aggressive rent seeking and short-term profit taking tend to replace more beneficial long-term investment. Policymakers should ensure that laws and regulations are consistent with the needs of a free market, which contracts and property rights are enforced, due process is efficient in correcting abuses, and legal requirements are transparent and accessible (World Development Report, 2005). India's participation in offshore job will be more productive if it will really take efficient steps for making a legal framework for the business. India has a great role in global ITES. Global estimates suggest that India is still a good choice in ITES offshore outsourcing. But a proper co-ordination between the legal reform and economic reform is urgently required. The new India is attempting hard to introduce a new data protection law. World is really waiting for a more safe destination of offshore business that will be India.

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