



Background screening is rather commonplace throughout India. However, companies should be aware of the diverse legal and cultural considerations before implementing a background screening program in this particular country. This whitepaper will highlight the legal landscape and outline checks available.

Legal Landscape

A rise in resume or CV fraud in India has contributed to background screening's growth in popularity. This trend is demonstrated in the PricewaterhouseCoopers 2016 Global Economic Crime Survey. According to the report, human resources fraud – particularly job applicants submitting false qualifications (as reported by 44% of survey respondents) – negatively impacted organizations. As noted in the survey, economic crime can harm more than the company's bottom line and may also impact employee morale, business relationships and company brand/reputation.

¹ Employers should seriously consider implementing a thorough background screening program that verifies credentials for full-time, part-time and temporary workers to help cut the risk of human resources fraud.

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| Capital | New Delhi |
| Currency | Indian rupee |
| Population | 1,293,057,000 |
| Area | 3,287,263 km ² |
| Language | Hindi, English |
| Time Zone | UTC +5:30 |
| Calling Code | +91 |

Data Privacy

Currently there is no comprehensive data privacy law in India. However, there are several pieces of legislation that provide guidance in this area. First, Article 21 of the Constitution of India guarantees that “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law.” While the word “privacy” is not specifically outlined in the Constitution as a fundamental right, Article 21 has been interpreted as upholding an individual's right to privacy by the Supreme Court in numerous cases. However, this issue has been contested in recent years with the NDA government (National Democratic Alliance) arguing that there is no right to privacy under the Constitution.

In addition, the Information Technology Act 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 outline parameters with respect to sensitive personal data. Sensitive personal data includes: financial information, sexual orientation, medical records and history, physical, physiological and mental health condition, passwords and biometric information (i.e., fingerprints, voice patterns, DNA, etc.). Organizations may only collect sensitive personal information if it is for a lawful and necessary purpose, and with consent of the individual.

¹ Pricewaterhouse Coopers, “PWC's Global Economic Crime Survey 2016: An India Perspective”. Published March 2016. Last accessed Nov. 26, 2016.



Discrimination Protection

The Constitution of India prohibits the State from discriminating on the basis of religion, race, caste, sex or place of birth. However, there is no comprehensive law that protects individuals from all types of discrimination in the private sector. Rather, various topics are covered via piecemeal legislation.

For example, the Equal Remuneration Act, 1976 includes protections for individuals in the workforce by prohibiting discrimination with respect to wages for work of a similar nature and by prohibiting employers from discriminating against women during the hiring process or in the employment context (i.e., promotions, transfers, etc.).

Background Screening – Available Checks

Civil Records

Criminal

Directorship

Education

Employment

Global Search

Motor Vehicle Records

Passport Check

Professional License Verification

References

In general, the most commonly conducted checks in India include reviewing an individual's past education and employment history, checking professional references and conducting a criminal records check. Other checks, such as reviewing an individual's motor vehicle records, are available; however, they tend to be used only when directly relevant to the position being filled and may not be suitable for every position in every industry. Consent should be obtained from the applicant before conducting the background check. In particular, it is common to have a school or employer request the applicant's authorization in writing before providing any verification information.

Education

In India it is common to verify only the highest degree obtained by a candidate. Educational institutions will be contacted to verify dates of attendance, graduation date and degree information. Employers should be advised that schools often charge additional fees without advance notice.

Employment

It is common to verify the last seven years of employment for candidates in India. Employers will be contacted to verify the individual's title, dates of employment and if the candidate is eligible for rehire.



Conducting education and employment verifications in particular are important in India due to a rapid increase in resume fraud that touts false education and/or employment credentials.

Criminal

Criminal records searches are conducted at the local police station, where many records are still stored in paper form versus electronically. Turnaround times may be longer for rural areas or police stations that are not equipped with efficient technology.

Miscellaneous

Other searches in India include: Bankruptcy Records, Civil Records, Directorship, Motor Vehicle Records, Passport Check, Global Search (sanctions and watch lists), Professional License Verification and Professional References.

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The preceding is offered as general educational information and is not intended to constitute legal advice. Given the intricacies of the pertinent laws and regulations, consultation with qualified legal counsel is recommended.