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A Study on Balancing Act between Data Protection and Market Competition

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ABSTRACT

This research paper provides a concise overview of the Balancing act between data protection and Market competition. Both Privacy regulation and Competition law are inter connected. Nowadays consumers are more concerned about their personal data and sharing these data to companies affects their privacy. Where Privacy violation is the fundamental right under Indian Constitution. As a result of it, Government started to implement stricter privacy regulations which affects the companies. Because all companies especially smaller ones cannot afford costly Data protection procedures. This eventually hurts companies profits and affects the market competition. Apart from this, it also focuses on companies or firms that prioritize data protection over market competition. And how much data privacy is important for the consumers, what are the difficulties undergone by consumers in sharing their personal data to companies, firms, websites etc. This paper also establishes the laws enacted by Government of India in relation to Data protection along with comparison of European Regulation GDPR (General data protection regulation). And provides some ways for companies to balance both data protection and market competition.

Keywords: *Data protection, Market competition, Personal data, Privacy Regulation, GDPR.*

I. INTRODUCTION

“Privacy is not something that I’m merely entitled to, it’s an absolute prerequisite.” Marlon Brando

Privacy is important for every individuals. Protecting one’s privacy means ensuring them with Human dignity and most importantly safety and self determination. Privacy is a fundamental right guaranteed under Indian Constitution. Article 21 states that *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

Supreme Court ruled that Right to Privacy is "intrinsic to life and personal liberty" and is inherently protected under Article 21.

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Personal data of an individual includes Name, address, mail id, contact number, health data, genetic data, biometrics etc. These information helps in identifying an individual. And hence it is termed as Personal data. When these datas are shared to companies by consumers and in turn they (companies) use those datas for fulfilling the purpose of customer. But if those information of an individual is taken without the consent of an individual and use those data for other other purposes and share those data to other companies or third parties (intermediaries) then is termed as Data Breach or Unauthorised access of companies.

Companies usually use these data for their market purposes and it is even termed as valuable asset of the companies. These data helps in increasing the product quality or providing better services from the companies and is used to improve the competition of the companies. These data play a vital role in the development of the companies.

But sometimes companies use these data in wrong ways by sharing it to another companies or to service providers without the consent of the consumers. For the sake of market competition and to be dominant or competent with other market competitors. This causes a lot of distress and privacy violation to the customers. Consumers are in need of strict privacy regulations to protect their personal data and Privacy.

So Government decided to make stricter Data privacy regulations. This caused a lot of change in the development and progression of the Companies, which resulted in market competition between firms and companies. Because privacy regulation in companies is not as easy as we think, it needs lots of difficult procedures, high maintenance, well equipped employees and well developed softwares. Not all companies can afford to these Privacy regulation measures as it is costlier, especially to smaller companies. This affects the profits of the companies. And increases the level of competition between companies. And there is a chance for Big companies to abuse its dominant position, to take advantage over the small companies. Because there will be increase in demand on a particular company. (Big) which can afford costlier Privacy regulations.

EG: When strict rules are implemented, it would be hard to track customers online, which will be hard for the consumers to find products online, Eventually affects the profits of the companies.

(A) Aim and objectives:

1. The main aim is to understand how the consumers (data subject) data has been used by companies and how often data breach is happening to the customers in relation to their personal data.

2. To research about the Data Protection Regulation in India and European Union. And bring out the advantages of strict regulations relating to data privacy.
3. To Provide a balancing act between Data protection and market competition, how data protection regulation affects the market and profits of the companies.
4. To create awareness among the consumers about the data protection regulation and their right to privacy.

(B) Methodology

Descriptive research methodology : Data has been collected from both consumers and the companies. In case of companies collected from the employees of the data privacy team. Collected through the sampling method and the sample size in case of consumers is 76 responses and in case of companies its 20 employees responses. The independent variables included in the study are personal data of the consumers (data subject) and the dependent variables used for the study is companies that use individuals personal data. SPSS (Statistical package) was used to analyze the collected data.

II. RESEARCH QUESTIONS AND THE RESPONSES FROM THE CONSUMERS



Chart 1 depicts, 84.2 % (64) of consumers states that they receive calls and messages from companies where they did not give their contact information. And only 15.8% (12) of consumers opposed it. So the probability of consumers who receive unauthorized calls or

messages is higher.



Chart 2 depicts, 90.7% (68) of customers states that they felt disturbed while receiving unwanted calls or messages from companies to sell their product or services. And only 9.3% (7) opposed to it. Which means majority of the customers are not convenient in receiving these calls, messages and mails.

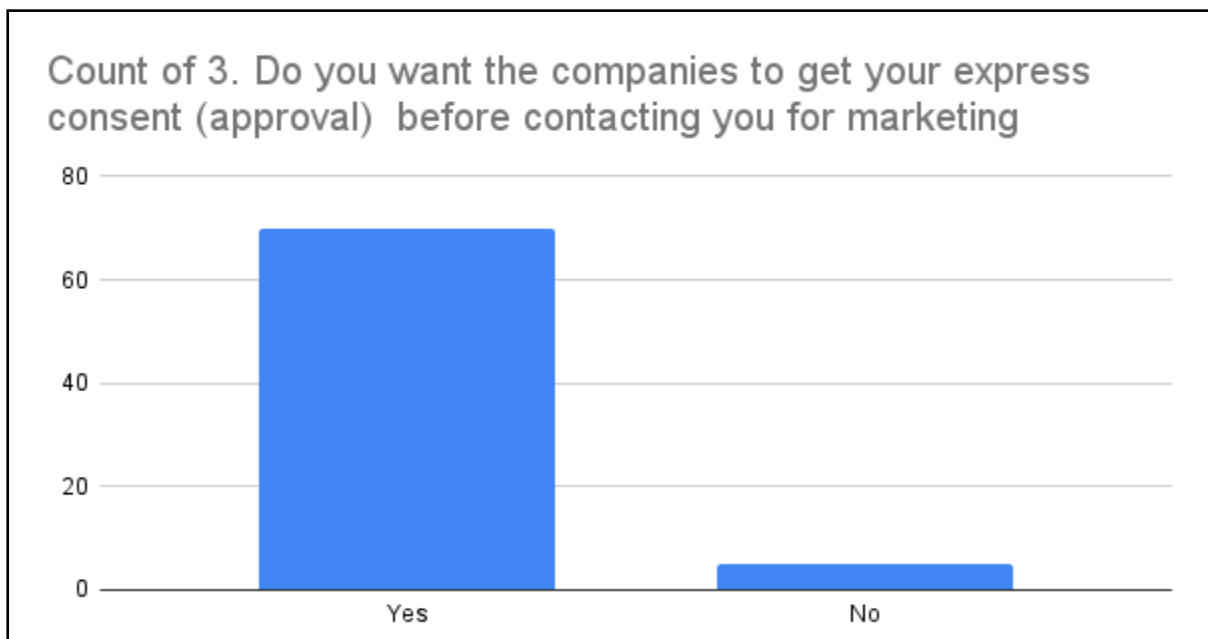


Chart 3 depicts, 93.3% (70) of consumers want the companies to get their express consent

before contacting them for marketing purposes. Only 6.7% (5) of consumers opposed to it. It means companies must get prior approval either express or implied consent from the individuals. It can be of any type either opt- in or opt-out depends on the information. But consent is necessary.

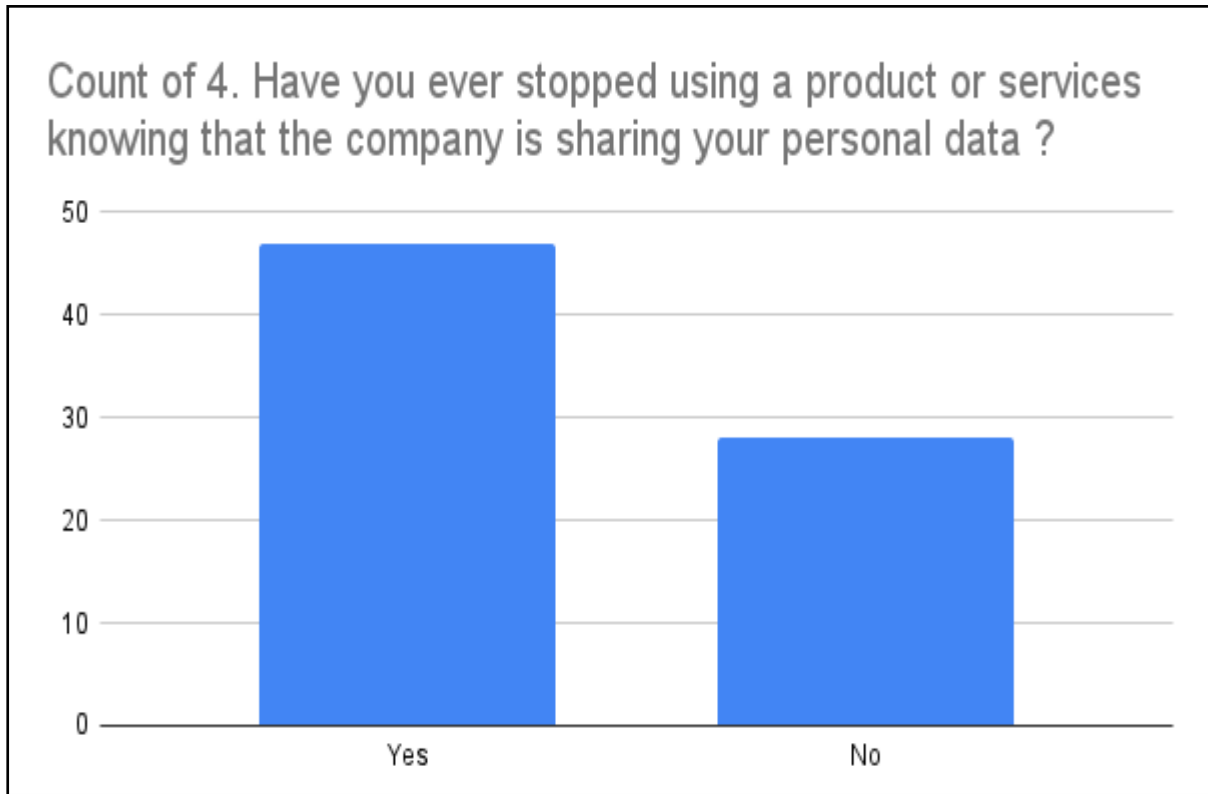


Chart 4 depicts 62.7% (47) of consumers stopped using a product or services knowing that the company is sharing their personal data. And 37.3% (28) of consumers gave contradictory response. But the probability of the consumers who stopped using the product or service is higher. It shows that consumers prefer data privacy over the products or services

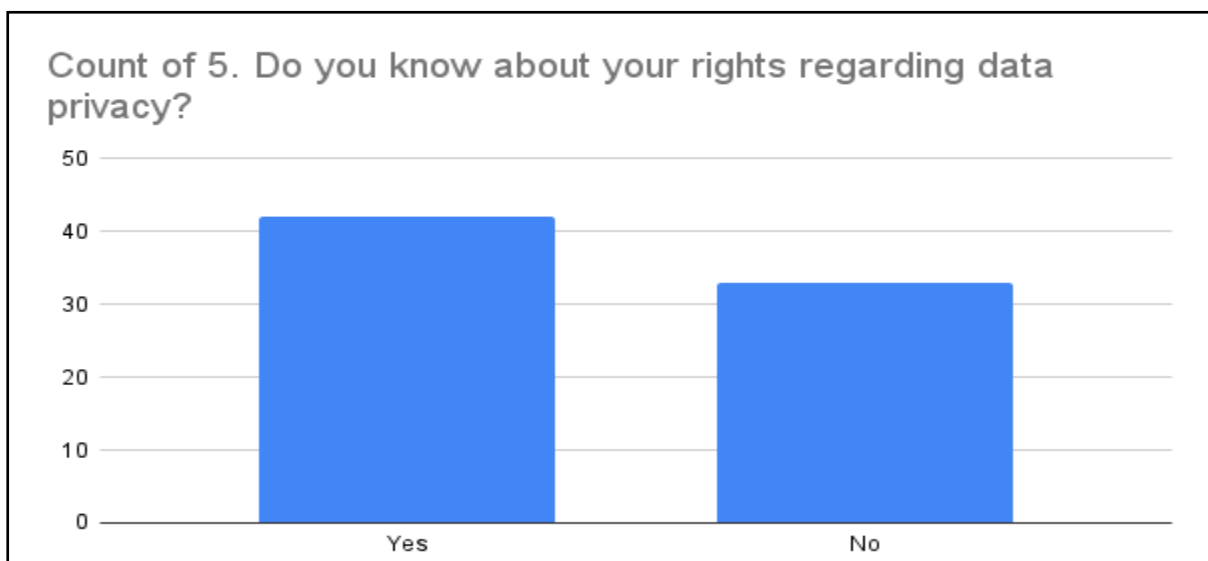


Chart 5 depicts, 56% (42) of an individuals know about their rights regarding data privacy. Which they are aware of the data privacy rights. But unfortunately 44% (33) of an individuals are not aware of their data privacy rights. Which is the responsibility of an individual to know about it. And companies must act accordingly. Especially the Government must enlighten individuals about their rights.

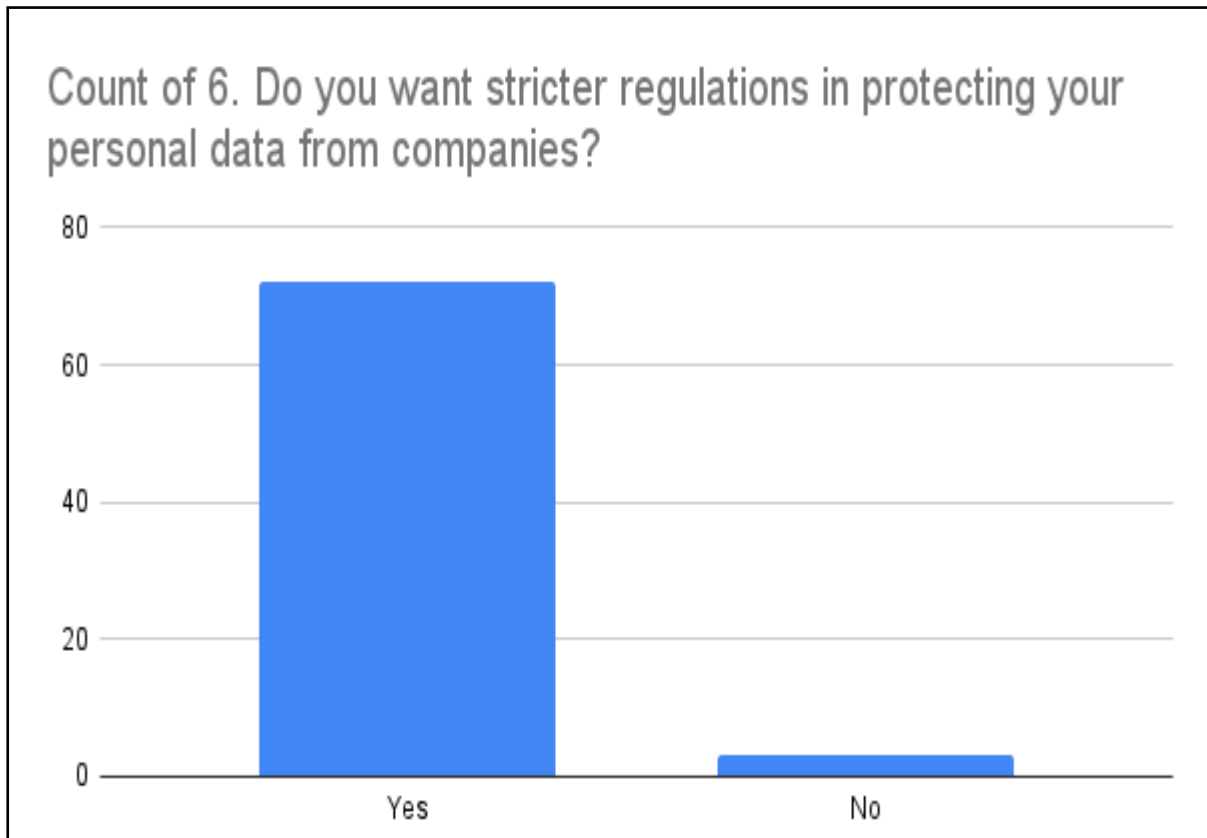


Chart 6 depicts that, 96% (72) of individuals wants stricter regulations in protecting their personal data. And its only 4% of individuals gave contradictory response. This clearly shows that individuals are concerned about their personal data and worry about their information being shared to companies. So they are in need of even more stricter Data protection regulations in India.

III. RESULT

Analyzing the responses from the consumers (individuals) it clearly depicts that data subjects (individuals) receive calls and messages from companies where they did not give their contact information. They receive unauthorized calls or messages from the companies which is disturbing for them and is inconvenient for them. Most of the companies use individuals personal data for their market purposes like selling their products or advertising their services. They are using different modes of communication like messages, calls, mails etc.,. Individuals want the companies to get their express consent before contacting them for marketing purposes

It means companies must get prior approval either express or implied consent from the individuals. It can be of any type either opt- in or opt-out depends on the information. But consent is necessary. There are many instances where individuals stopped using a product or services knowing that the company is sharing their personal data. It shows that consumers prefer data privacy over the products or services. Every individual must be aware of their data privacy rights and must be careful in protecting their personal data. Government must look into this data protection issue even more seriously and bring stricter regulations to protect individuals personal data from being shared or unauthorizedly used by companies.

IV. RESEARCH QUESTIONS AND THE RESPONSES FROM THE COMPANIES (EMPLOYEES)

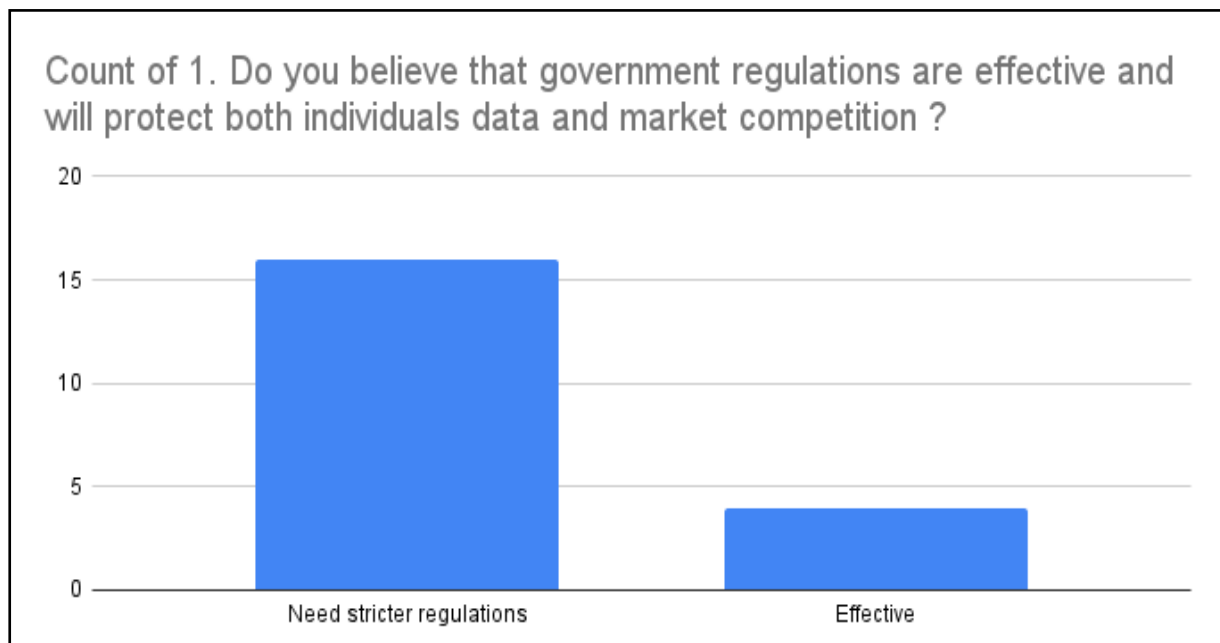


Chart 1 depicts, 80% of employees states that there is a need for stricter regulations that protects both data protection of an individual and balance market competition. Remaining 20% states that existing laws are effective. But the probability of employees who asks for stricter regulations is higher.

Result: So it is in the hands of Government to balance both data protection and market competition. There must be a balancing regulation to safeguard the smaller companies and at the same time provide protection to individuals data. But always right to privacy of an individuals must be in priority.

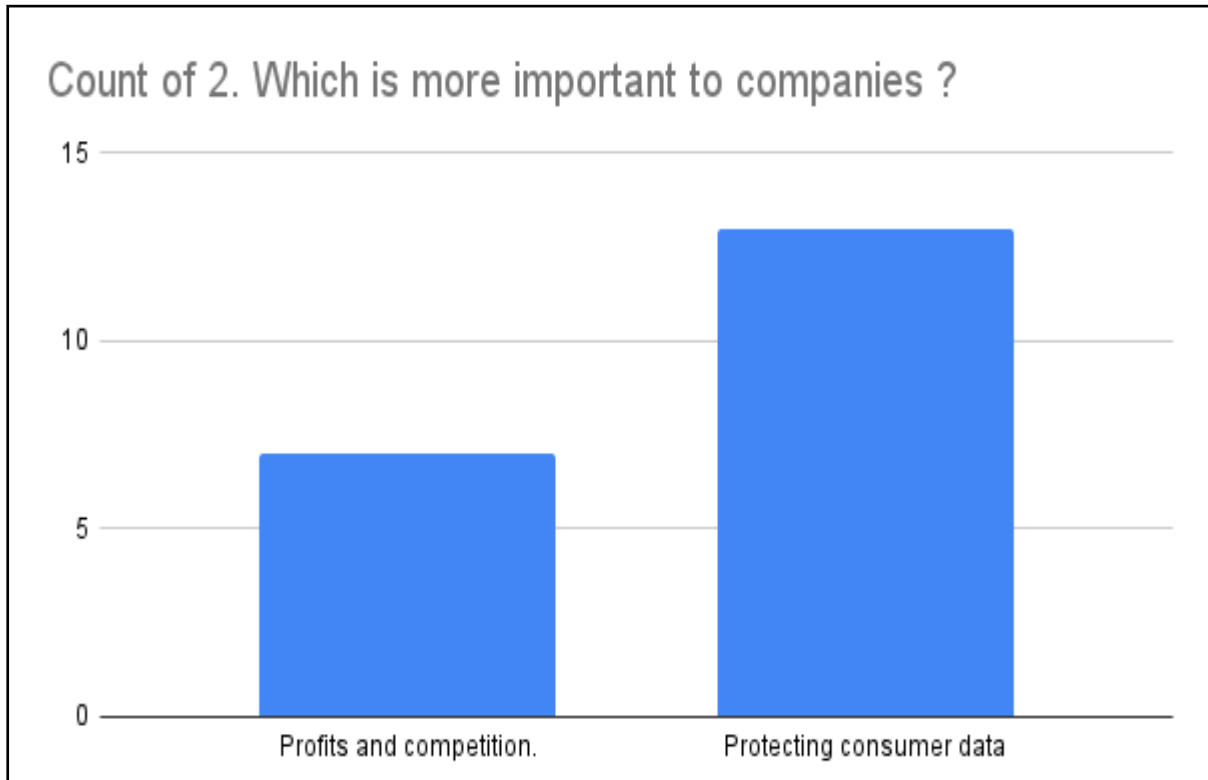


Chart 2 depicts, 65% of employees states that protecting personal data of an individual is important than profits and market competition of the companies. But remaining 30% of companies employees states that profits and competition is important for them.

Result: It is great that companies prioritize protecting consumer data than considering their developments, progression and profits. This thought must be carried out by all the companies even though small or big. Must not be limited to only few companies.

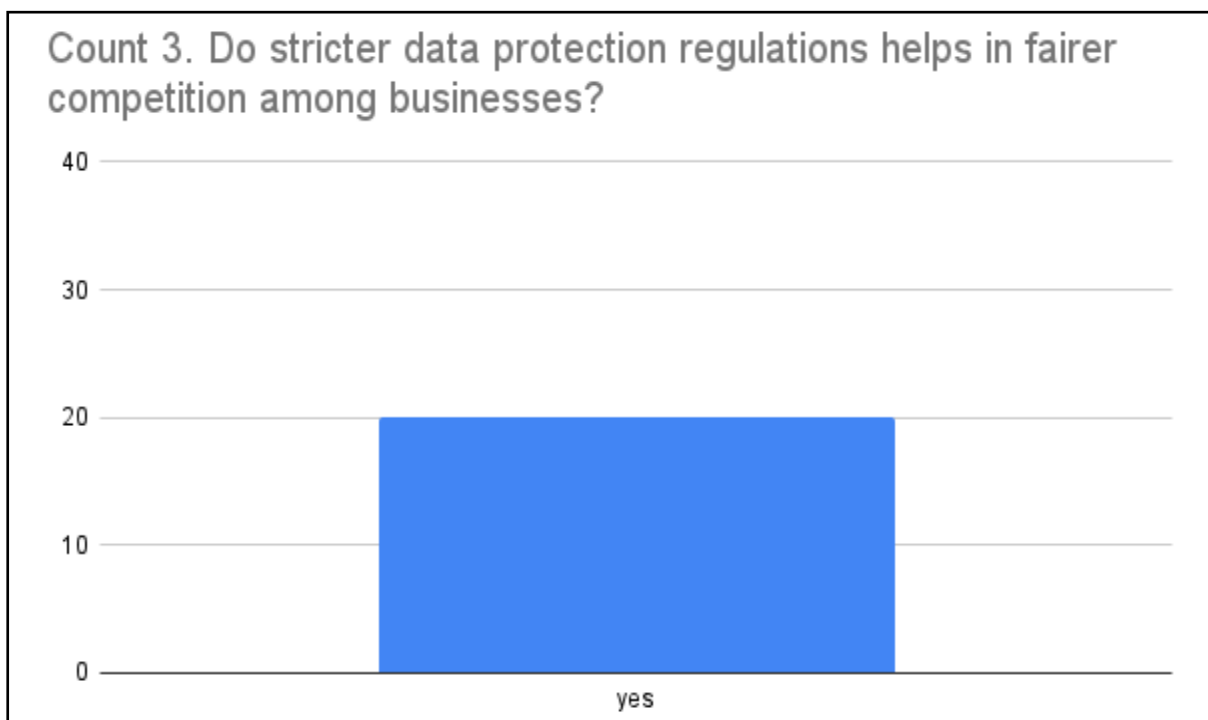


Chart 3 depicts, the intention of 100% of employees is that only when there is a data protection regulation, there exists a fairer competition among business.

Result: This is a positive attitude among employees, and when this prevails in every companies then there will be no data breach or unauthorized access, and no sharing of personal data will takes place. Because only when customer is satisfied and feels trusted the companies growth will increase. Which results in fairer competition. So trust must be built between companies and customers. Only when companies keep the customers data protected and safe they will develop a trust towards companies which aids in increase of profits in companies and at the same time fair competition arises among the companies.

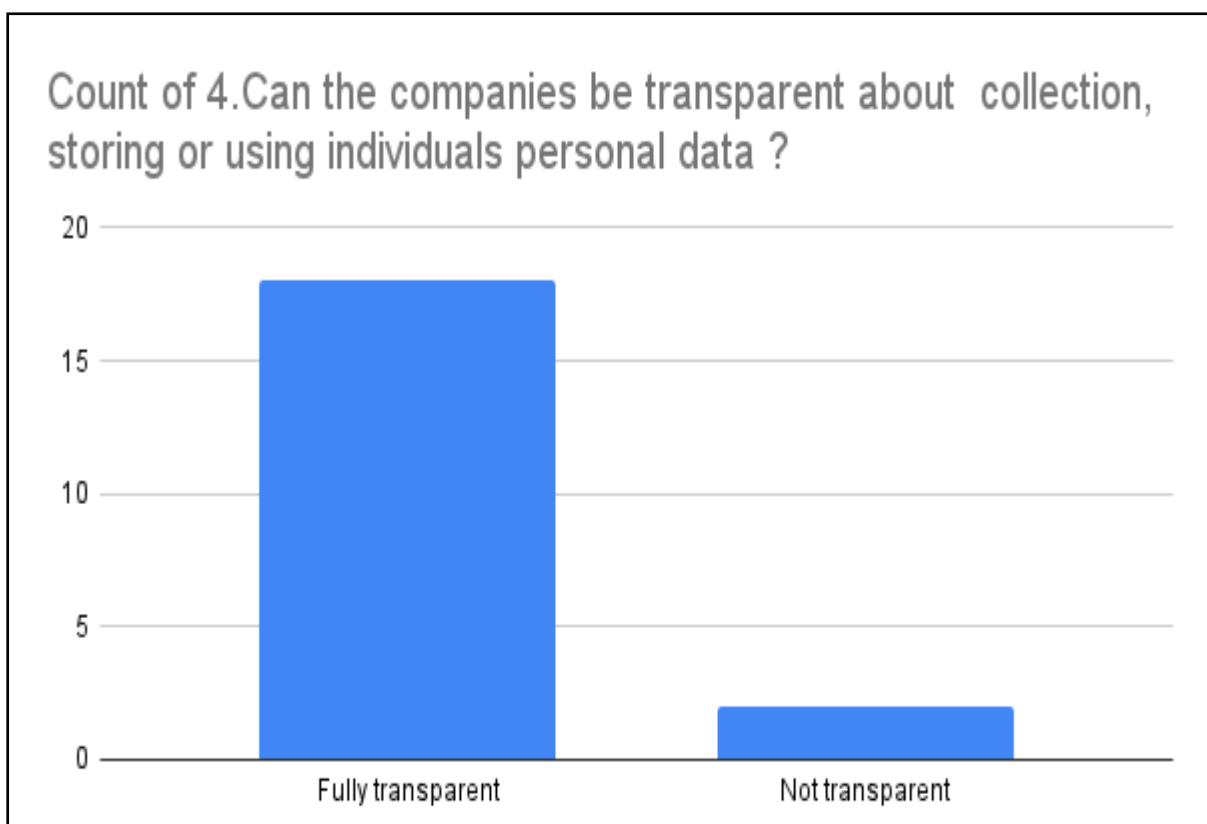


Chart 4 depicts, 90% of employees states that the companies can be transparent in processing (collect, store, use, rectify etc) the personal data of an individual. But 10% states that transparency in processing of data is harder.

Result : Because it requires lots of procedures and various measures, which is not affordable by all companies. But being transparent solves all the issues in data protection. And is the key element in protecting the personal data of an individual.



Chart 5 depicts, 50% of employees changed from using one product or services to another due to the privacy and security of their data. And at the same times 50% of employees states that it never happened to them.

Result : So those companies who provides less protection for their consumers personal data may end up in losing their consumers because they prefer safety and privacy nowadays. So only when companies provide enough protection to their consumers data, they will stay and if not they may change their products and services as there are lots of demands and competition exists.

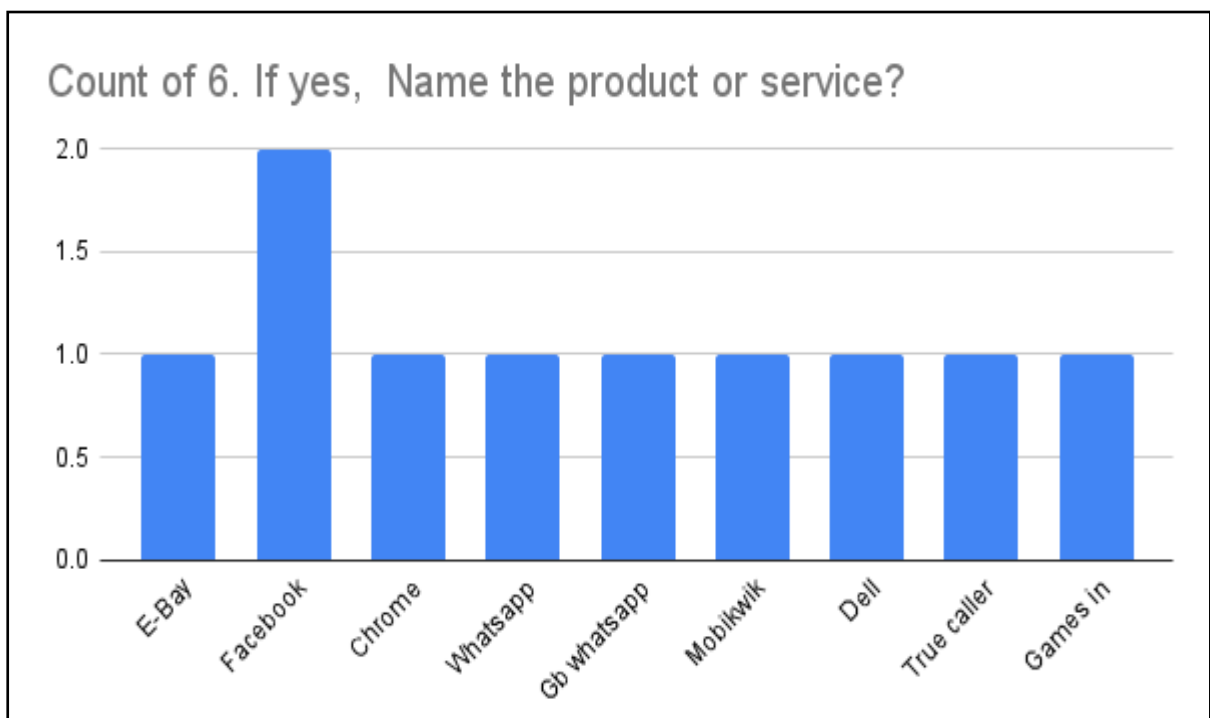


Chart 6 depicts, 50% of employees changed from one products and services to another. There is a chance that these companies did not protect their consumers personal data. This may emerged as a threat to the consumers regarding their data.

Result: All these companies must have undergone a major loss when customers change their products and services. These companies holds a lot of customer and so it is their prime responsibility to implement safety procedures and measures for protecting personal data of their customers and make sure that it is end to end encrypted in case of whats app and so. And not provide or share information to other third parties or service providers. And when data breach takes place, then huge sanctions will be imposed on companies.

What measures can the companies take to protect both data protection and market competition?

1. Companies should allocate a separate category employees for data protection.
2. Can improve data protection and so many consumers who are genuinely interested in data protection may approach the companies.
3. CIA triad (Confidentiality, Integrity, Accountability)
4. Strict procedures for analyzing companies and impose penalties.
5. Stop selling customer data for advertisements.
6. A proper data analysis system that protects the data and also is beneficial for the company.

These are the various measures that can be implemented to balance both data protection and market competition.

V. DATA PROTECTION LAWS IN INDIA AND EUROPEAN UNION

The Digital Personal Data Protection Act 2023 (DPDPA) is an Indian legislation which aims to protect the privacy of individuals in the online market. Earlier there was a data protection bill and now it became an Act. Came into effect on September 1, 2023.

Applicability : All organizations that process digital personal data of individuals in India. There is no specific control on processing sensitive personal data or critical personal data. But generally applies to all digital personal data.

Data protection Board of India is the regulating authority who is responsible for data breaches, conduct inquiries on complaints and issue directions. Most importantly impose

penalties and sanctions for non compliance of regulations by the companies.

The European Union General data protection regulation (GDPR) came into effect on 25 May, 2018 and is the world's strongest privacy and security law. It is the data protection regulation that determines how the personal data of an individual should be processed in the EU. The **scope of the regulation** extends to transfer of personal data to Non-EU countries when they offer goods and services and process, monitor the behavior of the EU individuals personal data.

The personal data must be processed only on the **basis of seven principles. Article 5 of GDPR,**

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimization
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality
7. Accountability

Data controller determines why and how the personal data of a data subject (individual) will be processed and he is responsible for the actions done by the **Data processor**. He is the person who acts on behalf of the controller in processing data, and is evident that he has less power when compared to controller. **Data subject** is the individual person whose information has been collected and processed.

The major reason why GDPR is successful is that it has stricter penalties on companies when data breach occurs. And also it provides exclusive rights to the data subjects. So that the personal data of an individual can be protected at all costs.

Rights of a Data subject: (Article 12 – 20)

1. Consent (express or implied)
2. Controller must inform data subject
3. Right to access personal data
4. Right to be forgotten (erasure right)
5. Rectification right
6. Restriction right (Objection to processing)

7. Data portability right

When the companies violate the rules of GDPR then the fines are extremely high. There are **two types of penalties, Article 83(5)**

1. 20 million Euros
2. 4% of global revenue - preceding fiscal year

Whichever is higher, and data subjects have the right to seek compensation for damages.

These are the general analysis of both Data protection Act and GDPR. Both the acts have similarities and differences. But the major one is, GDPR has stricter requirements when transfer of personal data outside EU like Adequacy standards, SCC (Standard Contractual clauses), BCR (Body corporate rules) But DPA has less requirements when transfer of personal data of Indian citizens outside India. So in DPA, even more stricter provisions and requirements must be incorporated.

VI. LIMITATIONS OF THE STUDY

This research study involves both Companies and Consumers perspective. It is quite easy to get responses from consumers when compared to companies. Because we should focus on their availability of the time and transparent responses. Keeping in mind that their giving their opinions on their own companies which will be slightly riskier. And due to lack to time, the responses from companies is lesser than the consumers. And also couldn't visit them in person to get their perspectives and reviews. Conducted surveys through questionnaire by google forms.

VII. SUGGESTIONS

Few ways on how to balance both data protection and market competition, Companies should allocate a separate category of employees for data protection. They can improve data protection and so many consumers who are genuinely interested in data protection may approach the companies. Must stop selling customer data for advertisements. Can introduce CIA triad (Confidentiality, Integrity, Accountability) between companies and consumers. Providing a proper data analysis system that balances both companies and data. Strict procedures for analyzing companies and impose penalties. The Government or other regulating body like Competition Commission of India (CCI) must interfere when issues of data breaches in the companies and must regulate it with strict data protection regulation and at the same time protect the smaller companies from loss.

VIII. CONCLUSION

As it is said that, ***Data must be treated as a valuable asset***. Because personal data is something that is used to identify an individual and there are categories of data such as sensitive personal data which includes racial, genetic, political, religious, health and other data. All these personal information of an individual is important and related to their privacy. And as we know right to privacy is a fundamental right which must be protected by both individual themselves and the companies who collected their personal data. The sole responsibility lies on Government to implement strict data protection regulations in comparison to EU regulations and also provide companies with proper framework so that they will not be affected when data protection regulations are made stricter. So that there will be a balancing act between both data protection and market competition.

IX. REFERENCES**(A) Statutes**

1. Constitution of India, 1950
2. Digital Data Protection Act, 2023
3. General Data Protection Regulation, 2018

(B) Journals

1. Dr. Katherine Kemp and Dr. Rob Nicholls, 18 April 2022 on Balancing the Competition, Consumer Protection and Privacy Regulation of Digital Platforms.
2. Barker, A. (2021), "Consumer data and competition: A new balancing act for online markets?", OECD Going Digital Toolkit Notes, No. 5, OECD Publishing, Paris, <https://doi.org/10.1787/e22e3a47-en>.
3. Priyansh dixit and Sukarn Sharma, June 19, 2023- Balancing Privacy and Competition: Evaluating the Competitive Effects of India's Data Protection Bill.
4. Tamannah and Adhiraj Andlay, Sep 19, 2023 - Privacy as a Concern for Competition Law in Light of the Digital Personal Data Protection Act, 2023.
