



JANUARY 2012

**SRM**

SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

# Legal Report

A Publication of the Society for Human Resource Management

# Background Checks in India

By Vikram Shroff and Neha Sinha

Companies in India are in recruitment overdrive. Domestic companies are competing with foreign giants for the best Indian talent. For HR managers in India, this presents an opportunity as well as a challenge in finding the right candidates for open positions. While job-specific proficiencies are examined regularly, the process for background checks is still in a nascent stage in India.

Newspapers regularly report stories of employees with falsified profiles. Recent incidents include:

- Infosys asking about 100 employees to leave due to discrepancies in their resumes.
- Wipro dismissing 25 employees for forged resumes and filing police complaints against the employees and 20 recruitment agencies.

- TCS dismissing 20 employees when background checks revealed fudged resumes.
- Mumbai blast suspects using fake degree certificates to get jobs.
- A driver brutally attacking and murdering a female employee; subsequent investigations revealed that the driver had a hidden criminal history.
- A senior professional, boasting certificates from IIT Mumbai and IIM Ahmedabad and 20 years of corporate experience, being on the verge of receiving a job offer when background investigations revealed that the certificates from IIT and IIM were fake.

In the quest for better and higher-paying employment opportunities, individuals tend to falsify their profiles to get an edge over their peers. While genuine candidates make extra efforts to develop certain skills and qualifications by attending workshops and courses, others doctor their resumes to reflect special skills, educational qualifications and work experience that they may not actually possess, in the hope that such misrepresentations won't be verified.

## Background Check Practices

Background verification has always been on the recruitment checklists of HR departments in India, but it has tended to be ticked off after a cursory glance at educational certificates and relieving letters from previous employers. Appalled by recent incidents, Indian companies have started including background checks as an integral part of the recruitment and screening process for prospective employees.

Background check practices in India vary significantly across different sectors, and even across different companies within the same sector, in the absence of any defined principles, processes or laws. A comprehensive background check requires a prospective employer to validate a candidate's educational qualifications, past employment records, work experience,

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criminal records and identity check, such as a passport, driving license or income tax registration number. An effective validation process also may involve contacting past employers and former managers and supervisors.

Leading IT companies in India have implemented stringent due diligence processes to detect falsification of records. Some companies have adopted a two-tier system where reference checks are handled partly by in-house departments and partly by third-party agencies. Others have developed processes for vigorous technical and HR interviews that help spot anomalies in education and work experience.

Some companies have developed policies requiring verification of previous employment and educational records, perhaps via interaction with previous employers, organizations and educational institutions. Additional policies may require a police clearance for candidates.

Multinational companies—particularly large ones—that have set up business operations in India have traditionally exported their policies and standards for background checks. For senior executive positions, the benchmark has been set higher, as companies check the candidate's reputation and any involvement in unethical practices, securities law violations, exchange control breaches and money laundering.

However, in recent times India has seen a mushrooming number of a variety of background check and investigative search agencies that help their clients in India by conducting detailed background checks. Companies have started using these services especially for higher-level positions.

## Legal Considerations

There is no legal requirement or standard for companies in India to conduct background checks on prospective employees, except in certain cases. For example, India's central bank, the Reserve Bank of India (RBI), has issued notices to banks requiring them to conduct a background check of personnel recruited as dealers from other banks. The RBI has placed the onus on banks to ensure that recovery agencies do not employ people with criminal backgrounds. And Indian companies that have an ISO 27001 certification or that follow similar standards are required to conduct background verification checks on candidates for employment.

In the absence of specific laws, at times the impetus for conducting background checks is contractual. Foreign companies, especially those from the United States, that outsource projects to Indian service providers, may require the providers to undertake comprehensive background checks

prior to hiring or engaging an individual to deliver services. A specific clause in this respect is generally added to the master service agreement, and a breach could result in termination of the contract as well as a damages claim.

India has no law comparable to the U.S. Fair Credit Reporting Act. Further, in light of the relatively less-developed laws on employment discrimination in India, certain employers conduct medical and health checkups on candidates as a condition of employment.



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Employers should be sensitive and mindful of the data being used for background checks as well as the means of obtaining such data, as India protects the privacy of an individual from unlawful incursion. While India does not have a codified law to protect the privacy of an individual, Article 21 of the Constitution of India guarantees a person's right to live with liberty and dignity. This article has been read by the Supreme Court of India to include the right to privacy.

Additionally, the Information Technology Act, 2000, imputes liability upon illegal and unauthorized use of data stored on computer systems. And, for entities engaged in the collection and maintenance of personal data relating to individuals' credit histories, the Credit Information Companies (Regulation) Act, 2005, attributes liability upon leakage or alteration of such data.

## Challenges

A comprehensive background check and validation process faces some practical challenges in India. One of the reasons is the absence of requisite and updated information on criminal matters, case history, creditworthiness and violations of law.

Further, in the absence of certain information being available in a centralized manner, there is the need for physical verification of information and records in India. This is especially true for

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criminal records because such verification is possible only by visiting each police station in the local areas where the person resided.

Records for individuals on a national or state level do not exist. Further, some of the traditional educational institutions have not developed a practice of maintaining detailed information of their ex-students. Companies are also not very forthcoming in sharing compensation details or the actual reasons for employment termination.

## Initiatives

The Indian government has launched a project to provide a Unique Identification (UID) number to all citizens. The UID would be like a national identification number and would include biometric data and other information on every Indian citizen. This project may link all identity databases, such as for driving licenses, passports and voter IDs, and could be used to access personal, educational, professional and criminal records as well as credit histories for each Indian citizen.

The government is also exploring the idea of setting up a National Academics Depository (NAD) as a national

database of academic records in an electronic format. One of the principal aims of this project is to eliminate fraudulent practices, such as forging certificates and mark-sheets, through online verifications. It is intended that all educational institutions be registered with the NAD, such that the NAD could be used as a single-point verification center for all academic records.

The National Association of Software Services Companies (NASSCOM) is possibly the first industry association that has taken a step toward addressing the problem of the unavailability of information needed to undertake background checks. NASSCOM set up the National Skills Registry (NSR), a database of IT professionals in India, in 2005. The NSR database is maintained by the National Securities Depository Ltd. (NSDL) and is a centralized database of information on IT professionals in India with details of educational qualifications and employment history.

Upon registration in the NSR database, individuals are required to provide detailed records of educational and professional qualifications, employment history, and biometric information, which is verified and authenticated by independent agencies

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selected by NSDL. As of February 2011, more than 800,000 professionals have registered their profiles, and 98 leading companies representing more than 60 percent of industry employee strength have subscribed to the database.

Following suit is the Retail Association of India, which has partnered with a leading HR consultancy and background verification firm to create a database of people employed in the retail industry verifying their backgrounds. Similarly, leading insurance companies have come together to bring into being a database of more than 300,000 people employed in the life and general insurance sector.

## Vigorous Screening

Weeding out candidates with fudged resumes and preventing fraud requires a vigilant eye and a reliable method for background screening. Having realized the need for background checks, a number of Indian companies have started developing vigorous screening policies for new hires that vary based on seniority and position.

Indian companies have started realizing that an effective due diligence process for candidates can help reduce workplace-related problems such as theft, embezzlement, violence, injury and harassment. Such practices can also help mitigate the risks of potential lawsuits as a result of negligent hiring.

While the task of conducting a comprehensive background check continues to be a challenge, initiatives by the government and industry associations should make the process simpler and less time-consuming.

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The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. The Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 250,000 members in over 140 countries, and more than 575 affiliated chapters. Visit [www.shrm.org](http://www.shrm.org).

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11-0779