



Ownership and legal confidentiality of data and trade secrets in business process management

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Abstract

Globalization describes the process by which regional economies, societies, and cultures have become integrated through communication, transportation, and trade. The term is most closely associated with the term 'economic globalization': the integration of national economies into the international economy through trade, foreign direct investment, capital flows, migration, the spread of technology, and military presence. However, globalization is usually recognized as being driven by a combination of economic, technological, socio-cultural, political, and biological factors. Today the US based companies are ranking India to be their first choice as an offshore outsourcing destination. India stands as one of the major players in the outsourcing industry, in terms of well educated, talented, low cost and English-speaking workforce, excellent IT and networking infrastructure, a fairly stable political scenario, friendly laws and well laid taxes and quality certified software firms. There are dozens of definitions of the term in the academic literature.

Keywords: Certified us companies, stable political scenario, technological, socio-cultural, political and biological factors

Introduction

"Outsourcing involves the sourcing of goods and services previously produced internally within the sourcing organization from external suppliers."

McIvor

Many businesses, however, fail to complete necessary due industry work before the outsourcing relationship begins and neglect to take sufficient care of the relationship, adopting an "out of sight, out of mind" approach once outsourcing begins. Successful outsourcing is no different from any other business relationship - it requires nurturing and management so that the needs of all parties are met. It is critical that both the purchaser and the supplier of outsourced processes understand each other's expectations and dependencies, as well as focus on maintaining a strong communication channel^[1].

Under the Constitution of India, labour is a subject in the concurrent list where both the central and state governments are competent to enact legislation is listed below:

- Labour laws enacted and enforced by central government:
 - The Employees' State Insurance Act 1948;
 - The Employees' Provident Fund and Miscellaneous Provisions Act 1952;
 - The Cine Workers Welfare (Cess) Act 1981; and
 - The Cine Workers Welfare Fund Act 1981;
- Labour laws enacted by both central and state governments:
 - The Contract Labour (Regulation and Abolition) Act 1970;
 - The Equal Remuneration Act 1976;
 - The Industrial Disputes Act 1947;
 - The Industrial Employment (Standing Orders) Act 1946;
 - The Inter-State Migrant Act 1979;
 - The Maternity Benefit Act 1961;
 - The Minimum Wages Act 1948;

- The Payment of Bonus Act 1965;
- The Payment of Gratuity Act 1972;
- The Payment of Wages Act 1936;
- Cinema Theatre Workers (Regulation of Employment) Act 1981;
- The Building and Other Construction Workers Cess Act 1996; and
- Labour laws enacted by central and state governments:
 - The Employers' Liability Act 1938;
 - The Factories Act 1948;
 - The Personal Injuries (Compensation Insurance) Act 1963;
 - The Weekly Holidays Act 1942; and
 - The Workmen's Compensation Act 1923^[2]

Since companies are entering into the digital world, information technology is playing a major role in bringing process improvements to the forefront of business management. In the recent decades, many organizations have struggled to redesign and improve their business processes to reduce their total cost. The contribution of outsourcing research is to propose an intelligent framework that possesses the ability to employ a database of best practices, business standards, and business activity in order to permit the manager to analyze and improve the design of the business processes^[3].

Each business is different nature, amount, and pace of change in a business are dynamic. Historically, most companies have been structured around functional, geographic, or product disciplines. Few companies are structured around their business processes. As institutions reach new levels of process maturity, new skills, management structures, and ways to align, motivate, and reward employees may be introduced. So that Business Process Management Professionals can anticipate, plan, prepare, and guide the business through the transition to a process-driven enterprise^[4].

Elements of Outsourcing

In reviewing the literature on BPs, it can be observed that BPs includes the following important elements which are related to each other.

- **Process:** is a major element of the business which is made up of several business activities and procedures that work together to achieve business goals, such as the mobile phone order management process.
- **Activity:** which can be a function, task or operation is the specific behavior carried out in the organisation, such as collecting and passing the customer details to the account department.
- **Product and service:** is the value of the process outcome.
- **Role:** Are the actor or agent types which take part in the BPs, such as the general office.
- **Goal:** is the aim of the process, such as serving the customer automatically and reducing the number of staff.
- **Event:** is an occurrence which takes place at a specific time and is capable of inducing several observable behaviours, processes or activities, such as a customer's request for finance.
- **Rule:** which can be behaviour, control or action is the constraint identified for any part of the organisation and it's BPs, such as only considering customers with a clear credit check for a loan ^[5].

Benefits of outsourcing

- Lower costs, resulting in improved capital and labour productivity.
- Access to more effective business processes that will improve their own service and competitiveness, Access to scarce resources through the supplier's own resource base (e.g. staff), Access to dedicated world-class technology, spread of risk.
- Predictable cost streams – budgeting becomes more predictable, and the risk of managers in the cost structure supporting the outsourced process is transferred to the service provider, Better service, including for example, 24 x 7 call centre availability ^[6].

Steps of Outsourcing

The following seven steps have been identified in order to achieve success in outsourcing:

1. **Planning Initiatives:** The first step is to announce initiative after the assessment of risks. Project team is to be formed, and advisers are to be engaged to train the team. Other resources are to be acquired and issues like resource management, information management and project management need to be addressed. Accordingly, objectives then are set. Exploring Strategic Implications: The second step is to understand the organization's vision, core competencies, structure, transformation tools, value chain and strategies. Thereafter decision rights, contract length and termination date need to be determined. Aligning initiative should follow.

2. **Analyzing Costs and Performance:** The next step in the process is to measure activity and project failure costs. Existing and future performance is then to be measured along with the estimation of the cost of poor performance. It is also very important to benchmark costs and performance. Specific risks, asset values, make total costs, pricing models and final targets need to be determined.
3. **Selecting Providers:** The next crucial step is to select providers. For this purpose, the organizations need to first set qualifications and evaluation criteria. Providers are then identified and screened. An RFP is drafted. Proposals are then evaluated based on the qualifications and costs and the provider is finalized.
4. **Negotiating Terms:** Negotiations are then to be planned after addressing high level issues and deal breakers. Accordingly, term sheets are to be prepared. The contract then need to be negotiated based on the scope, performance standards, pricing schedules, and terms and conditions; and the relationship be announced.
5. **Transitioning Resources:** The next important step is to adjust team roles and to compare/merge transition plans. The transition issues like communication, human resources, and other production factors are to be addressed. The employees need to be taken into confidence.
6. **Managing Relationships:** The last but the most vital step is to adjust management styles, set up oversight council, and communicate. Meeting agendas, meeting schedule and performance reports need to be defined and designed. Poor performance is to be confronted and problems, if any, are to be solved. The ultimate effort is to build the relationship ^[7].

Terms of Outsourcing Agreement

The next major task for parties entering into the outsourcing arrangement is to negotiate and set forth, the terms of the outsourcing agreement (Agreement). The Agreement is the crux of the outsourcing arrangement as it will be the guiding document by which the vendor and customer pursue their respective obligations. The various terms of the Agree that will be negotiated are the following:

- The Term of the Agreement;
- The Services to be provided
- Ownership of Intellectual Property
- Ownership and Confidentiality of Data and Trade Secrets;
- Delegation of responsibilities;
- Warranties and Indemnities;
- Disclaimers;
- Force Majeure;
- The Choice of Law and Jurisdiction;
- The Termination Clause ^[8].

BPO Categories

Business processes that have come under close examination as potential candidates for outsourcing typically fall within one of seven categories: Finance and accounting, Investment and asset management, Human resources,

Procurement, Logistics Real estate management. These categories have been established to facilitate the discussion of the general types of business processes that are the subject of consideration for out-sourcing. Because in many cases a business process touches different areas within an organization, customers and vendors may categorize certain business processes under different headings depending on the organization's internal structure. Outsourcing can occur in many forms contracting out typically involves a competitive bidding process in which RFPs (Requests for Proposals) are disseminated to eligible vendors. Some city and state governments require contractor registration prior to bidding while others independently select potential contractors based on experience and reputation.

- Public-Private Partnerships: are cooperative arrangements between governments and private organizations to jointly fund or operate a particular program, project, or service.
- Volunteers or volunteer associations are often called on to provide public services highly valued by community members for no cost to the city.
- Load shedding: involves government relinquishing the responsibility for providing services or operating a program.
- Franchising: involves the licensing of private service providers to exclusively provide public services in a particular area. Private vendors then charge city residents fees for the services they provide.
- Vouchers: involve government payments to third parties for goods or services provided to residents. Vouchers are often used to enhance the competition and availability of a service to residents without direct government service provision.^[9]

Challenges in outsourcing

According to Harland the most significant risks in outsourcing include decisions on which activities should remain within the organisation and which should be outsourced, whether all or part of the activity should be outsourced, and how to manage relationships rather than internal functions and processes. Mistakes in identifying core and non-core activities can lead organisations to outsource their competitive advantages. However, what is core one day may not be so the next. There is a difficult decision regarding how "close to core" outsourcing should be. Some Organisations choose to retain some capability and capacity in-house and outsource part of the activity. Failure to manage outsourcing relationships properly, perhaps through service level agreements, may reduce customer service, levels of control and contact with customers^[10].

Recently, the strategic approaches of public sector organizations are reevaluated in order to achieve modern effective operations and provide better services to their customers. Business Process Outsourcing solutions are recognized as essential tools for public services transformation, as they enable public organizations to be more efficient, to meet business challenges rapidly and flexibly, and to improve the customers experience by resolving incidents and responding to requests in a timely fashion^[11].

Business processes are used by a large variety of organizations, most importantly but not exclusively by commercial businesses. These organizations have different

purposes, are structured in a different ways and, as a result, have different approaches to fulfilling their purpose. As a result, business processes cover a wide area of applications and can differ tremendously between organizations, despite the existence of certain standard processes which are applicable for typical standard business situations or needs.

- Primary Business Processes are processes which are directly involved with the main purpose of the organization. Organizations generally exist in order to fulfill a specific purpose. Primary business is directly involved with that purpose. For example, for a car manufacturer, the production process for new cars would be a primary process.
- Secondary Business Processes manage issues an organization has to deal with but do not directly contribute to the core purpose of the organization. Despite not directly furthering the main purpose, they are nevertheless necessary for the organization, either by maintaining the existence of the organization or contributing indirectly towards the core purpose.
- Tertiary Business Processes are a category of meta-processes that deal with managerial issues arising from the coordination of primary and secondary processes. This includes organization of meetings and reports and adjustment of business strategies. If the term tertiary business processes is not used, they are counted as secondary business processes^[12].

Why in India?

- Indian professionals have proved their mature, prosper and build core capabilities in order to establish their name and fame in the whole world.
- Many international companies are geared towards India because of the many talented and genius human resource at reasonable costs.
- Indian companies are now expertise in various areas like from Pharmacy, Medicine, Law, Biotechnology, Education & Training, Engineering,
- India is perhaps the best country in outsourcing industry, and it is very much likely to only grow in the foreseeable future as well.
- Needs of the clients with respect to software quality, accuracy and safety must be fulfilled.
- The kinds of solutions offered are not just limited to mere execution of your requirements. Creativity, talent, and expertise allow Indian software developers to suggest ways in which you can transform your business.
- Software outsourcing to India guarantees flexible technology and service.
- Software outsourcing in India allows you to adopt innovative skills and techniques while financial risks will be in the hands of the vendor.
- Software outsourcing in India minimizes cost and facilitates business transition.
- Through software outsourcing in India, one can make use of one's own valuable time by concentrating on his / her core competencies
- Joining hands with the professionals skilled at software outsourcing in India (like in a joint venture) takes you to new markets and opens a new world of profits with minimal effort^[13].

BPO Sector in India

In the contemporary world, women no longer lag behind in terms of career. It has been noticed that BPO is one of the industry, which has witnessed high growth for women and helped them more. However, even today women are expected to do multi tasking. One can say that 'Nature has given women too much power, the law gives them too little' as there is no separate in support of women to fill the gap during their innate responsibilities. Earlier the Factories Act, 1948, under Section 66, banned working of women in night shifts but later on The High Court of Mumbai in its judgment dated 10th June 1999 passed an interim order allowing deployment of women in Santa Cruz Electronic in the nightshift.

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The factual scenario of the transportation facility in BPO industry is not unblemished. According to a study in Pune city, there are about 5,500 cabs engaged in local transportation on about 35,000 BPO employees daily in the city. High profile companies like Wipro, Converges, EDS, Infosys, and EXL use these cabs which are not owned by them but outsourced. Background check and references are the weakest link. Officials of NASSCOM and HR executives defend themselves by pointing out the measures they have taken to tighten the security. ^[14].

Conclusion

The dramatic decade-old growth of outsourcing services has transformed the way businesses have managed their operations. New types of services are being outsourced as businesses have identified processes that can be separated from core processes. New offshore locations are emerging. Markets are expanding not only in the United States but in Europe and Asia. Adoption rates by existing industries are rising and new industries are starting to accept the transforming model of outsourcing and offshoring.

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