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## FRAUD & INVESTIGATION

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# FRAUD & COMMON OFFENCES IN AN ORGANISATION

- Numerous instances arise where a company becomes a victim to various types of crimes conducted by third parties and even the employees. Companies become a tool for such individuals to extract money and engage in various illegal activities. Broadly, crimes are of two types:



- As per Black's law dictionary, "Fraud" consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive and intentional.

# EXCUSES FOR DOING FRAUD

- Everyone else was doing it
- I/They can afford it
- I needed the money
- It was just a loan...I would have repaid it
- I felt used and wanted revenge
- I meant no harm and did no harm
- I did it to keep the business afloat
- Bribery is the norm in this type of business
- What I did was entirely appropriate for someone in my position
- My employer didn't compensate me well enough, so I took what was due to me

# **FRAUD AS PER THE INDIAN CONTRACT ACT, 1872**

# FRAUD AS PER THE INDIAN CONTRACT ACT, 1872

- As per Section 17 of the Indian Contract Act, 1872, “fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the 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.

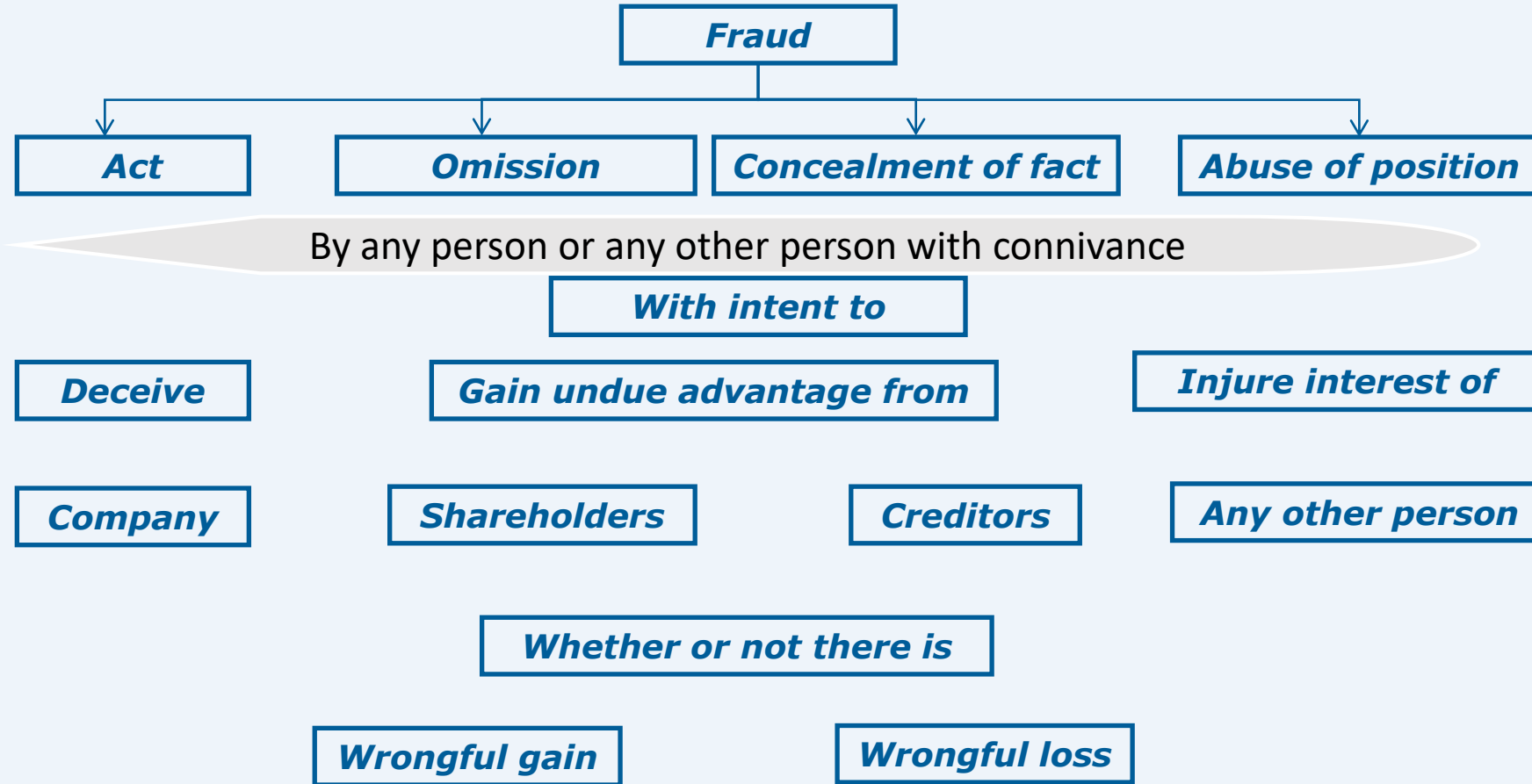
Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

- As per Section 19 of the Indian Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

# FRAUD AS PER COMPANIES ACT, 2013

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## FRAUD – Section 447 of Companies Act, 2013

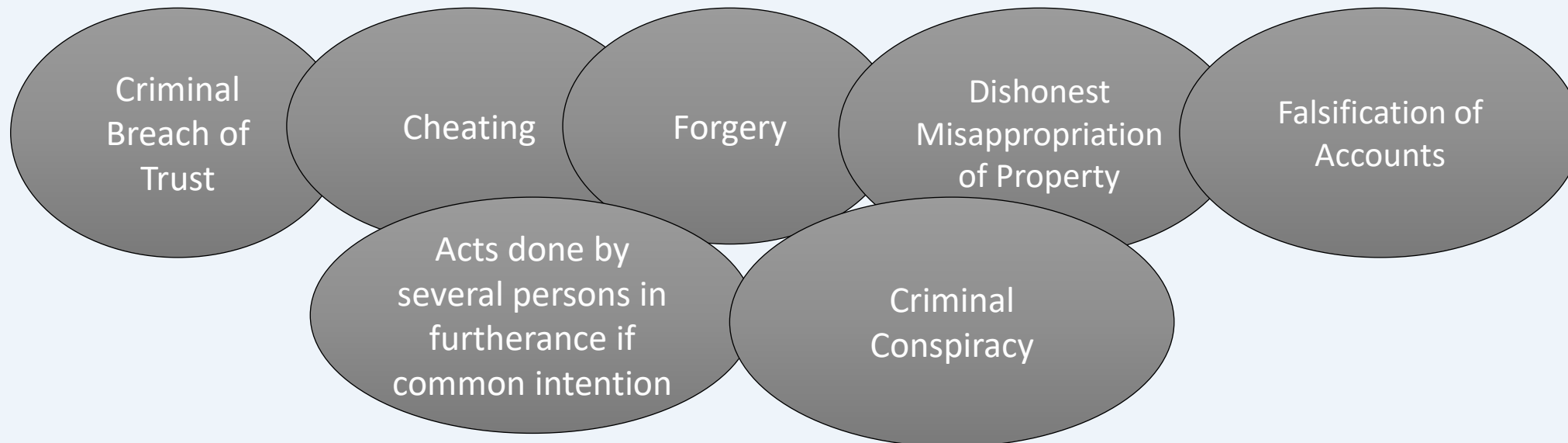


# **NON CYBER CRIMES - OFFENCES UNDER THE INDIAN PENAL CODE**



# NON CYBER CRIMES - OFFENCES UNDER THE INDIAN PENAL CODE

- Interestingly, the word 'fraud' is a loosely used term and is not defined under the Indian Penal Code. However, as per Section 25 of the Indian Penal Code (IPC), a person is said to do a thing fraudulently if he does that with intent to defraud but not otherwise.
- The most common offences that are committed in an organization under the provisions of IPC.



# NON CYBER CRIMES - OFFENCES UNDER THE INDIAN PENAL CODE (Contd.)

## INSTANCES OF COMMON OFFENCES COMMITTED IN AN ORGANISATION

### **INSTANCE 1:**

- A company comes up with a scheme to promote its products wherein a mobile application is created. As per the mobile application, certain points are credited in the account of the person using the application. The said points are converted in money. The points are approved by certain employees of the company who are in charge. The employees in connivance with related parties creates fake accounts thereby crediting the points in the accounts.
- The company files a police complaint for dishonest misappropriation of property, criminal breach of trust, cheating, forgery, falsification of accounts and criminal conspiracy.
- Sections involved - 403, 406, 408, 415, 418, 420, 468, 477A, 120B and 34 of the Indian Penal Code.

# NON CYBER CRIMES - OFFENCES UNDER THE INDIAN PENAL CODE (Contd.)

## INSTANCE 2:

- A Society carrying out CSR activities enters into an agreement with a company and induces the company to transfer certain amounts to the Society. While carrying out activities, the company finds that a sizeable amount has been irregularly utilized by society and not utilized for the purpose of the intended purpose as entrusted to it under the Agreement. The society submits false invoices in support of the false expenses incurred by the employees of the society and misappropriates the funds therein.
- The company files a police complaint for criminal breach of trust, cheating, forgery, criminal conspiracy.
- Sections involved - 406, 408, 415, 418, 420, 468, 34 & 120B of the Indian Penal Code

# **CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000**

# CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

- Financial Fraud is a white-collar crime that affects the general public and has a negative impact on the whole economy. With the advancement in space of technology, cases of financial fraud are on the rise.
- The Information Technology Act, 2000 contains provisions dealing with cyber fraud and financial frauds committed using computer resource.



Data Theft

Identity Theft

Cheating by  
personation by using  
computer resource

# CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000 (Contd.)

## DATA THEFT

- “Data Theft” is not defined under The Information Technology Act, 2000. However the same can be inferred from Section 43 sub-clause (b) of The Information Technology Act, 2000 which states that if any person without the permission of the owner or any other person who is in charge of a computer, the computer system or computer network, downloads, copies, or extracts any data, computer database, or information from such as computer, computer system or computer network. It is the term used when any information in the form of data is illegally copied or taken from a business or another individual without his knowledge or consent.
- If any person indulges in data theft, she/ he shall be liable to pay damages by way of compensation to the person so affected.
- Whereas Section 43A of The Act makes a body corporate liable for wrongful loss caused to a person due to the negligence of such authority in maintaining reasonable security practices and she/ he shall be liable to pay compensation to the person so affected.

# CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000 (Contd.)

## IDENTITY THEFT

- In simple words, identity theft is the crime of obtaining another person's information to make a transaction or purchase; it involves stealing of an individual's identity and information to receive a benefit in the name of the victim. In case of identity theft, a person steals another's information and uses it without their permission.
- Identity theft occurs when criminals pose as owners, officers, or employees of an organization to illegally transact business and establish lines of credit with banks and vendors. It is the unauthorized use of a business name or identity for financial gain. The offenders commit fraud by gaining access to business' bank accounts and credit cards or by stealing sensitive company information, including owners' personal information.
- Punishment for identity theft is covered under Section 66C of The Information Technology Act.

# CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000 (Contd.)

## CHEATING BY PERSONATION

- Cheating by personation by using computer resource is the crime of pretending to be someone else to gain an unfair advantage.
- Cheating by personation by using computer resource is analogous to Section 416 of the **Indian Penal Code** which defines cheating by personation as a person who cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is. The offence is said to be committed whether the individual personated is a real or imaginary person.
- Punishment for identity theft is covered under Section 66D of The Information Technology Act.



# CYBER CRIMES - OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000(Contd.)

## INSTANCE OF COMMON OFFENCES COMMITTED IN AN ORGANISATION

- Phishing is a fraudulent practice in which an attacker masquerades as a reputable entity or person in an email or other form of communication. An employee sends an e-mail to a client, claiming to be the CEO and informs the client that future payments need to be made into the employee's personal account. In phishing and e-mail spoofing, the login credentials or password is not stolen, instead the e-mail only claims that the e-mail originates from a different person or at a different time or from a different place. In this case, the employee will be guilty of cheating by personation.
- If a person “hacks” or uses the password of an e-mail account and sends e-mail from the e-mail account using stolen credentials, Section 66C will apply and he will be guilty of identity theft.

# **NON CYBER CRIMES - OFFENCES WITH RESPECT TO THE INTELLECTUAL PROPERTY RIGHTS**

# NON CYBER CRIMES - OFFENCES WITH RESPECT TO THE INTELLECTUAL PROPERTY RIGHTS

- There may be instances where the accused infringes upon the intellectual property of the complainant. Such offences are also punishable and a complaint can be filed in this regard. Many a time, counterfeit products are sold in the market to illegally gain out of the goodwill of the intellectual property owner.

## REMEDIES AND ACTION AGAINST THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

The Trade Marks  
Act, 1999  
(Section 103 &  
104)

Copyright Act,  
1957  
(Section 63)

# NON CYBER CRIMES - OFFENCES WITH RESPECT TO THE INTELLECTUAL PROPERTY RIGHTS (Contd.)

## INSTANCE OF COMMON OFFENCES COMMITTED IN AN ORGANISATION

- The accused, while in employment, uses the trademark of the Complainant which leads to the belief that the goods, which are not otherwise of the Complainant, are designated and described by Complainant's trademark.
- The accused uses the trademark of the Complainant in commercial documents like invoices and goods are delivered or services are rendered to a person in pursuance of an order made by reference to the complainant's trademark so used.
- The said acts are done by the accused without the assent of the Complainant and hence falsifies the trademark of the Complainant.

# **JURISDICTION & FAILURE OF POLICE TO REGISTER AN FIR**

# JURISDICTION & FAILURE OF POLICE TO REGISTER AN FIR

## JURISDICTION IN CRIMINAL CASES

- Ordinarily the place of offence is the jurisdiction of inquiry and trial. However, in certain cases it becomes difficult to ascertain the place of jurisdiction. The company which intends to file the complaint also has its limitation as to where the inquiry is to be conducted as the same requires the physical presence of representative of the company. There may be cases where the offence is committed at several places. When the offence is committed in more than one area, the offence may be inquired into or tried by a court having jurisdiction over any such local areas.
- As far as offences against a company is concerned, any offence of criminal breach of trust or criminal misappropriation may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.
- Jurisdiction of the criminal courts in inquiries and trials are provided under Chapter XIII of The Code of Criminal Procedure, 1973.

# JURISDICTION & FAILURE OF POLICE TO REGISTER AN FIR

## FAILURE OF POLICE TO REGISTER AN FIR

- In cases which are partly civil and partly criminal in nature, the police may delay or may not be inclined to register an FIR. In such cases, the complainant/ company has the remedy of filing a petition under Section 156(3) of The Code of Criminal Procedure, 1973 before the Magistrate Court of appropriate jurisdiction praying for a direction to the SHO or the IO of the concerned police station to register an FIR.
- At this stage, the Magistrate prima facie decides whether a cognizable offence is made out or not without going deep into the merits of the case. The Magistrate can direct the concerned Investigation Officer to file an Action Taken Report (ATR) apprising the court about action taken on such complaint and eventually give a direction for registration of FIR.
- The Magistrate can also treat such petition as complaint and take cognizance of the case based on merits and documents filed in such petition.

# INTERNAL INVESTIGATION & PREVENTIVE STEPS



# INTERNAL INVESTIGATION

Initiation of internal investigation of a company can be from the following sources

Internal complaints made by employees/ any other member of the organisation

External complaints

Complaints from whistleblowers

Suo motu cognizance of such offences taken by the organization

Disclosures made in the course of audit

Disclosures made in the course of due diligence

# INTERNAL INVESTIGATION (Cont.)

## COLLATION OF DATA

- Once it comes into light of the organization that some mischievous/ suspicious activity has been conducted, the next step is the collation of data/ information.
- Such information may be in the form of documents in hard copies or in electronic format in computer storage devices or online or devices like cell phones, laptops etc. Depending on the nature of activity, the organization can hire **data collection experts** which would ensure ease in forensic imaging of data available, so that details pertaining to creation of a document, edits, subsequent access or destruction may be detected.

# PREVENTIVE STEPS

The organization can take various steps to avoid being a victim in such frauds:

Conduct proper background checks of the employees as well as third parties before entering into any agreement

Sign up for electronic notifications with your bank and other creditors or service providers.

Drafting of intact agreements with third parties

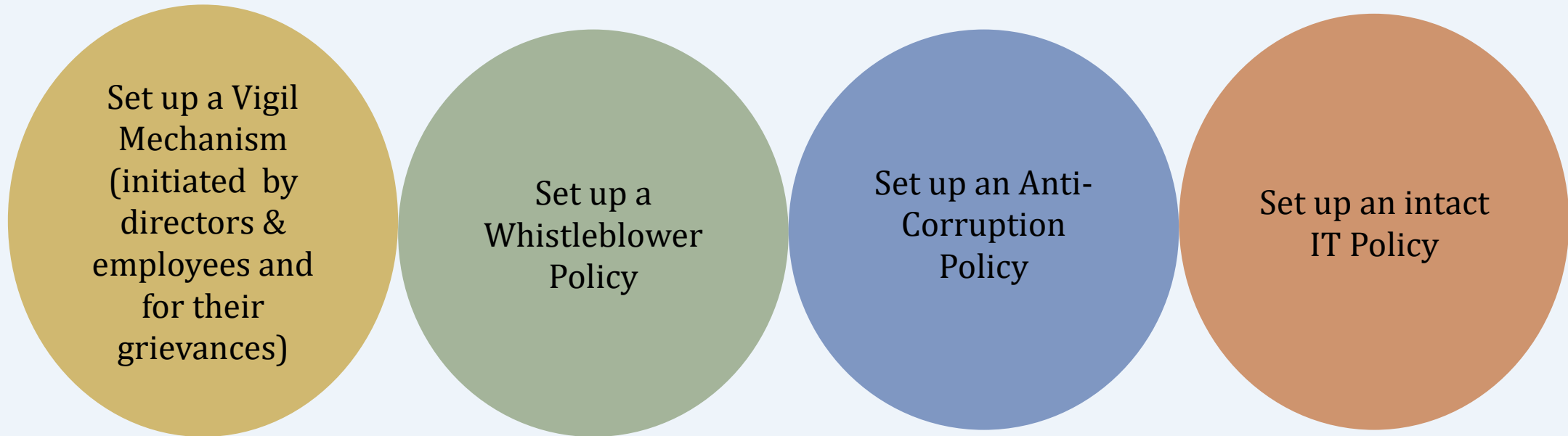
Review bills and account statements upon receipt and immediately report any suspicious activity to the originating company

Educate staff on best cybersecurity practices.

Do not share sensitive information over email or any web-based service

# PREVENTIVE STEPS (Cont.)

## POLICIES AND MECHANISMS:



Such mechanisms and policies allow the directors and employees to report any instances of misappropriation, kickbacks, fraud, or unethical acts to the organization's management

# IMPORTANT LINKS



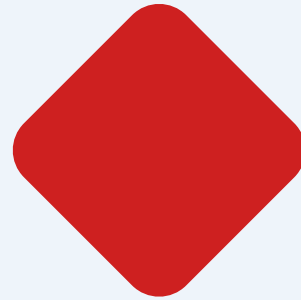
## **Indian Penal Code**

<https://ldashboard.legislative.gov.in/sites/default/files/A1860-45.pdf>



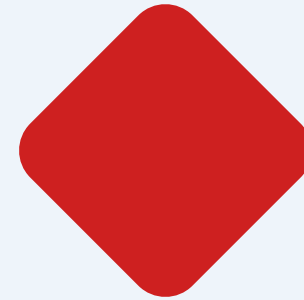
## **Trade Marks Act, 1999**

[https://ldashboard.legislative.gov.in/sites/default/files/A1999-47\\_0.pdf](https://ldashboard.legislative.gov.in/sites/default/files/A1999-47_0.pdf)



## **Copyrights Act, 1957**

<https://ldashboard.legislative.gov.in/sites/default/files/A1957-14.pdf>



## **Information Technology Act, 2000**

[https://ldashboard.legislative.gov.in/sites/default/files/A2000-21\\_0.pdf](https://ldashboard.legislative.gov.in/sites/default/files/A2000-21_0.pdf)



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