

“Need for Specific Laws on Background Check of Employee”

**Ananyaa Jha
B.B.A L.L.B
Amity Law School,
Noida*

***Aayush Kanojia
Amity Law School,
Noida*

"Safety is a Choice to Make, Not a Chance to Take"

We are all familiar with this quote pertaining to workplace safety for employees in an organization. But on closer inspection, it's a narrow perspective, as workplace safety doesn't limit itself to the surrounding things but also to the people working in that place who have a huge impact on an organizations' health and success. Human Resource is the pivot if the organization is a machine. Lack of stringent laws on the background check of employees leaves the empire vulnerable and proves to be its' nemesis.

India is yet to develop on this frontier as infamous incidents ranging within small to big enterprises are reported frequently. The outrageous 2014 Uber rape case which resulted in the services being banned temporarily in the State capital threw light on the fact that 4,000 unverified drivers have been employed by the company. The parameters that the company wanted to seek had not been fulfilled with respect to even a single employee showing grave negligence in the background check process. Many such heinous events are reported every year because of dereliction of duty on the enterprises part.¹

The background check process can be conducted through various methods- having an in-house department, contacting third party agencies as they can be thorough in the process since they specialize in this field of investigation of candidates, an intense interview to find out any sort of discrepancies in their work and educational experience, for a senior position the reputation can be inquired upon for any active or accompanying participation in immoral and unprincipled operations

¹ <https://www.thehindu.com/news/national/uber-rape-case-delhi-hc-upholds-life-term-of-convict-shiv-kumar-yadav/article24953654.ece> (Visited on September 10, 2018)

and securities fraud of any magnitude. Although, online background checking portals have been developed in western countries and it's mostly undemanding of time and money, in India it's still a relatively new concept as Article 21 of the Indian Constitution guarantees a person to live with dignity and liberty and thereby, respecting their privacy as a matter of utmost importance.

Now, a detailed look into the two main methods of background checks, they can be conducted by having an in-house department in the organisation itself or by outsourcing the job of screening the background of the candidates to a third party, that is, other agencies or companies. Having an in-house department is only possible in big organizations that have enough turnover per year to make profits as well as spend on the thorough screening activities of the prospective employees as well as the already employed so as to take adequate protective measures for the organization.

Background check does not only incur a great deal of costs, but it also takes a lot of time. It is a procedure, which, if thoroughly followed would be time and money consuming. For example, if a person is hired by one of the big 4's in India, for instance KPMG, this giant corporation will conduct a background check with its own sources however this will take at least 2-5 weeks of time depending on the nature of the scrutinisation required which would be directly proportional to the responsibilities and significance of the vacant position that needs to be filled and only then the employee can get involved in the business of the organization which can sometimes result in delay of work and can cause losses of great magnitude to the organization. Although, it's an age old saying that it's better to be safe than sorry.²

A far more stressing drawback would be that even though time and money can be managed, it might lack the intensity and extensiveness to stand at par with other agencies that specialises in the background checking process of candidates and employees and can cover greater range in that aspect.

However, in smaller firms which operate on a tight budget, rendering it not big enough to have their own, separate in-house department to conduct background checks because of the lack of requisite resources so these firms have to outsource the job to other third-party agencies or companies that

²<https://home.kpmg.com/in/en/home/services/advisory/risk-consulting/forensic/verifications-services.html> (Last Visited on 15 September, 2018)

solely indulge themselves in the process of background checks. This process requires greater extent of time since the work gets sublet to another agency but the drawback arising earlier with having an in-house department gets diminished as they explore every facet that seems imperative and the vital depth and scope are consummated. India's most common, successful and reliable companies that do background checks for other firms are KPMG, Verifact, First Advantage et cetera. The foremost part about outsourcing this tedious process is that these companies or agencies verify everything even if it's considerably less important, from birth dates, employees' education details, their work history, driving violations, running credit checks on these job applicants, drug testing, criminal records and such other information as may seem important. They collect all the information about the candidate that there is to know to help the firm hire the most suitable and reliable candidate for the job and also shielding itself from any fraudulent activities.

Now, background check can be made on an already hired employee or on prospective candidates that would bring about confidence among the recruiters in their hiring choices. There can be information of substance that could have been overlooked if the recruitment has been done in haste, or policy and procedure related to the process was not previously established in the organization and have recently been devised, instituting the background check process would then seem apt as it's a common catchphrase, "it's better to be safe than sorry". It's wiser to be cautious and careful in selecting employees for the health of the organization and its' workers.

Looking closely at the crime rate which definitely seems to be soaring in almost every department especially related to the work place well-being, an entrepreneur who ambitiously places a foot forward to start his own organization has it in his best interest to have a safe and trustworthy staff so as to maintain the clientage and everyday office activities with ease. It is widely known that "Safety rules are our best tools", which points in the direction of having clear, unambiguous, safety norms laid out, giving wide protection coverage in all required domains. The whole enterprise can crumble down before even picking up pace in the industry, such is the repercussion of having a person with a fraudulent history. An entrepreneur starting out on his own can't devise a thorough legal background check process; it is beyond his area of expertise. Therefore, a choice of different stringent set of rules and procedure must exist for all industries to choose from aptly, thereby, saving time and energy.

The need for background check has been floating since a long time but no attention was paid until it became a continuous problem knocking on all doors of the enterprises and a whopping number of incidents being reported in India. It's become impossible to turn a blind eye towards the complications hovering and acting as a stumbling block towards the firms' successful outcomes. The background check has yet to become a mandatory practice so as to assure that the employee being hired does not have a bad history at old workplaces and does not carry a criminal record. This practice soon has to set course due to the rise in fraudulent activities. It has been taking place with close scrutinization for the position of employment for recovering agencies after the RBI has placed responsibilities to not employ people with criminal history. Certain Indian organisations' that have an ISO 27001 certification or companies that tread on the heels of similar standards are required to conduct background verification of the candidates during the selection process from among the prospective pool of candidates that applied during the recruitment drive. But, a severe need has been seen to make it happen in all kinds of organisations as generally small business's because of having a limited budget don't put much thought into the whole screening the candidate before hiring process. However, since these companies are tightly-knit and have a small circle culture running inside them, it's dire to have a healthy and safe functioning staff.

Employment background checks are more or less summed up and are called-for, for safety and welfare purpose of the external and internal environment of the organisation. Certain aspects of it are often overlooked, such as, through this method, the educational qualification, the previous employment reference and records can be cross-checked, the skills required can be ascertained. The attributes in the job-seeker can be chalked up and the organisation can become aware whether the applicant would be befitting to the organisation or not, whether they possess the desired qualities for the position and whether they would prove to be beneficial for the organisation or not. Also, certain other list of eligibilities would emerge through the process, such as, whether or not they are eligible for loans et cetera.

“Background check ruins a person's reputation by creating a feeling of doubtfulness”, a common myth that has arisen amongst the people about the process due to which the candidates become dubious and unwelcoming about the background check, most often not being aware of the fact that this practice is not a mere follow the protocol conduct by an organization but instead it has become a key part so as to protect the workers, the organization and its' reputation in public eyes.

In recent times, more light is being thrown in the direction of the world which is full of scams and frauds, many people who do not possess the power to do such scams or frauds at large scale, that is, in renowned and big companies, try their hand at small fraudulent activities such as by lying on their resume to get good opportunities in their professional lives and concealing important facts and putting up a facade to mislead the employer to employ them. These shams have been on a rise since the country has been trapped in the vicious circle of unemployment which has still been increasing. These treacherous incidents have not only been witnessed and reported in India but have been hovering over organisations all over the world. It is not limited but is spread far and wide. Taking example of one such fraud, a person named Shyam worked sincerely at Hewlett Packard's (HP), Bangalore office for 3 years before he quit. A few months later, a person named Shankar joined the company who looked very similar to Shyam. On being asked by other employees whether he was Shyam because of the heavy resemblance, Shankar denied and said he barely knew who Shyam was. After a complete and thorough background check by the Human Resource Department of the company, it turned out that Shankar was indeed Shyam who had been working in the company using his friend's brother degree i.e., Shyams' college degree as he did not have one of his own. During the tenure of his work at the company, he completed his college degree in the initial two years and re-applied for the same job with his original name and degree as Shankar. This is a case of a person impersonating someone to get the job as Shankar without the desired educational qualifications would not have been able to secure the job. Disregard of the importance of background check resulted in a person working in the organisation without any qualification and successfully outwitting everyone for 3 years. Thus it seems pertinent and extremely indispensable for a company to do a background check of prospective employees before any scope of such fraudulent activity takes place and harms the reputation of the company and creates a future bad influence on the other employees. Apart from impostors, companies are also at risk of embezzlements, et cetera apart from the isolated criminal harm that may transpire.

The service of background check is used by most big employers as EBS (Employee Background Screening). Generally EBS costs firms from Rs. 2,500/- to Rs. 10,000/- per candidate depending on the intensity of the research and can go upwards of the amount too. Therefore, the cost varies depending upon the type of background check to be done, whether the background check is specific (regarding the educational background / history or past work experience) or it can be general,

involving an overall history of the candidate stated in the resume, cross-checking to find any unwanted discrepancies. Background checks are expensive since money has to be given to the sources that provide the information and charge fees for deploying their manpower in the process. For example, checking someone's educational qualification would require the university to go through documents, and manpower would be utilised which would demand money. Similarly another situation would be that verification of an individual for marriage can cost up to Rs.50000/- as there is a risk of leaking the personal information of an individual in wrong hands which might lead to blackmail or any sort of harassment.

Among all the Indian cities, Bangalore has witnessed to be topping the charts when it comes to job applicants meddling with their resume about previous employment reference or address details when applying for a job. After Bangalore, Mumbai, Chennai and Delhi have been witnessing the most amounts of disparities in the CV's of job contenders. Almost 4-5 lakh checks were done by an organisation out of which 9.3% were fraudulent which means that 9 people out of every 100 people had lied on their application resulting in fraud and paving way for other illegal activities to surface in firms. Furnishing wrong employment details in the job application provided by the contenders was the most common inconsistency, accounting for 71.5% of all fraudulent cases.³

Even though there is no guarantee that the organisation is safe but it is still safer when the employees are better known and their background information is available. There's no stopping an employee from committing illegal activities once they join the organisation yet getting a head-start and being cautious from the advent of the process is helpful and a prudent step. Therefore, a rational and stringent set of rules should be formulated per industry through which the process should be governed, keeping in check the candidates' privacy and maintaining healthy organisation environment.

Conclusion

We can observe from the above research after light has been thrown to the importance of running background check on the prospective job-seekers and those already employed in the organization

³ <https://timesofindia.indiatimes.com/business/india-business/Bangalore-tops-frauds-in-job-applications/articleshow/21640178.cms>
(Last Visited on 21 September, 2018)

that it's a safety net for all kinds of industries. For each industry, according to the specific needs and criteria the rules should be framed along with a general set of rules which should be applicable to all enterprises. Different ways of conducting background checks should also be analyzed and the best one should be adopted according to the suitability, scale and size of the organizations.

However, it would be ignorant to believe that conducting the scrutinization of the employees would put a halt to all frauds, reputation damaging activities and other harmful conducts rather it would be correct to say that through this inspection, such activities will narrow down and the number of crimes would reduce significantly. Thus, it's in the interest of both the company as well as the employees working in the company to conduct background checks on a regular basis to detect any form of unsound and risky atmosphere, not to forget the well-being of the general public.