

# PRACTISES OF BUSINESS IN INDIA & INSTITUTIONAL VOIDS

INDIAN BUSINESS MODEL AND STRATEGY

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# OUTLINE

1. INDIAN BUSINESS MODEL ( NON-STATE OWNED FIRMS)
2. FRAUD ANALISYS  
CASE STUDIES
3. INSTITUTIONAL VOIDS(LOOPHOLES) AND SOLUTIONS

# INDIAN BUSINESS MODEL

## ▶ PESTEL FRAMEWORK

P	• POLITICAL
E	• ECONOMICAL
S	• SOCIAL
T	• TECHNOLOGICAL
E	• ENVIRONMENTAL
L	• LEGAL

# POLITICAL FACTORS

- ▶ INTERFERENCE – STAFF, WORKER'S UNIONS, EXTORTIONS, NATIONALIZATION OF INDUSTRIES, CURRENCY DEVALUATION



# POLITICAL FACTORS CONTD...

- ▶ CONNECTIONS –
  - ▶ TO GET SOMETHING ALLOTTED- SPECTRUM/ COAL
  - ▶ TO DO SOME THING ILLEGAL
  - ▶ TO AVOID SOME ACTION
  - ▶ TO GET RID OF INITIATED ACTION



# POLITICAL FACTORS CONTD...

- ▶ INVESTMENT – FROM POLITICS, TO POLITICS



# ECONOMIC FACTORS

- ▶ TAXATION
- ▶ CREDIT-
  - ▶ BANK FRAUD
    - ▶ FAKE DOCUMENTS
    - ▶ FAKE TURNOVER
    - ▶ POOR VERIFICATION
      - ▶ KYC
      - ▶ PROPOSAL FOR CREDIT
- ▶ MONEY LAUNDERING

# SOCIAL

- ▶ OWNERSHIP STRUCTURE
  - ▶ FAMILY
  - ▶ COMMUNITY – AVAILABILITY OF TRUSTWORTHY RESOURCES IN PLENTY
- ▶ CORPORATE SOCIAL RESPONSIBILITY



# TECHNOLOGICAL

- ▶ IMPORT INTENSIVE
- ▶ LOWER INVESTMENT

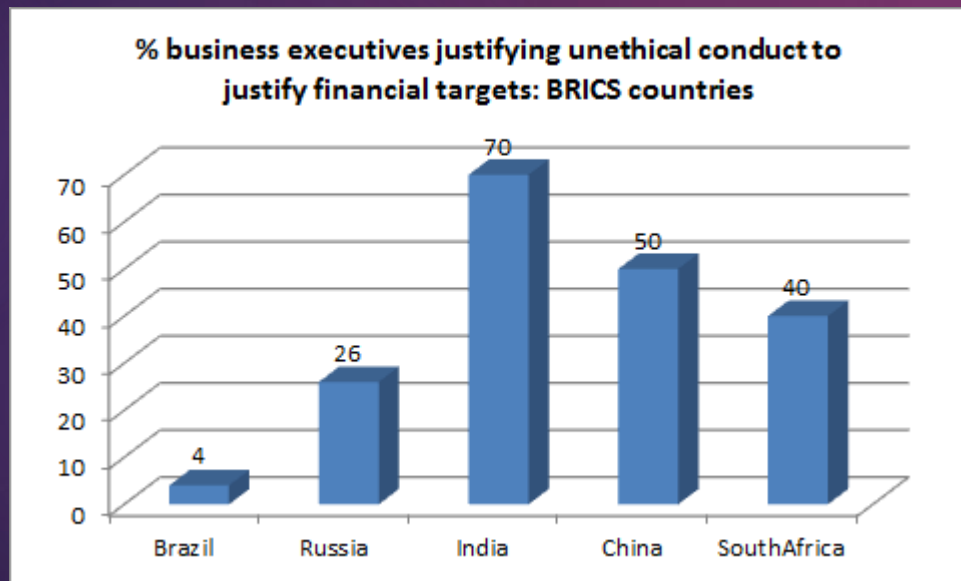
# ENVIRONMENTAL

- ▶ CLIMATE CHANGE
- ▶ POLLUTION



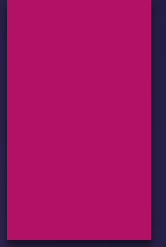
# LEGAL

- ▶ CONSULTANTS
- ▶ COST OF COMPLIANCE
- ▶ EX-DEPARTMENTAL OFFICERS

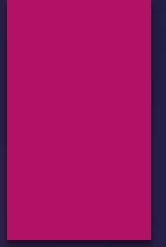


Ernst & Young's (E&Y's) 14th Global Fraud Survey

# FRAUD ANALYSIS



# Case Studies



# CASE STUDIES

- ▶ SATYAM
- ▶ SERVICE TAX
- ▶ HAWALA

## Fraud.....a thought on definition

In the broadest sense, a fraud is an intentional deception made for personal gain or to damage another person/entity

- Wrongful or criminal deception intended to result in financial or personal gain

# INDIAN CONTRACT ACT 1972

Section 17 of the Act defines "Fraud" as

"Fraud" means and include any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into a contract:

- the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
- the active concealment of a fact by one having knowledge or belief of the fact;
- a promise made without any intention of performing it;
- any other act fitted to deceive;
- any such act or omission as the law specially declares to be fraudulent.



# INDIAN PENAL CODE 1860

Section 25 of IPC defines "Fraudulently" as:

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

## SECTION 447 OF COMPANY ACT 2013

“fraud” in relation to affairs of a company or any body corporate, includes

any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

# The key sectors of the economy wherein there is high risk of fraud in India

1. Real Estate

2. Bullion Market

Real Estate Regulatory Authority (RERA) Bill was introduced in 2013. The bill was passed by the *Rajya Sabha* on 10 March 2016 and by the *Lok Sabha* on 15 March 2016. The Act came into force from 1 May 2016.

In the Budget **2016-17**, **Central Excise duty** at the rate of 1% (without input tax credit) and 12.5% (with input tax credit) has been imposed on all articles of **jewellery**

# Case study of Service Tax evasion and deadlock.....

- ▶ Evasion of Service Tax to the tune of Rs 3.5 Cr by ABC, A proprietor concern from 2007-08 to 2011-12.
- ▶ Engaged in Manpower Supply Services.
- ▶ Case of Service tax collected but not deposited to the Government exchequer.
- ▶ Case under Section 89(1)(d) of Finance Act 1994.
- ▶ Action under Section 87 completed.
- ▶ Prosecution complaint file.
- ▶ Closed ABC and now operating as XYZ, a propriety concern in name of daughter.

# Satyam....a case study

The greed to excel in business to match the business level of WIPRO, INFOSYS etc.

The purpose was to show profitability.

Fake invoices to inflate sales/income ( 7561 invoices of Rs 4783 Cr was forged). To match this, he has created 10000 additional human resources, which actually never existed.

Fake fixed deposits to show cash balances ( Rs 3.35 Cr in 1998-99 to Rs 3320 Cr in 2007-08)

1 The promoters decided to inflate the revenue and profit figures of satyam. in the event, the company had a huge hole in its balance sheet so to fill up this gap..... company announced acquisition of 51% stake in maytas infra and 100% stake in maytas properties on 16th dec 2008 but the deal was not profitable for investors investors dumped satyam's stock and threatened action against the management.

2 This was mainly done to hide the irregularities in the accounts of satyam. it is also said the close association with the political leaders is one of the reasons.

3 Raising fictitious bills for services that were never rendered. • to increase the cash & bank balance correspondingly. • operating profits were artificially boosted from the actual rs 61 crore to 5064 crores



# Hawala based money transfer to foreign supplier

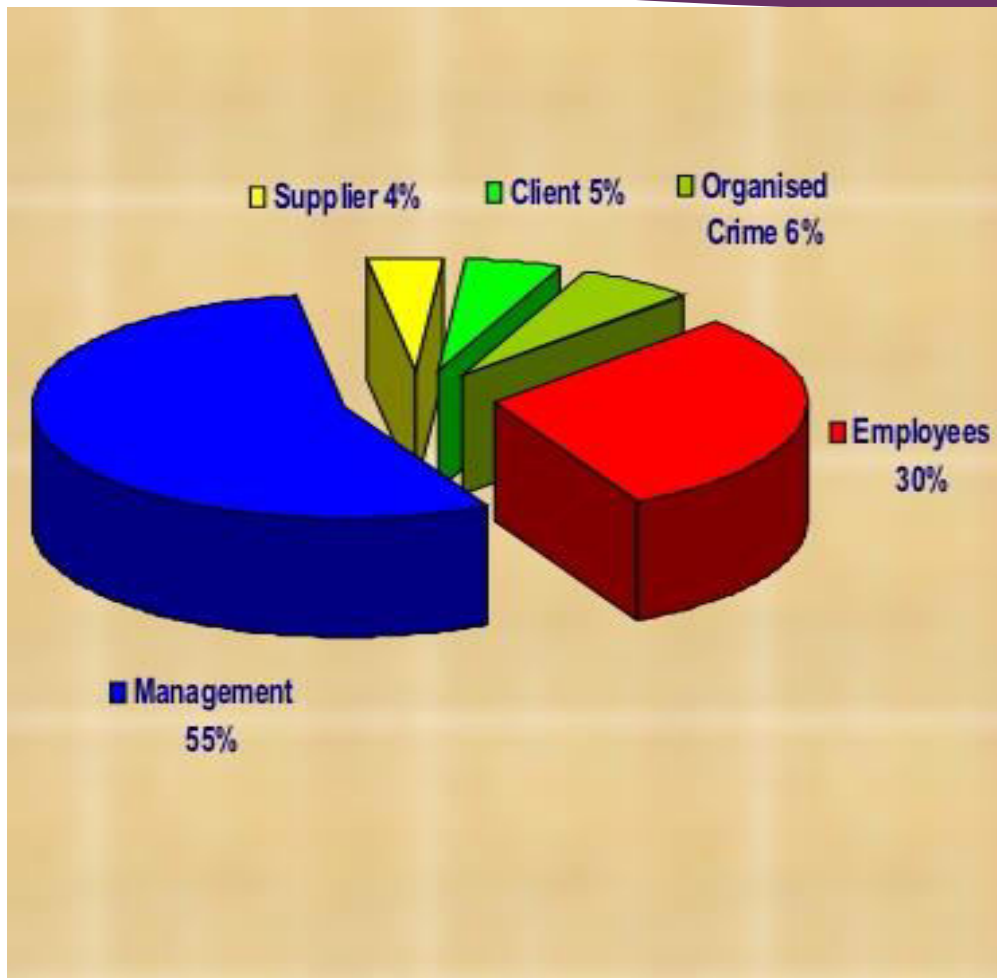
BANGALORE BASED IMPORTER OF FURNITURE ITEMS

IMPORTED MORE THAN 100 CRORES OF ITEMS FROM CHINA, MALAYSIA AND HONGKONG

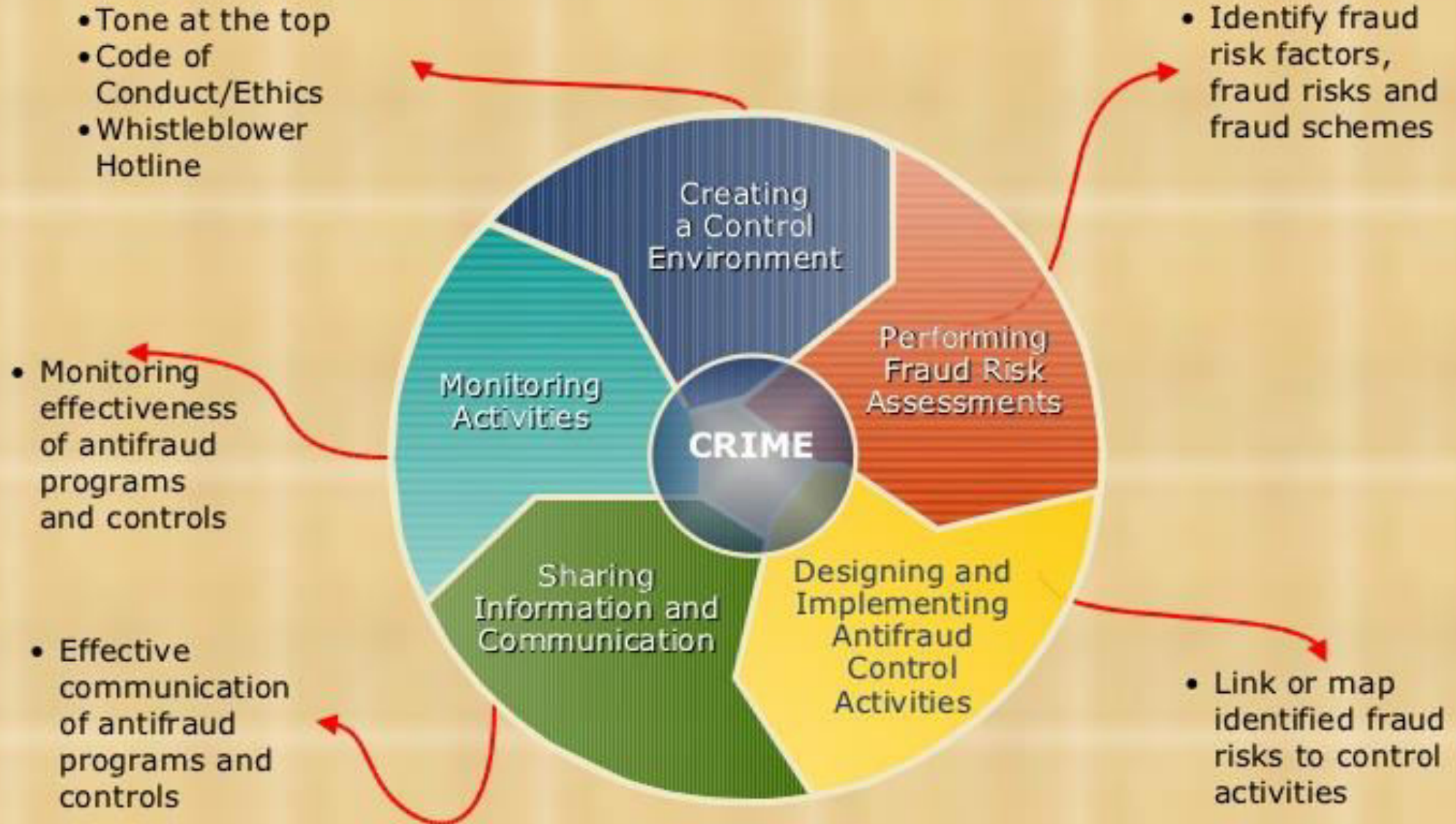
MAINTAINED TWO INVOICES ONE FOR CUSTOMS (30%) AND ANOTHER ONE FOR ACCOUNT PURPOSE (100 %)

REMITTANCES SENT THROUGH 30 % BY BANK AGAINST IMPORT DOCUMENT, HAWALA MODE AND ON ACCOUNT OF FICTITIOUS EXPENSES OF OWN COMPANY AT HONGKONG AND PROCUREMENT CHARGES

# WHO COMMITS FRAUDS



# Antifraud Programs and Controls.(CRIME)



# INSTITUTIONAL VOIDS (LOOPHOLES) AND SOLUTIONS

- ▶ UNLINKED DATABASES
- ▶ POOR RISK MANAGEMENT SYSTEM – METADATA STANDARDS
- ▶ LACK OF DEFINITION OF BENEFICIAL OWNER
- ▶ FREEDOM TO GENERATE INVOICES – IRCTC EXAMPLE
- ▶ REGISTRATION OF PROPRIETARY FIRM/ PARTNERSHIP FIRM
- ▶ FAKE DOCUMENTS LIKE IEC,PAN – NON VERIFICATION OF PREMISES  
CRIMINAL OFFENCE
- ▶ POOR TRACKING OF OFFENDERS
- ▶ CAP ON PREMISES SHARING
- ▶ BLACKLISTING FRAMEWORK
- ▶ EXIM FRAUDS – CONTAINER SCANNERS, FTA, SEZ, EXPORT DATA SHARING  
AGREEMENTS



Questions  
are  
guaranteed in  
life;  
Answers  
aren't.