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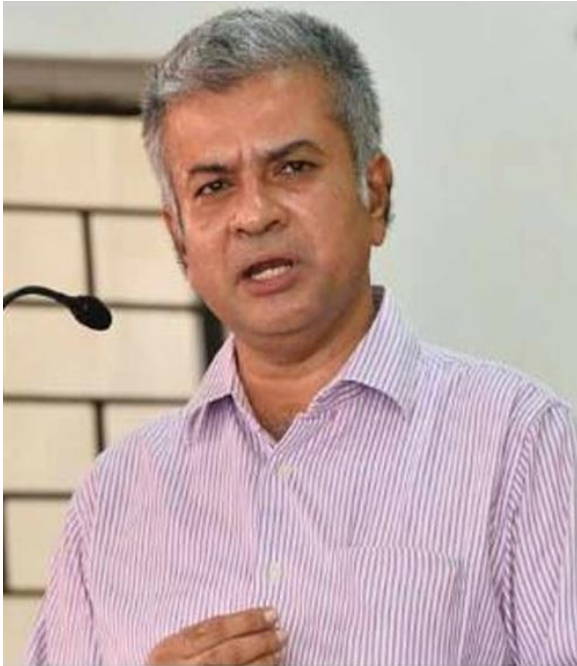
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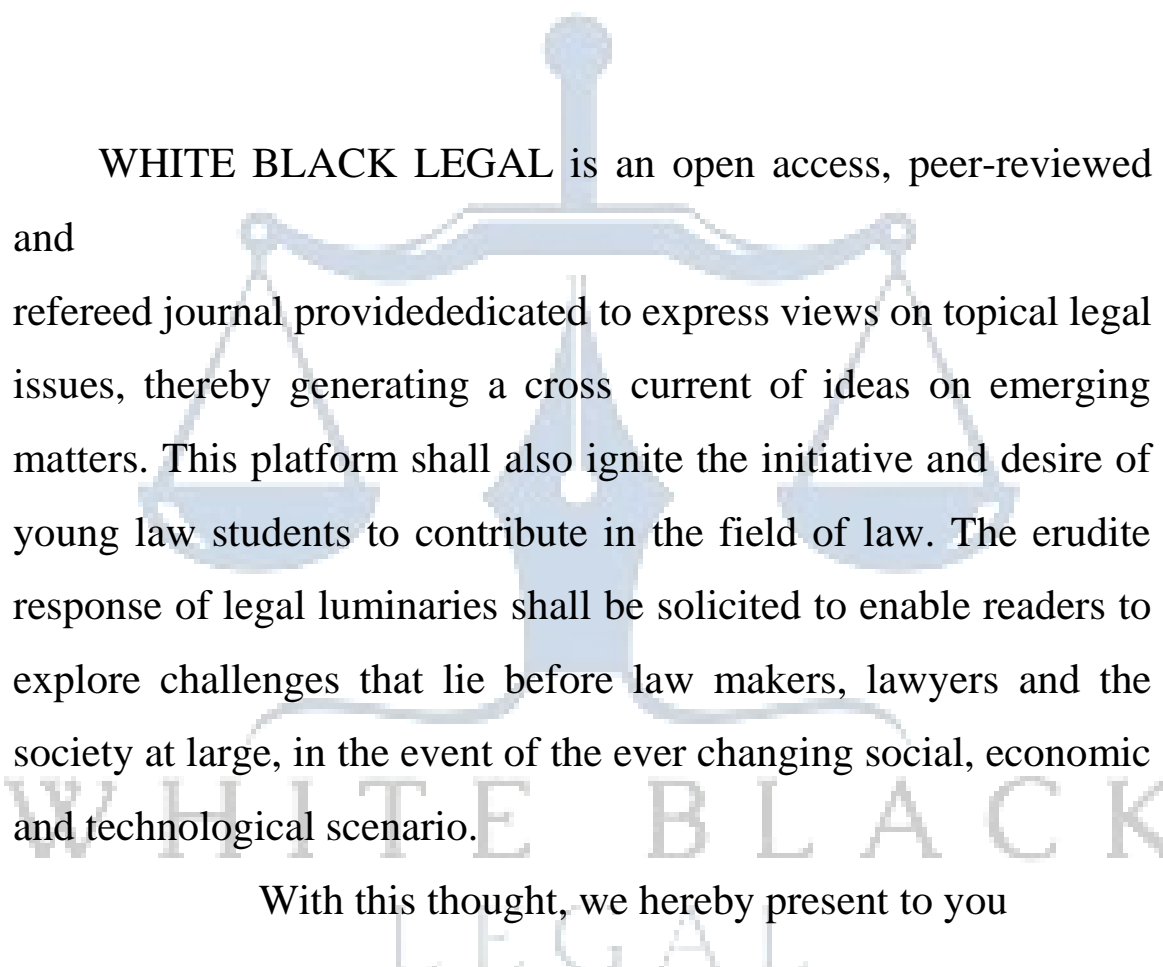


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNRAVELING THE COMPLEXITIES: HOW INDIA'S GROUNDBREAKING DATA PROTECTION LAW IS REDEFINING THE LANDSCAPE OF INTERNAL INVESTIGATIONS.

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INTRODUCTION

At present, there are no statutory mandates or procedural directives in India for conducting internal investigations in a company, other than under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹. This law requires every organization with ten or more employees to constitute an internal complaints committee and lists out the procedure for handling such complaints².

However, internal investigations may need to be carried out by employers in relation to a wide range of issues and/or situations. This note specifically discusses the collection, handling, storage, and/or processing of personal data in the wider context of internal investigations, including with respect to allegations or suspicions of economic and criminal offences³.

INTERNAL INVESTIGATIONS

An Indian company may find itself undertaking internal investigations in circumstances involving allegations or suspicions of:

- misconduct or unethical business conduct⁴;

¹ **Ministry of Women and Child Development.** *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.* Government of India, 2013.

² **Dua Associates.** "Overview of Indian Employment Laws." *Lexology*, 2021, www.lexology.com/library/detail.aspx?g=a763d0b4-ef76-4053-92a4-9f918b8285be.

³ **Khaitan & Co.** "Corporate Investigations in India." *Corporate Compliance Insights*, 2022, www.corporatecomplianceinsights.com/corporate-investigations-india.

⁴ **Nishith Desai Associates.** "Investigation Essentials for Indian Companies." *NDA Legal Insights*, 2023, www.nishithdesai.com/fileadmin/user_upload/Investigation_Essentials.pdf.

- harassment - including sexual harassment⁵;
- possible commission of criminal offences such as fraud, corruption, bribery, criminal breach of trust, cheating, or theft⁶;
- the manipulation of or tampering with official and/or financial records - including forgery and falsification of transactions or underlying documents⁷;
- misappropriation of funds or misuse of a company's assets⁸;
- illegal payments made to vendors or contractors⁹;
- embezzlement or money laundering¹⁰;
- a breach of confidentiality¹¹;
- insider trading and market abuse¹²; or
- any other misconduct under law, a relevant employment contract, or a company's rules, charter documents, codes, and policies¹³.
- Internal investigations typically get triggered on the basis of:
- a complaint made by:
 - a whistleblower (including from stakeholders who are external to a company)¹⁴;
 - an aggrieved employee (or any other member or employee of such company)¹⁵;
 - or
 - a third party¹⁶; or
- pursuant to:
 - the management's suspicion(s)¹⁷; or
 - disclosures made in the course of an audit¹⁸.

Further, in the case of subsidiaries of multinational corporations ("MNCs"), investigations may

⁵ **KPMG India.** "Harassment and Ethical Misconduct in the Workplace." *KPMG Reports*, 2022, www.home.kpmg/in/en/home/insights/2022/harassment-report.html.

⁶ **Central Bureau of Investigation.** "Fraud, Bribery, and Corruption: Indian Penal Code." *CBI Handbook*, 2023.

⁷ **PWC India.** "Financial and Document Tampering." *Forensics and Investigations*, 2021, www.pwc.com/in/forensics-documentation.html.

⁸ **Ernst & Young India.** "Corporate Misappropriation of Assets." *EY India Insights*, 2022, www.ey.com/en_in/insights/misappropriation.

⁹ **Gartner.** "Guidance on Vendor Payment Risks." *Gartner Legal Compliance Reports*, 2022.

¹⁰ **Reserve Bank of India.** "Money Laundering Regulations." *RBI Guidelines*, 2023.

¹¹ **Trilegal.** "Confidentiality Obligations in Indian Employment Law." *Trilegal Insights*, 2022.

¹² **SEBI.** *Prohibition of Insider Trading Regulations, 2015*. Securities and Exchange Board of India, 2015.

¹³ **Baker McKenzie.** "Global Anti-Corruption and Internal Investigations Handbook." *BM Legal Resources*, 2021.

¹⁴ **International Finance Corporation.** "Corporate Whistleblowing Practices." *IFC Policy Brief*, 2023.

¹⁵ **National Human Rights Commission of India.** "Guidelines on Employee Complaints." *NHRC Handbook*, 2023.

¹⁶ **Economic Times.** "Third-Party Complaints in Corporate Investigations." *ET Legal Insights*, 2023.

¹⁷ **Deloitte India.** "Management's Role in Triggering Investigations." *Deloitte Compliance Handbook*, 2022.

¹⁸ **Grant Thornton.** "The Role of Audits in Corporate Investigations." *GT Legal Resources*, 2021.

be carried out for the purpose of satisfying compliance requirements under law(s) applicable to the parent entity. For example, an investigation may be initiated by or in relation to an Indian subsidiary for the purpose of compliance with legal obligations under the Foreign Corrupt Practices Act of 1977 of the US or the UK's Bribery Act 2010¹⁹.

In general, in the context and course of such internal investigations, large amounts of personal data related to accused individuals, informants, witnesses, people aware of the matter, and other relevant employees may need to be processed by an employer—either by itself or through its advisors (e.g., forensic partners, law firms, and other experts)²⁰. Accordingly, an informed assessment of the rights and obligations of the concerned employees and other individuals, as well as those of the employer and its advisors/agents, becomes crucial from the perspective of applicable data protection laws²¹.

INDIA'S DATA PROTECTION REGIME

In India, the Digital Personal Data Protection Act, 2023 (the "DPDP Act" or "Act") was published in the official gazette pursuant to a notification dated August 11, 2023²². Although not yet in force, the Act's provisions and rules are expected to be notified soon, overhauling the current legal framework governing personal data in India (the "Existing Regime")²³. For a brief overview of the DPDP Act, see our note here²⁴. For a broad overview of the Existing Regime and India's legislative trajectory with respect to governing personal data, see our note here. For a recent update on the DPDP Act and its rules, see our note here.

THE DPDP ACT AND INTERNAL INVESTIGATIONS

"Personal data" has been defined broadly in the Act to mean any data about an individual (each such individual, a "data principal") who is identifiable by or in relation to such data. The DPDP Act specifically protects "digital personal data," which means personal data in digital form.

¹⁹ **U.S. Department of Justice.** *Foreign Corrupt Practices Act of 1977*. DOJ Publications, 1977.

²⁰ **The Law Commission of India.** "Personal Data Processing in Employment." *Data Protection Draft Report*, 2023.

²¹ **Ministry of Electronics and Information Technology.** *Digital Personal Data Protection Act, 2023*. Government of India, 2023.

²² **Khaitan & Co.** "Understanding India's New Data Protection Laws." *Lexology*, 2023.

²³ **Data Security Council of India.** "A Guide to India's Digital Personal Data Protection Act." *DSCI Reports*, 2023.

²⁴ **Infosys Insights.** "India's Data Protection Act Overview." *Infosys Legal*, 2023.

In the context of internal investigations, any digital data that (even indirectly) relates to and/or identifies relevant individuals is likely to be covered under the Act.

Further, entities that 'process' digital personal data will be required to implement appropriate technical and organizational measures to ensure compliance with the DPDP Act. This requirement would apply to employers conducting internal investigations involving the use of personal data. Employers should note that the Act defines the term "processing" broadly, including wholly or partly automated operations that involve the collection, storage, retrieval, use, sharing, disclosure, erasure, or destruction of personal data.

In addition, if a sector-specific law or a dedicated regulatory/statutory body mandates additional data protection and/or data processing obligations, those will apply over and above the general requirements under the DPDP Act. Accordingly, in the context of internal investigations, applicable corporate, labor, and employment laws are likely to remain applicable, including with respect to data processing restrictions and requirements, if any.



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