

Lead by example: Making
whistleblowing programs
successful in corporate India
*A Deloitte Forensic India
Survey Report*



Introduction

Some of the largest frauds the world has seen in the last five years have been detected by whistleblower complaints and tip-offs. Bolstered by this, governments and regulatory bodies are, increasingly, making it mandatory for companies to provision for whistleblower helplines to help employees to voice concerns in case of potential fraud and misconduct. Surveys, conducted in recent times, unanimously emphasize that companies that have a formal whistleblowing channel are more likely to detect frauds than those that don't have one.

Despite global recognition for whistleblower hotlines, our experience shows that India has had very little success in harnessing this channel to detect frauds. One of the major reasons for this lies in the approach that companies take when they set out to implement such a hotline. When an initiative is commenced with an aim to 'tick in the box', it is unlikely to succeed. That is what seems to be happening with the majority of Indian companies trying to implement a whistleblowing program.

For such programs to succeed, it is important to realize that a hotline is not merely another source, but perhaps the only source that can detect fraud at an early stage. Accordingly, companies need to build an employee/stakeholder-friendly whistleblowing program – one that restores good faith and makes employees feel empowered about their decision to blow the whistle. Most importantly, confidence can only come

when employees see a commitment from the senior management to the program and know firsthand what actions were taken for the suspicions already reported. Only when one leads, can others follow.

Globally, regulatory bodies seem to recognize this and are publishing the number of whistle blower complaints received in a bid to encourage more people to come forward with such tips. The US Department of Justice reported over 3,000 whistleblower tips between 2012 and 2013¹, while UK's Serious Fraud Office's whistleblower hotline receives 500 calls a month.

As whistleblowing has become central to fraud detection and with increased regulatory emphasis on the need for having such a mechanism, we wanted to understand corporate India's current sentiments on the need, structure and implementation of an effective whistleblowing mechanism. We, not only, received an overwhelming response to our brief survey, but also affirmation from respondents that establishing a whistleblowing hotline can lead to better governance and reduction of fraud within a company.

I hope you find our survey results useful and relevant to your efforts in curbing fraud.

Rohit Mahajan

National Leader & Senior Director
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¹ US SEC Annual Report on Dodd-Frank Whistle Blower program, 2012

Contents

Keeping the eyes and ears open	4
Whistleblowing in the wind?	5
Managing whistle blower complaints effectively – Deloitte Forensic point of view	7
Not opening wide enough	9
Addressing concerns	10
Building a supportive environment for whistleblowers	11
Communicate, communicate, communicate	12
Conclusion: Supportive legislation alone is an insufficient motivator	13
Key contacts	14



Keeping the eyes and ears open

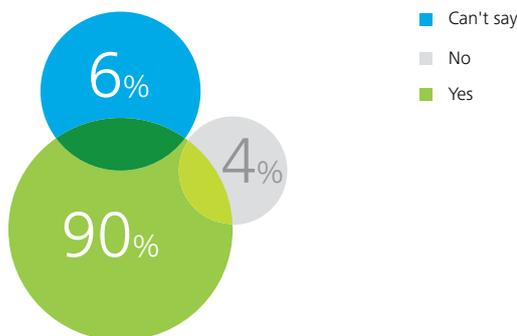
Companies understand that employees are their eyes and ears – i.e. they see and hear everything that goes on within, including inappropriate behavior and who is involved in perpetrating it. According to the Association of Certified Fraud Examiners' 2014 Report to the Nations on Occupational Fraud and Abuse, frauds are more likely to be detected by 'tips' (received from employees and third parties) than by any other method. Additionally, companies with some form of a hotline in place experienced frauds that were 41 percent less costly and detected frauds 50 percent more quickly.

While 90 percent of our respondents² agreed that establishing a whistleblower hotline could help reduce

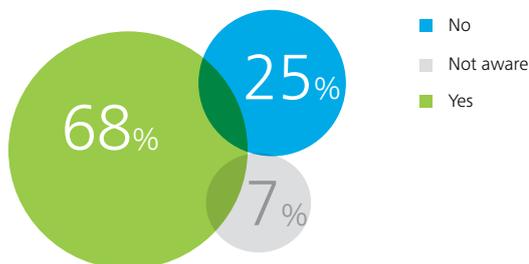
fraud, only 68 percent said they were actually equipped with such a hotline or policy.

It is important to understand that providing individuals with a means to report suspicious activity is a critical part of an anti-fraud program. Fraud reporting mechanisms, such as a hotline in this case, should be set up to receive tips from both internal as well as external sources, while allowing anonymity and confidentiality. Around 84 percent of the respondents to the survey felt it was essential to extend a company's whistleblowing hotline to the associated third parties such as vendors and business partners.

Given the current environment, do you feel that establishing a whistleblowing hotline can lead to better governance/reduction of fraud within an organization?



Is your company equipped with a whistleblowing policy/ hotline?



² We received 83 responses to this survey. The respondents include C-Level executives from consumer markets (14.5%), financial services(13%), industrial markets (11%), infrastructure(17%), IT/ITeS(14.5%), media and entertainment (2.5%) and other sectors (27.5%).

Whistleblowing in the wind?

In our experience, while companies have a whistleblowing policy, they are still unable to utilize it effectively to detect frauds. The primary reason is poor response from employees. The survey respondents indicated a number of reasons, as depicted in the graph, for employees to feel under confident using their companies' whistleblower hotline.

These responses point to a more fundamental concern within organizations – the seriousness with which the company approaches fraud detection and management.

For most companies today, whistleblowing is perceived as 'yet another measure to implement' as part of the larger fraud risk management efforts and, hence, it gets relegated to a tick in the box. Organisations must understand that whistleblowing is, perhaps, the only tool that comes close to pointing out a fraud in its nascent stages. It is, therefore, important to build, monitor and nurture this channel continuously. Data from the whistleblower hotline needs to be continuously monitored and integrated into the larger fraud risk management systems so that even small irregularities can be detected early. Around 83 percent of our survey respondents agreed that proactive trend analysis based on the data generated through whistleblower hotlines was useful to their organizations.

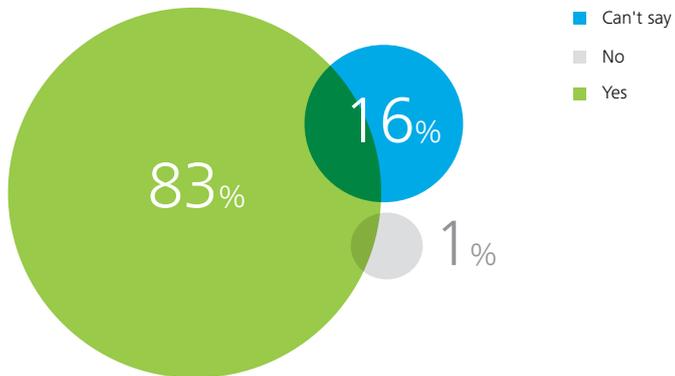
Through our engagements, we have seen that a majority of Indian companies usually invest little time and resources on building robust whistleblowing systems or training employees on the existence and use of such a system. Often, hotlines are either not functional or available through multiple access points. What is worse, hotlines fail to promise confidentiality to users and in several instances there are no dedicated teams to run these hotlines. Often, the person managing the hotline either has a full time administrative or human resources responsibility.

Such poor infrastructure and support for hotlines builds little confidence in employees to use them. The situation is compounded because the law too can provide only limited protection to whistleblowers. The Whistleblowers Protection Bill 2011 does not allow anonymous complaints and imposes no penalties on those who harass whistleblowers. Further, there are no specific requirements from companies to provide such a hotline or any guidelines on safeguarding the whistleblower. On the contrary, in developed countries

What aspects do you feel dissuade employees from 'blowing the whistle'?



Do you think a proactive trend-analysis, based on the regular data generated (accumulated) from a hotline, can be of value to your organization?



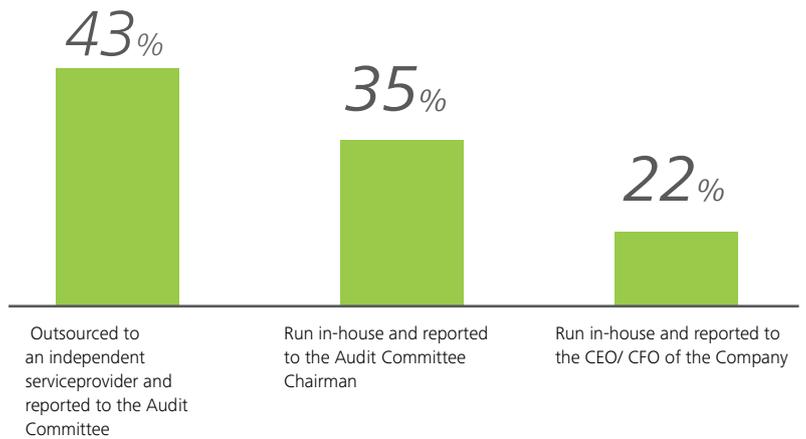
like the US, the Sarbanes Oxley Act (section 301) mandates companies trading on the US Stock Exchange to provide a mechanism to employees to remain anonymous when reporting concerns about accounting or audit irregularities.

Under these circumstances, the extent to which a whistleblower can rely on the company to protect him depends on the 'tone at the top'. The senior management's commitment is essential for the success of a whistleblower hotline, and therefore, they need to frequently communicate about the hotline to employees.

One of the ways that companies can ensure effective management of a whistleblower hotline is outsourcing its implementation and management to a third party with the relevant experience and capability. Around 43 percent of respondents felt that a helpline run by an independent service provider reporting to the Audit Committee would be the most effective model of whistleblowing hotlines.

Through outsourced whistleblower hotline management, companies can assure their employees that the initial communication is handled independently to ensure that all allegations are recorded 'as is' and passed to the appropriate person. What occurs subsequently depends on the nature of the allegation and the company as well. Although internally operated hotlines can also work well, they might be disadvantaged by the fact that all allegations are initially received by employees of the organization where the subject of the whistleblower's allegation is also one of the employees and may be subject to bias.

What forms of whistleblowing hotline/service, in your opinion, would be the most efficient?



Managing whistleblower complaints effectively

Deloitte Forensic point of view



Every whistleblower complaint comprises of three aspects - the whistleblower, the complaint and the suspect. Companies can expect success with their whistleblower mechanism only when they have processes that deal with all three aspects with maturity and sensitivity. Unfortunately, little is done to sensitize employees and other stakeholders on these aspects. Below, are some tips on how such complaints can be managed in a better way.

Ongoing support to the whistleblower is important to ensure that he/she is comfortable with the proceedings and is not suffering from any adverse treatment as a result of his/her actions. This fear of retaliation seems to be the major reason that whistleblowers initially wish to remain anonymous. Policies should ensure that any 'detrimental' action taken against the whistleblower as a result of their allegation should be treated as a serious matter and appropriate action ensured. Processes should also be put in place to deal with the person(s) against whom the whistleblowing allegation is made.

A clear and well documented process for managing complaints can give greater confidence to employees to report suspicions. For instance, the processes required to establish allegations involving junior or middle ranking staff tend to be fairly straightforward across most companies. Either internal or external investigators

are appointed to review the matter and report on the allegations that are raised. Usually, an appropriate senior manager will then deal with the matter after advice from legal and HR teams..

If the allegation is against a senior manager, the situation can become a little complicated. Companies without a robust policy for dealing with such a scenario, mostly, run the risk of such investigations becoming compromised by senior management involvement or of such allegations being ignored.

Employees need to be made aware of these detailed processes around how their complaints will be handled, so that they can gain trust in the system.

During the investigation process, it is important to ensure that the suspect is not victimized. In fact, it is best to not let the suspect or anyone else know about the complaint. Upon investigation, unless evidence is found supporting the whistleblower complaint, the suspect is better off not knowing about his/her involvement. Upon gathering evidence, most companies discuss the findings with the suspect and basis the reaction, determine the next steps. In extremely critical cases, the suspect's access to the company's systems is cut off until after the investigation in order to help preserve evidence.



Not opening wide enough

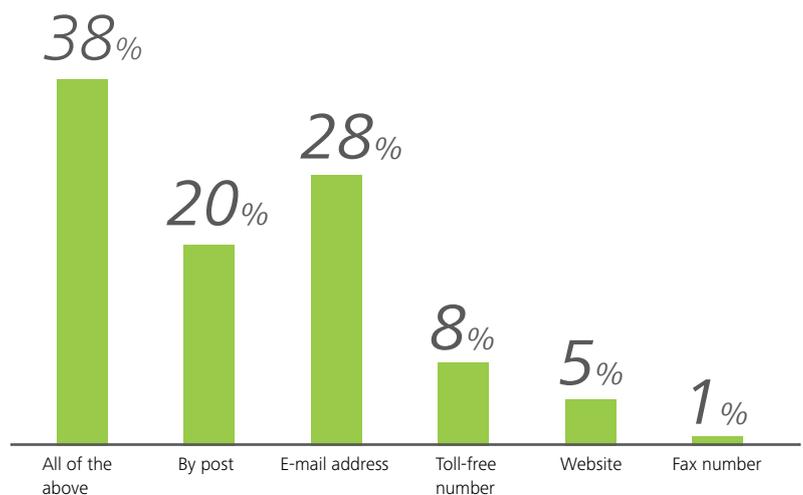
“Open wide,” says the dentist. The wider you open your mouth, the easier it is for your dentist to see what is going on, identify potential problems early, and take action to keep your teeth in good shape. Whistleblower systems work in a similar way. When access is restricted, it is harder for people to report potential wrongdoing. Issues can fester until they create such pain that action has to be taken.

Whistleblower system access can, sometimes, be restricted consciously by executives who may be fearful of having to respond to more allegations if they “open wide.” More often, access is restricted unconsciously through use of a design that inadvertently doesn’t reflect some of the lessons learned in recent years about whistleblower systems.

Whistleblowing can involve several forms of communication, such as the use of a special telephone hotline, e-mail, web form, regular mail, fax or at times simply speaking up to a supervisor/ manager, human resources specialist, or a trusted person.

Amongst our survey respondents, while the majority (38 percent) preferred a service that offered varied platforms; the next best option chosen by 28 percent of our respondents was to opt for an e-mail based service.

Which modes of access/communication channels are crucial for an effective whistleblowing hotline?



This is in line with the global trend of hotlines becoming Internet and e-mail-based. While this makes it easier to report concerns, it removes the ability of the hotline operator to gather potentially critical additional information at the beginning. Besides these, there also are other access related barriers to whistleblowing. These include:

<p>Service hours</p> 	<p>Many early whistleblower systems consisted of a phone number that employees could call during business hours. It may have gone to a compliance officer or an internal auditor at the head office. However, in our experience, majority of calls received are outside business hours. Whistleblowers may be reluctant to make hotline calls from the workplace where they could easily be overheard, have their name show up on caller ID, and be tracked in telephone call logs. Thus, enabling access to a 24/7 helpline can help to increase calls.</p>
<p>Language</p> 	<p>Whistleblower reports are sensitive and tricky things to communicate, so not being able to use one’s preferred language can deter whistleblowing or adversely impact a report’s completeness and accuracy. For many companies today, the ability to take reports in many different languages is becoming a necessity.</p>
<p>Constituencies</p> 	<p>While many companies have focused on providing a whistleblower reporting system just for employees, it is important to know that a significant number of tips also come from external sources such as customers, vendors, shareholders, competitors, etc. Encouraging these other stakeholders to use your system could, thus, generate better tips.</p>
<p>Methods</p> 	<p>Phone calls handled by trained professionals make it easy to seek clarifications from whistleblowers and help understand the issue better. However, not all whistleblowers are comfortable with that system. Preferred methods vary by country and culture. Hence, offering multiple methods of reporting can help to generate more tips than just a hotline or e-mail system on its own.</p>

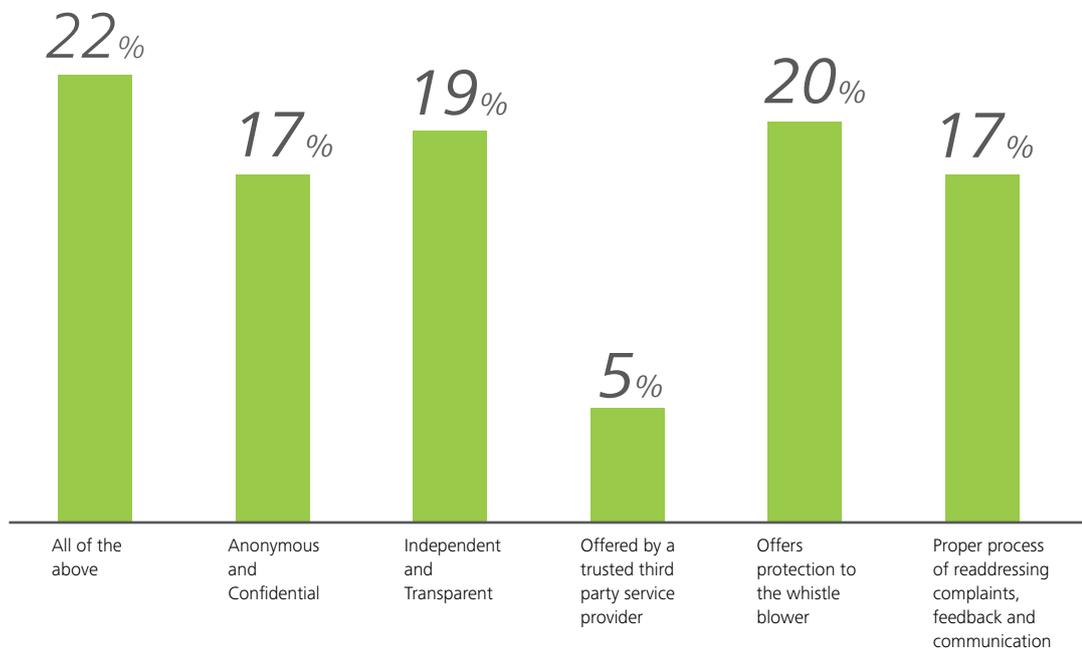
Addressing concerns

The word “whistleblower” tends to have a negative connotation for most people and may evoke the feeling that the action of making a report to the system is an extreme act akin to hosting anti-establishment sentiments. Calling such a reporting system a “whistleblower hotline” may also spark fears about retribution against the potential source. Some companies have, therefore, chosen names that focus on positive outcomes of fraud prevention, such as “Integrity Hotline” or “Ethics Helpline”. These alternative names emphasize the desirable behavior demonstrated by the employee when they make use of the system, since most people would like to be thought of by their peers as a person of high integrity or ethics.

Some other characteristics that can encourage whistleblowers to use a hotline include providing anonymity and confidentiality, communicating the independence and transparency in the process, and offering protection to the whistleblower.

It is crucial to remember that all the factors discussed above are equally important and not even a single element should be ignored or given less weightage. Most of our respondents have not realized this aspect and education in this area is, therefore, of vital importance.

What characteristics do you feel, a whistleblower hotline/ policy should necessarily have?



Building a supportive environment for whistleblowers



Given how valuable whistleblowing can be in deterring and detecting wrongdoing, it would be prudent for an organization to create a supportive environment for whistleblowers. Measures that a company can take to do this include:

- Developing meaningful rewards for whistleblowing
- Implementing a detailed non-retaliation policy protecting whistleblowers who make reports in good faith (and perhaps dissuading frivolous allegations)
- Communicating this policy in the employee code of ethics, orientation and periodic refresher training, hotline posters, employee newsletters, ethics and compliance communications, and periodic speeches from senior management
- Designating a central function or person, such as the corporate compliance and ethics officer, to monitor the career progression, compensation, and any proposed disciplinary actions against whistleblowers for a period of time (such as three years) after a whistleblower report is made. This person can also be designated to receive and to investigate any complaints of retribution
- Implementing a records retention policy for whistleblower reports, complaints and investigations
- Training senior management about the whistleblower policies, especially non-retaliation. Additionally, senior leaders can also test the whistleblower hotline and share their experiences with employees, assuring them of equal treatment of complaints
- Ongoing education/ workshops, from inclusion in a mandatory annual compliance training session to constantly displaying a poster in the company break room, is essential for getting employees to accept and embrace the idea of self-regulation using a hotline. Around 76 percent of our respondents recognized this idea.

Communicate, communicate, communicate

A successful whistleblower system requires effective communication to create and maintain awareness of the hotline's existence, build employees' willingness to use it, as well as, develop the employees' ability to identify potential wrongdoing.

We advocate a three-step process that companies can implement to build momentum for their whistleblower hotlines.

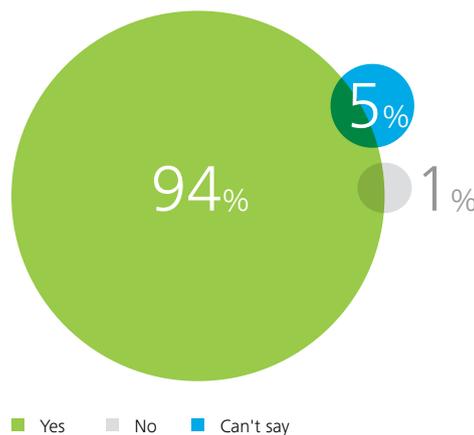


Companies need to focus their communication on assuring employees that their tips will remain confidential. To demonstrate this, they may publish internal suitably anonymous examples of where a whistleblower system report led to an investigation and appropriate disciplinary action against those found to have violated the companies' policies. This helps to build the necessary trust for the system. Once employees are confident about reporting any concerns, they should be educated about red flags, risks and schemes related to unethical or illegal behavior including topics such as conflicts of interest, bribery, kickbacks, embezzlement, financial statement manipulation and fraudulent regulatory reporting.

This type of awareness can be part of a fraud risk management or ethics and compliance awareness program. It is important to explain that every employee has a role in preventing and detecting fraud and that the hotline system is a key tool for people to use for that purpose. Armed with this knowledge, employees will be in a better position to act if they experience/ witness a suspicious behavior.

Supporting this, 94 percent of our survey respondents agreed that a proper response and feedback mechanism for cases reported using a whistleblowing hotline is a good practice to follow. Once employees realize that action is indeed being taken on tips, they are encouraged to use the hotline. A passive approach on closing employee complaints can result in loss of confidence in the entire mechanism.

Do you agree that a proper response and feedback mechanism is necessary for cases reported using a whistleblowing hotline?



Conclusion: Supportive legislation alone is an insufficient motivator

Regulators and governments across the world are, increasingly, introducing laws that require organizations to have a mechanism in place that enables employees to report suspicious behavior within the workplace and also offer protection to whistleblowers.

India has taken steps through the new Companies Act, 2013 that makes it mandatory for certain companies to establish a vigil mechanism for Directors and employees to report genuine concerns and will also need to make adequate safeguards against victimization/prejudice. The existence of such a whistle blower mechanism must compulsorily also be disclosed in the Board's report. The Act also enforces penalties on companies that fail to comply, thereby, encouraging employees to safely blow the whistle before a mere red flag becomes a serious issue.

Additionally, the Code of Independent Directors, as set forth in Schedule IV of the Act, requires independent directors to ascertain that the company has an adequate and functional vigil mechanism as well as ensuring that the interests of a person who uses such a mechanism (whistleblower) is protected.

The Securities Exchange Board of India (SEBI) has also approved amendments with respect to corporate governance norms, expanding the role of the audit committee in listed companies and has directed them to adopt a compulsory whistleblower mechanism to curb unfair business practices and protect the interest of minority stakeholders.

The US Dodd-Frank Act has created a large financial incentive for whistleblowing in companies across all industries in the US. As regulatory enforcement against fraud is increasing both at domestic and international levels, the whistleblower provisions of the Dodd-Frank Act have the potential to expand prosecutions of fraud dramatically. As more individuals become aware of the potential rewards of whistleblowing, companies who receive allegations of securities fraud and being investigated by the SEC may increase substantially. Employees of Indian firms engaged in doing business in the US can also blow the whistle under the Dodd – Frank Act.



While these legislations are welcome, they are helpful in only ensuring that a vigil mechanism like a whistleblower hotline exists in all large companies. Organizations have to work hard in ensuring that such a mechanism is not only effective but also generates confidence amongst the stakeholders for it to be used without any fear. One aspect that can really make a difference in the success of the whistleblower mechanism is demonstration of senior leadership commitment by 'walking the talk' when it comes to handling of complaints through such a mechanism. An effective and successful whistleblower mechanism is characterized by high level of employee awareness, confidence amongst employees/stakeholders in the mechanism as being fair, objective and non-vindictive, easily accessible and continued improvement in the mechanism based on experience.

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