1) In your estimates, experience and/or analysis, does the Indian entities face any problems in relation to data privacy with the current legal scenario of India? If your answer is yes, please explain the origin of these difficulties- is it government or is it offshore customers? Please describe the nature of the difficulties faced from either/both the sources.

There is no difficulty in law.

There could however be apprehension on the judicial process to seek damages in case of any data security violations. The adjudicators (With the exception of the Mumbai Adjudicator) who have sole discretion for data privacy violations under ITA 2008 are not well informed or are otherwise not interested in meeting their role responsibilities. The appellate authority (Cyber Appellate Authority-CAT) is not functioning due to the non-availability of a Chair person for the last several years.

2) Does the Indian companies find it difficult to procure business on the ground that India lacks a robust data privacy regime?

Not in my opinion.

3) Does the existing Indian statutory and regulatory provisions provide adequate protection to the victims of data privacy infringements?

Yes.

4) Have you witnessed any difference since the enforcement of the Information Technology Act as amended? If yes, in what manner, sense and extent?

Yes. The law now exists at least on paper providing for punishments and damages. Implementation has to follow.

5) Do you foresee any difficulties in ascertaining the damages under section 43A of the Information Technology Act (wherein it states that the ‘body corporate shall be liable to pay damages by way of compensation to the person so affected’)?

No
6) Does the introduction of section 72 A in the Information Technology Act—punishment for disclosure of information in breach of lawful contract, suffices the requirement of punishing the entity having contractual relations for infringing the data/information?

No. unless the concept of unconscionable contracts is recognized and sanctity of proper disclosure before execution of the contract is recognized.

7) As per the current legal position, can the foreign players be punished for contravening the provisions of Information Act, 2000 in India?

Yes

8) Are the rights of data subjects addressed/protected adequately in the Information Technology Act, 2000?

Substantially. Problem remains on the judicial support.

9) In your opinion, has the administrative implementation of the Information Technology Act posed any problems in the business of offshore outsourcing?

No

10) Does the Indian entities rely more heavily on other measures like information technology security measures, contractual provisions, audits, physical security, etc. rather than banking on the Indian legislation?

Yes

11) Is the Data Protection bill introduced in 2006 comprehensive enough to provide the required legal protection to the data subjects?

It was a reasonable effort.

12) Please provide your opinion on whether the Indian statutory provisions related to data privacy is at par with the international statutory standards?

No. ..since there is no primary law on privacy protection for individuals that fixes the rights and liabilities of parties. All violations have to be fitted with offences and contraventions of ITA 2008

13) What are the recommendations to bridge the gap between the Indian data privacy legislations and the international statutory provisions, if any?

There is a need for Privacy Protection law.

14) In your opinion, are there any other difficulties in the business of offshore outsourcing in the field of transmission and processing of personal data?

No

15) In your opinion, does India need a separate and exclusive data protection legislation?

A Privacy protection law may be required to define the rights of liabilities. Data protection is inherent in ITA 2008. However a law similar to HIPAA can be contemplated. Such a law can be a comprehensive law to address all “Sensitive Personal Information” rather than sector specific.