



Newsletter

# Sharp View

## July 2022

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The month of July brings heavy downpours to India. The weather is cool due to lesser sunshine. July is known for celebrating various days and events but an interesting fact about this month is that 'All India Radio' (AIR) completes its 95 years of existence! Since its inception in 1927, AIR has come a long way to serve, educate, inform and entertain its audience by its motto: 'Bahujan Hitaya : Bahujan Sukhaya' (i.e. for the benefit and joy of the masses)

## Did you know?

- On 23 July 1927, India's first-ever radio broadcast went on air from Bombay station.
- AIR is one of the largest broadcasting organisations in the world in terms of the number of languages of broadcast and the spectrum of socio-economic and cultural diversity.
- AIR's home service comprises of 470 broadcasting centres located across India, covering nearly 92% of the country's area and 99.19 % of the total population.
- AIR originates its programming in 23 languages and 179 dialects.
- It was called by different names:
  - 1927-1935 – Indian Broadcasting Service
  - 1935-1956 – All India Radio
  - 1956.... and onwards - Akashvani
- It comes under the Ministry of Information and Broadcasting.
- 'NewsOnAir App' has a large number of listeners in more than 85 countries and 8,000 cities across the globe - U.S., Australia and U.K. being the top three countries.
- All India Radio and DD news enjoy high trust in terms of authenticity and accuracy of the news than their private counterparts.

*Happy Reading!*



# Assurance

## *Data Analytics for Audit*

In an auditing environment, data analytics means the extraction of data from a client's information system to perform data selection, classification, ordering, filtering, translation, and other functions to provide the client with information about their business processes. The use of data analytics by the auditors helps them to better understand the clients' information and identify the risks. Mr. Sunil Satwani (Mumbai Office) elucidates the benefits and the challenges of using data analytics in the audit process.



Chartered Accountancy (CA) firms operate within an environment of high expectations from their clients, the external public, and regulators. Regardless of size, CA firms, whether statutory auditors or internal auditors are always looking for new and innovative ways to deliver value to their existing customers while attracting new clientele. Despite changing regulatory environments and fluctuating economies, one constant to a more profitable practice is lowering costs and time. CA firms require technologies that can add as much value as possible to their clients, in the most cost-effective method available. With audit enabling technologies CA firms can harness the power of data analytics to ensure a structured framework for performing organized, efficient and reliable audits that meet or exceed professional standards.

### What is data analytics?

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The extraction of data from a client's information system to perform data selection, classification, ordering, filtering, translation, and other functions to provide the client with information about their business processes. Audit data analytics involves the analysis of complete sets of data to identify anomalies and trends for further investigation, as well as to provide audit evidence. This process usually involves an analysis of entire populations of data, rather than the much more common audit approach of only examining a small sample of the data.

### How can data analytics be used by audit firms?

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The International Auditing and Assurance Standards Board (IAASB) defines data analytics for audit as the science and art of discovering and analysing patterns, deviations and inconsistencies, and extracting other useful information in the data underlying or related to the subject matter of an audit through analysis, modelling and visualisation for planning and performing the audit.

The larger audit firms, and increasingly smaller firms, utilise data analytics as part of their audit procedures to reduce risk and to add value to the client. Bigger firms often have the resources to create their own data analytics platforms whereas smaller firms may opt to acquire an off-the-shelf package. There is no one universal audit data analytics tool but there are many forms developed in-house by firms. These tools are generally developed by specialist staff and use visual methods such as graphs to present data to help identify trends and correlations.

For auditors, the main driver of using data analytics is to improve audit quality. It allows them to more effectively audit the large amounts of data held and processed in IT systems for larger clients. Auditors can extract and manipulate client data and analyse it. By doing so they can better understand the client's information and better identify the risks. Data analytics tools have the power to turn all the data into pre-structured forms/presentations that are understandable to both auditors and clients and even to generate audit programmes tailored to client-specific risks or to provide data directly into computerised audit procedures thus allowing the auditor to more efficiently arrive at the result.

Examples of the use of data analytics to perform audit procedures include:

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NRV testing – comparing the last time an inventory item was purchased with the last time it was sold and at what price

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Analysis of revenue trends by product and region

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Matching purchase orders to invoices and payments

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Segregation of duties testing by identifying combinations of users involved in processing transactions from the metadata attached to transactions

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### Benefits of data analytics

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The increased access and manipulation of data and the consistency of application of data analytics tools should increase audit quality and efficiency through:

- Increased business understanding through a more thorough analysis of a client's data and the use of visual output such as dashboard displays rather than text or numerical information, allows auditors to better understand the trends and patterns of the business and makes it easier to identify anomalies or outliers.
- Better focus on risk - This increases the understanding and aids the identification of risks associated with a client, enabling testing to be concentrated on those areas. This is further enhanced by freeing up the auditor's time from analysing routine data so that more time can be spent on areas of risk.
- Increased consistency across group audits where all auditors are using the same technology and process, enabling the group auditor to direct specific tools for use in component audits and to execute testing across the group. This would require appropriate consent from all component companies but if granted enables a more holistic view of a group to be undertaken.
- Increased efficiency through the use of computer programmes to perform very fast processing of large volumes of data and provide analysis to auditors on which to base their conclusion, saving time within the audit and allowing better focus on judgemental and risk areas. For example, much larger samples can be tested, often 100% testing is possible using data analytics, improving the coverage of audit procedures and reducing or eliminating sampling risk.
- Data can be more easily manipulated by the auditor as part of audit testing, for example performing sensitivity analysis on management assumptions.
- Increased fraud detection through the ability to interrogate the entire database and to test segregation of duties; and

- Information obtained through data analytics can be shared with the client, adding value to the audit and providing a real benefit to management in that they are provided with useful information, perhaps from a different perspective.
- With more thorough analysis offered by data analytics, an auditor can benefit in several ways. For example, the auditor has more efficient planning, since analytics can be used early in an audit to identify problem areas. It also results in better risk assessments, based on any anomalies and trends uncovered. In addition, it yields higher-quality audit evidence, since the auditor can now examine far more data than had previously been possible with audit sampling. Finally, it results in the communication of more issues to the client, since data analytics is more likely to uncover a variety of anomalies that could be of interest to those charged with governance of the client.

### Challenges of data analytics

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The introduction of data analytics for audit firms isn't without challenges to overcome. At present there is a lack of consistency or a widely accepted standard across firms and even within a firm. At present there is no specific regulation or guidance which covers all the uses of data analytics within an audit. This results in difficulty establishing quality guidelines. It also means that firms with the resources to develop their own data analytics tools may have a competitive advantage in the market place effectively increasing the gap between the largest firms and smaller firms, reducing effective competition in the audit industry. Other issues which can arise with the introduction of data analytics as an audit tool include:

- Data privacy and confidentiality. The copying and storage of client data risks breach of confidentiality and data protection laws as the audit firm now stores a copy of large amounts of detailed client data. This data can be misused by the firms or illegal access obtained if the firm's data security is weak or hacked which may result in serious legal and reputational consequences.
- For a variety of reasons, including the above, and also due to a perception that it may be disruptive to business, the audit client may be reluctant to allow the audit firm sufficient access to their systems to perform audit data analytics.
- This risk can be mitigated by ensuring that the tests performed are documented properly and only the exceptions are noted on the working papers. If no exceptions are noted, this fact can be stated so stated on the audit file.
- Completeness and integrity of the extracted client data may not be guaranteed. Specialists are often required to perform the extraction and there may be limitations to the data extraction where either the firm does not have the appropriate tools or understanding of the client data to ensure that all data is collected. This may especially be the case where multiple data systems are used by a client. In addition, it may be possible for clients to only make selected data accessible or to manipulate the data available for extraction.

- Compatibility issues with client systems may render standard tests ineffective if data is not available in the expected formats.
- Audit staff may not be competent to understand the exact nature of the data and output to draw appropriate conclusions, training will need to be provided which can be expensive.
- Insufficient or inappropriate evidence retained on file due to failure to understand or document the procedures and inputs fully. For example, a screenshot on the file of the results of an audit procedure performed by the data analytic tool may not record the input conditions and detail of the testing.
- Practice management issues arise relating to data storage and accessibility for the duration of the required retention period for audit evidence. The data obtained must be held for several years in a form which can be retested. As large volumes will be required firms may need to invest in hardware to support such storage or outsource data storage which compounds the risk of lost data or privacy issues.
- An expectation gap among stakeholders who think that because the auditor is testing 100% of transactions in a specific area, the client's data must be 100% correct.

### Conclusion

Data analytics tools which can interact directly with client systems to extract data have the ability to allow every transaction and balance to be analysed and tested. The increase in the volumes of transactions is such that it has become difficult to verify each and every transaction, therefore the risk-based approach is followed to identify the key audit areas. With data analytics, auditors will have the ability to test more transactions and balances. This may increase the chances of detecting certain types of fraud or the ability to identify inefficiencies and opportunities for a clients' business. Ultimately, although the primary role of auditors will not change, the way an audit is performed in the future will be significantly different from the audit of today. Nonetheless, audit data analytics represent a significant improvement over traditional audit techniques, and so will likely occupy an increasing proportion of auditor's time in the future.



## ***Depot Management – An Integral Part of Supply Chain Management***

Depot Management is a smart way to balance the need for backup with cost-effectiveness. It requires complete synchronization of all critical business functions within the value chain. Ms. Pranjal Sonawane (Pune Office) discusses the crucial role of 'depot' in supply chain management, and the key auditing aspects in the depot management process.





# GRC | Depot Management – An Integral Part of Supply Chain Management

## Introduction

A depot is a dedicated facility used for storing physical inventory for sale or distribution. It is used to temporarily store products in bulk before inter-location shipment or shipping to consumers.

Currently, India's total depot capacity is estimated to be 160 Mn tonnes. The growth in the depot market is largely driven by the rise in international businesses. The entry of foreign and domestic industries has generated greater export opportunities, leading to an increase in demand for depot spaces.

Depot Management is one smart way to balance the need for backup with cost-effectiveness. It requires complete synchronization of all critical business functions within the value chain.

## The crucial role of depot in supply chain management

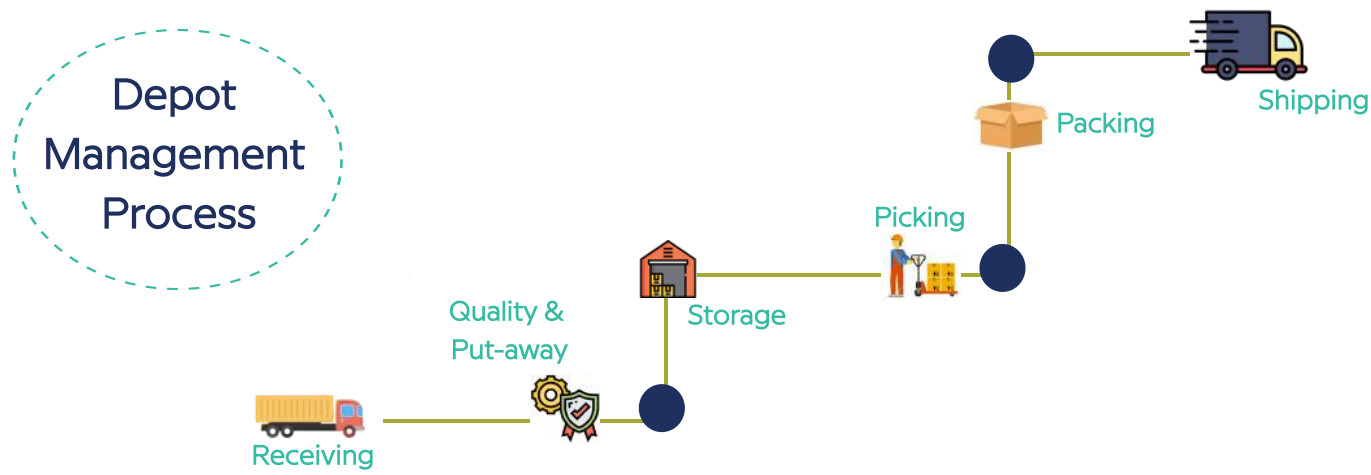
Supply chain management's objective is to maintain an uninterrupted flow of inventory. When a manufacturing unit is at one location and the customer base is scattered across various parts of the country, it becomes vital to have a strong distribution channel. The Depot model ensures reaching out to the customers across various locations in the most efficient manner.

Efficient depot management prioritises fast distribution without sacrificing quality and ensuring better market coverage. This helps in building long-term relationships with partners and customers. It also strikes a balance between demand and supply in the supply chain thus, gaining a competitive edge in the market.

On the other hand, depot-related cons can also negatively affect the entire supply chain. Therefore, it is crucial to choose a properly-functioning depot and run all the operations carefully till the end.

## Depot management process

Depot management includes six core processes. Each process influences the efficiency of the next, so every step must be optimized for the depot operation to run like a well-oiled machine:



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# GRC | Depot Management – An Integral Part of Supply Chain Management

## Key auditing aspects of depot

### 1. Inward controls

Ensuring the receipt of the right quantity of required product in the right condition at right time is one of the mainstays of the depot operation. The following key controls need to be verified:

- i. The company has defined policies and procedures for receiving material and recording receipt information at the gate
- ii. Whether the depot has a weighment bridge. If not, whether the security accompanies the truck to the external weighment bridge?
- iii. Are the procedures defined for recording and reporting shortage/damaged quantity received beyond the tolerance limits?
- iv. Ensure that users are trained to handle any such exceptional cases that might come up at the time of inwarding.
- v. Turnaround time (TAT) is defined for inwarding of goods into the system.
- vi. A review mechanism is in place for delayed and open goods receipt notes (GRN).
- vii. Materials are tagged at the time of receiving GRN which is integrated with the system used by the depot.
- viii. Check if the goods have been received as per the stock-transfer purchase order (PO)

### 2. Sales/dispatch controls

One of the basic functions of the depot is the dispatch of goods. Checkpoints for auditors for the dispatching process are mentioned below:

- i. Timely preparation of outbound deliveries (OBD) against the dispatch schedule.
- ii. Monitoring of time lag in the creation of invoice, post OBD.
- iii. Comparison of 'Actual Delivery Date' with 'Scheduled delivery date' to identify delays
- iv. Real-time tracking of stock-in-transit.
- v. Review of authorisation of dispatches made on holidays in accordance with company's policy.
- vi. Adequate approvals for monitoring of manual invoices (if any) created for dispatches.
- vii. Periodic review and reporting of customer rejections, incorrect material dispatch, cancelled invoices, etc. via MIS.

### 3. Warehousing controls

A depot holds the inventory of the company till dispatch orders are received for the same. Therefore, managing the inventory stored becomes critical. Following are a few checkpoints for auditing warehousing controls at the depot.

- i. Daily perpetual inventory is performed as per the physical stock verification (PSV) calendar and reporting of discrepancies.
- ii. Ensure adequate segregation of duties while conducting physical verification.
- iii. Periodic reporting of slow-moving/non-moving/obsolete inventory at the depot.
- iv. Standard operating procedures (SOPs) for proper segregation, tagging, stacking norms and storage of inventory.
- v. Adequate insurance cover as per average stock holding is obtained for inventory at the depot.

# GRC | Depot Management – An Integral Part of Supply Chain Management

## 4. Security and administration related controls

Depot security is a critical component. To deter theft or vandalism, strong security measures for the depot should be taken. Key checkpoints are:

- i. Adherence to security norms such as availability of security personnel, firefighting equipment, CCTV, compound wall, yard lights, gensets, fire extinguishers, fire alarms, smoke detector, air conditioners, etc.
- ii. Emergency exit gates are not blocked by stocks or other items.
- iii. Proper ventilation is ensured in the depot
- iv. Proper working conditions of forklifts, conveyors etc. used for picking up the materials.

## 5. Statutory compliances

There are numerous licenses and registrations for operating a depot. Below are certain key compliances that a depot needs to comply with:

- i. Compliances w.r.t. packaging of goods, safe transportation, maintenance of registers, etc. under The Legal Metrology Act, 2009
- ii. Compliances under The Contract Labour (Regulation and Abolition) Act, 1970 w.r.t. PF, PT, ESIC, etc of various contract workers working at the depot
- iii. Adherence to the provisions of The Shops and Establishment Act of the respective State.
- iv. Packing and storage requirements as per Warehousing (Development & Regulation) Act, 2007
- v. NOC or warehousing license from the municipal corporation or local authority
- vi. Registration under The Customs Act, 1962, Private Security Guards Act of the respective state, etc.
- vii. FSSAI License/Registration as per The Food Safety and Standards Act, 2006

## 6. Other controls:

- i. Inductions and periodic trainings for employees and process of knowledge transfer from outgoing employees should be set up.
- ii. In the case of shared depot, contractual terms for asset allocation, availability of dedicated manpower, and infrastructure are to be defined.
- iii. MIS for all the predefined reporting parameters needs to be prepared on a timely basis.
- iv. Adherence to contractual terms w.r.t. every clause in the contract needs to be ensured. Any deviation is to be monitored and reported.

## Key Takeaways

Effective depot management is crucial to the success of any business operation. Efficient internal controls can strengthen the entire distribution system.

The depot-audit report draws the attention of the management to the pain areas and evaluates the entire depot function on the benchmark of best practices. Hence, auditing depot operations is vital to maintain best-in-class operations.

In a nutshell, a depot audit identifies good working practices and improvement or optimization opportunities inside the depot through data benchmarking and an objective assessment. It also supplies a roadmap to qualitative depot improvement, savings and cost avoidance, and improved efficiency.

# Taxation

## ***GST - Taxability of the seconded employees under the reverse charge mechanism***

We have seen many Supreme Court rulings under the GST in the recent past. Recently, the honourable SC has ruled that employees seconded by the foreign company to its Indian affiliate fall under 'Manpower supply services' and hence taxable. Due to the absence of 'employer-employee relationship' between the Indian affiliate and the seconded employee, the same is taxable under the reverse charge mechanism. Mr. Shouvik Roy (Mumbai Office) explains the judgement lucidly.



Commissioner v. Northern Operating Systems Pvt. Ltd.  
SC Judgement dated 19 May 2022 in CA 2289-2293/2021`

### Summary

A three Judge Bench of the Honourable Supreme Court has held that the service tax is payable (under the service head of "Supply of Manpower Services") on the payments (salaries and allowances) towards secondment of employees seconded from a foreign company to its Indian subsidiary/associate. In arriving at this decision, the Honourable Supreme Court noted, inter alia that although operational or functional control over the seconded employees was exercised by the assessee, the seconded employees continue to remain as employees of the foreign group company. Hence, exemption from service tax on the plea of employer-employee relationship between secondee and assessee company is not sustainable.

### Facts

- The issue for determination was the legality and validity demand notices issued to the assessee company ('assessee') in India. The assessee entered into agreements with its various group companies located in the United States of America, United Kingdom, Dublin, Singapore, etc. and provided general back office and operational support to such group companies.
- As per the understanding with group companies, when required the assessee requested the group companies for managerial and technical personnel to assist in its business and accordingly the employees were selected by the foreign group company and transferred to assessee in India.
- The seconded employees would receive their salary, bonus, social benefits and other expenses from the group company and there after the assessee would reimburse the same to the group company against debit notes raised by the foreign group company.
- Demand of service tax under Reverse Charge Mechanism ('RCM') was raised under 'Manpower Recruitment or Supply Agency Service' for payments made to foreign group companies w.r.t. seconded personnel. Period in dispute pertained to October 2006 to March 2014. (Extended period was invoked on allegation of "suppression of facts.")

### Revenue Authority & CESTAT Orders

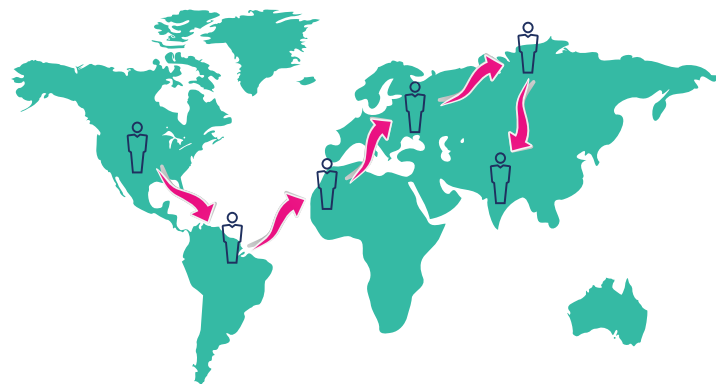
The Adjudicating Authority (Commissioner) confirmed the demand of service tax for the period October 2006 to March 2012 on the ground that the idea behind secondment arrangement was that the secondee will remain employed by the original employer during the secondment, and will, after the termination of the secondment, eventually return to the original company, as a consequence of which the secondee does not become integrated into the host's organization in India.

However, for the period post April 2012, the demand was dropped holding that employer-employee relationship exists between the assessee and seconded employee which was exempted under the Negative List regime introduced w.e.f 1/4/2012.

Appeals were made to the CESTAT. The CESTAT allowed the assessee appeals and dismissed the Revenue Appeals. CESTAT held that the agreement between the assessee and group company does not relate to 'supply of manpower' at all and there was no taxable service.

### Ratio Decidendi of the Supreme Court Judgement

- On appeal by the Revenue, the Honourable Supreme Court affirmed the findings of the Adjudicating Authority (Commissioner) and confirmed the demand of service tax for the normal period of limitation.
- It was observed by the SC that although seconded employee was under visible control and works under the direction of the assessee in India, seconded employee continued to be in the payroll of the original (seconding) group company.
- It was further noted that if the assessee (host company in India) was not satisfied with the seconded employee, the seconded employee returned back to the original group company even if the secondment period was not completed. Further, after successful completion of secondment the seconded employee returned to the group company. Further, even the secondment was as per the policy of the group company. Therefore, the overseas entity (the seconding company or the original company) was held to be the employer, and not the assessee (host company.)
- Under the contractual arrangement, the original group company in relation to its business deployed them to the assessee company. The consideration in the transaction was that the assessee (host company) benefited from the skilled employees, assigned them with specific jobs or assignments and thereby benefited from increase in revenue. The quid pro quo in secondment of employees was the reimbursements made by the host company (the assessee in India.)
- Giving importance to "substance over form" it was held by SC that these secondment arrangements are nothing but provision of service by the employer to the host affiliate Co, and therefore reimbursements paid by the Host Co to the original (Overseas Group Co) should be subject to service tax.
- SC however, held that the demand beyond the normal period of limitation, even though otherwise taxable, has to be dropped on the ground of time bar and being beyond the normal limitation period. It held that there was no willful suppression of facts in this case, to justify invoking a larger period beyond the normal limitation period of 1 year.



### Conclusion and Implications

Multinational companies often share their talent pool across borders and jurisdictions to achieve various objectives. In the Indian context, typically, these arrangements are structured in the form of dual employments where the seconded employee remains on the payrolls of the company in the base location or the head office ('employer') and continues to draw their salary in that country itself, for maintaining the social security status in that country. The Indian affiliate, to which the employees are seconded, ('host affiliate') take these employees on its payrolls for the agreed tenure and reimburses the salary of the employees to the employer under a letter of understanding or a secondment agreement. The host affiliate, normally, also undertakes the tax deduction and labour law related compliance required under the local laws. The seconded employees operate and work under the control and supervision of the host affiliate and provides all their services to the host affiliate. Once the agreed tenure is completed, the seconded employee returns back to the original (overseas) company.

This judgement is likely to have significant implications on companies involved in secondment agreements. The SC noted that no single factor would be sufficient to decide such cases, SC's observations would play a crucial role in determining liabilities involving similar arrangements. Therefore, companies will have to review their existing secondment agreements to re-visit their tax positions and analyse whether they need to re-structure the arrangement or create provision in books, for possible tax liabilities arising on the group, out of such arrangements.



# Consulting

## ***The concept of whistle blowing mechanism***

The purpose of the whistle-blowing policy is to provide a framework to promote the responsible behaviour of an organization. The whistleblowing policy submerges in the internal control and compliance of the company which demonstrates to the investors and law enforcement agencies the efforts made by the company to thwart, detect and deal with fraudulent behaviour. Mr. Bhargav Soni (Baroda Office) presents you with the pros vs. cons of the whistle-blower policy along and the existing legislative framework which supports the whistle-blowing mechanism.





### Background

In recent years, the corporates of India were overshadowed by many controversial corporate scandals. These scandals have always left adverse effects on the reputation, financial status, and governance not limited to losing the interests of the investors and stakeholders.

Every business is susceptible to fraud. The nature of the business, the size of the business, and the approach of the management matter when the incidents are reported. Having a system that reports such incidents in the organization, helps the organization in preventing wrongdoings and stopping future occurrences, ensures to prevent the employees from participating in illegal or fraudulent activity, and exposes such fraudulent incidents. Most of cases of whistleblowing, the employees of the organizations are the first respondents to have viable information about the fraudulent activity happening in the organizations but due to the fear of losing a job, and not knowing who to contact, their concerns go unheard. This makes it even more important for the organization to protect the whistleblower's identity. The whistleblowing policy submerges in the internal control and compliance of the company which showcases the investors and law enforcement agencies that the company has made efforts to thwart, detect and deal with fraudulent behaviour.

### Definitions

A whistleblower is a person who may an employee, ex-employee, or someone in relation to the organization who exposes a piece of information that he believed to be a fraud or corruption or deviate from the company policies and regulations.

According to Koehn (2003) "Whistleblowing occurs when an employee informs the public about inappropriate activities going on inside the organization".

According to Boatright (2003) "Whistleblowing is the release of the information by a member or former member of an organization this is evidence of illegal and/or immoral conduct in the organization that is not in the public interest.

### Potential types of Whistle Blower

There are some types of whistleblowers ascertained by the nature of the whistleblower.

**Internal:** The whistleblower reports the wrongdoings to the officials at the higher position in the organization. The usual subjects of internal whistleblowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience, etc.

**External:** Here, the wrongdoings are reported to the people outside of the organization like media, public interest groups, or enforcement agencies.

**Alumni:** Whistleblowing done by a former employee.

**Open:** The identity of the whistleblower is revealed.

**Personal:** Disclosing the organizational wrongdoings that are intended to harm a particular person.

**Impersonal:** It is when the wrongdoing is to harm others.

## Consulting | The concept of whistle blowing mechanism

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**Government:** Disclosure is made about wrongdoings or unethical practices adopted by a government official.

**Corporate:** Disclosure is made about wrongdoings in a business corporation.

### Adopting the whistleblowing policy

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The purpose of the whistle-blowing policy is to provide a framework to promote the responsible behaviour of the organization. The framework protects the employees who wish to raise a concern to the management. This allows the employees to timely raise their concerns to the management and the management to ensure timely response on the complaint made.

The framework may include the employees (contractual or permanent), ex-employees, vendors, contractors, suppliers or agencies, etc.

The framework may include the penalties for the complaints raised with the belief of wrongdoing which later turns into a false claim. The organization is required to take strict actions to be taken if the whistleblower purposefully raises the alarm to take advantage of it.

The ICSI explained in its report the best practices in designing and implementing effective whistle-blowing mechanism.

1. Gaining top-level commitment
2. Developing the whistle-blower policy
3. Designing and reporting mechanism
4. Embedding the program
5. Reporting, Monitoring, and Evolution

The Association of Certified Fraud Examiner on the 2022 Report to the Nation on Occupational Fraud and Abuses stated that organizations that have effective reporting mechanism tend to detect fraud and reduce losses earlier than those organization that does not have reporting mechanism.

The losses incurred as the result of fraud are 2 times higher than for the organizations without any reporting mechanism. 42% of frauds are detected by tips than any other method, and more than half of the tips were from employees.

### Pros and cons of adopting whistle blower policy

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#### Pros

1. Helps Combat Fraud: Encouraging employees to speak up against wrongdoing and expose a fraud may prevent them from committing any illegal activities.
2. Safeguarding reputation: Internal whistleblower mechanism enables an organization to tackle the issue at an early stage thereby preventing serious reputational damage. If the whistleblower uses the internal mechanism, it gives the organization a chance to deal with the issue early. By early tackling the issue before it escalates, the company gets the opportunity to prevent serious damage to the reputation of the firm.

3. Raises Awareness: The information passed on by the whistleblower can raise awareness of the severity of the nature of the issue thus identifying the gaps or breaches in the system.
4. Creates open culture: The employees feel a hard time opening up to their managers. The whistle-blowing mechanism helps in to provide their valuable feedback without any concern.

### Cons

1. Personal Threat: The whistleblower may receive death or life threats. India has witnessed many cases of whistleblowers being threatened to death.
2. Threat of retaliation: The whistleblower may feel the wrongful retaliation from the employer. They have this apprehension that if they report the fraud, they might be at the risk of losing their job.

### Timeline of Whistle Blower Protection Act 2011

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The 'Public Interest Disclosure and Protection to Persons Making the Disclosure Bill' did take a couple of years to get enacted. Early attempts in 2010 – 2013 finally materialized in 2014, and the Bill was passed by Rajya Sabha on 21 February 2014. It received the Presidential assent on 9 May 2014.

### Legislative framework in India supporting the whistle-blowing mechanism

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The legal framework in India regarding the protection of whistleblowers is still in an early stage when contrasted with the framework developed by nations like the United Kingdom and the United States of America.

A few bits of regulation set down arrangements overseeing the method involved with whistleblowing and protecting the whistleblowers. Coming up next are the regulations:

- **The Whistleblowing Protection Act, 2014**

Whistle-Blowers Protection Act, 2011 (renamed as Whistle Blowers Protection Act, 2014 by the second schedule of the Repealing and Amending Act, 2015) is an Act of the Parliament of India which provides a mechanism to investigate alleged corruption and misuse of power by public servants and protect anyone who exposes alleged wrongdoing in government bodies, projects and offices. The wrongdoing might take the form of fraud, corruption or mismanagement.

- **The Companies Act, 2013 read along with "The Companies (Meeting Board and its Power) Rules 2014, elaborated in section 179 (9) makes it compulsory for every publicly listed company to set 'vigil mechanism.'**

Section 177 of the Companies Act was amended in the year 2017, wherein the phrase "every listed company" was amended to "every publicly listed company."

Clause 10 mandates the vigil mechanism to take all reasonable steps to protect the complainant or the whistleblower from any kind of harassment or victimization, the clause further lays down the procedure for any complainant who wishes to raise their concerns directly before the chairperson of the Audit Committee in exceptional cases.

- **The SEBI's Equity Listing Agreement**

The Security Exchange Board of India through clause 49 of the SEBI's equity listing has made it compulsory for every listed company to set up its vigil mechanism and adopt a whistleblower policy. The provision further makes it mandatory for all the companies to ensure that the employees are aware of the policy in case they need to report any act of wrongdoing, fraud, corruption, and make the company aware of any kind of information that is sensitive. The clause also mandates the companies to take all reasonable measures possible to protect the directors and the complainant from any kind of harassment and victimization. To encourage the employees to raise their concerns the SEBI has started a reward mechanism.

### Key takeaway

The role of encouraging whistleblowing lies with both companies and the law. Companies need to accommodate the pre-requisite culture, support of the top management, and high-level corporate leadership for whistleblowing. The companies are needed to incorporate rigorous policies to bring the unethical and illegal practices forward to the management also, the training of the employees and managers enhances their knowledge in detecting the unethical practice. By and large, the level of whistleblowing policy is likely to depend not simply on the legal protection granted to the whistleblowing but also on the response of the management of the organization.



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**Phone: (91) (80) 2555 0987.**

## Chennai

**Parsn Manere, A Wing Third Floor,  
602 Anna Salai, Chennai 600 006.**

**Phone: (91) (44) 2827 4368, 2822 9534.**

## Coimbatore

**09, Verivada Street, Redfields,  
Race Course, Coimbatore 641 045 .**

**Phone: (91) (422 ) 427 4500.**

## Goa

**SF-9 , 2nd Floor , Block A Palmer Premises  
Holders Co-op Soc Journalist Colony Road  
Bardez Goa 403 521.**

**Phone: (91) 9820284854.**

## Mumbai - 1

**Ravindra Annexe 194, Churchgate  
Reclamation Dinshaw Vachha Road,  
Mumbai 400 020.**

**Phone: (91) (22) 66338343 to 8347.**

## Mumbai - 2

**87, Nariman Bhavan, 227 Nariman Point  
Mumbai 400 021.**

**Phone: (91) (22) 6153 7500 / 2202 2224 / 8857.**

## New Delhi

**205-207 Ansal Tower 38,  
Nehru Place, New Delhi 110 019.**

**Phone: (91) (11) 4103 2506, 4103 3506.**

## Pune

**802 Lloyds Chambers , Dr. Ambedkar Road  
Opp. Ambedkar Bhavan, Pune 411 011.**

**Phone: (91) (20) 605 0802.**

## Vadodara

**8th Floor, West Wing Aurum,  
Behind Vasna HP Petrol Pump, Makrand  
Desai Road, Vadodara - 390.007.**

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