

WhatsApp used by LIS Professionals in India: Impact and Implications

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Abstract

With introduction of Internet and various tools/applications on the web and mobile; how information is created, shared, communicated and consumed has changed. Along with these new changes; came new situations and challenges that need to be dealt with. Each social tool has Terms and Conditions (T&C) to become a member; giving rise to legal implications of using these apps and jurisdiction they fall, should a problem arise. These tools and technologies did not exist when Indian Penal Code (IPC) was written; and since it is difficult to make new rules; or make amendments to existing ones; the existing rules are interpreted to encompass today's challenges. As new issues arise, there are new interpretations of existing legal rules. How WhatsApp, an instant messaging service is impacting the life of people using it and how Indian Librarians have adopted using WhatsApp for personal and professional updation is detailed in this article. Since information is the forte of Librarians; they are having additional responsibility of ensuring that they identify fake from real and authentic information from untruths that is floating around on various social tools especially WhatsApp and educate the general community of the same. This article aims to inform admins/users of LIS WhatsApp groups of legal implications of using WhatsApp tool.

Keywords: India, Legal, Librarians, Library and Information Science, LIS, WhatsApp

Introduction

WhatsApp started in 2009 worldwide and launched in 2010 in India and is very popular with 200 million Indian members.

There is a lot of disagreement regarding WhatsApp being a social tool or instant messaging service. Google Play lists WhatsApp as “a FREE messaging app available for Android and other smartphones” and is available on the web at <https://web.whatsapp.com/> since Jan 2015. Wikipedia defines Social media as “computer-mediated technologies that allow the creating and sharing of information, ideas, career interests and other forms

of expression via virtual communities and networks”. WhatsApp fulfils all criteria of social media as defined, so it can be termed as a social tool.

Currently the WhatsApp group supports 256 members. It is used for

- ❖ Personal Connections
- ❖ Professional Groups
- ❖ Broadcasting

WhatsApp was initially used by families & friends to connect with each other. But is increasingly being used by students to share homework; academics for their research and work related information exchange for professionals. Many guides or supervisors are already using WhatsApp to connect with their research scholars either on one-



to-one basis or in a group to share information, links of relevance, documents/pdf files etc. Librarians have always welcomed new applications and technologies into their personal life for updation and professional work sphere to be able to better deliver service. And to be able to better do their work, they first needed to update themselves. To update themselves, they use various online groups, ICT devices, tools and applications; WhatsApp is one of them. Librarians in India are using WhatsApp not only to share information regarding conferences, workshops, seminars and symposia with each other; but also information on journal submissions as well as to prepare for UGC NET SET exams; extend advice on Linux and DSpace installations; and troubleshooting Open Access Library Management Software like KOHA on WhatsApp. Serious discussions regarding the future of LIS profession and threats to professions survival; role of Library associations are discussed with various solutions shared for betterment of the profession. There are niche groups for school librarians, corporate librarians, Business School librarians etc. Good news, awards, rewards and felicitations are shared with congratulatory messages with virtual bouquets showered on the recipient; along with sad news like death of a colleague where condolences to family, friends and colleagues pour in. Advices are sought and help is given instantly. Job vacancies and scholarship announcements are posted and encourage members to share on various LIS groups to benefit all. "Virtual Workshop on Marketing Library Services with WhatsApp" sessions are being conducted with registration at link www.goo.gl/forms/KWB1rYqZs0wvOFVH2. IndiaLibraries blog at <http://www.indialibraries.wordpress.com/> has listed out 42 LIS WhatsApp groups available in India can be

referred at Annexure I and for three additional groups not listed Annexure II can be referred. Dream Librarian is one of the first known LIS groups started on 16 Oct 2013 almost three years later after WhatsApp was introduced in India and South India LIS Group is the newest group which started on 1 Jan 2017. IndiaLibraries is one of the most popular and sought after LIS WhatsApp group as per poll posted at https://docs.google.com/forms/d/e/1FAIpQLSfbM0HkNhe5X9zszfS6dvGIIgZbsfAUaEkURsv85SMIIYCUw/viewform?usp=fb_send_twt with members polling it at the top as it allows only LIS information to be posted and follows stringent rules and having members from India and abroad.

With so many people making groups and exchanging information there is bound to be legal consequences. Many people use information and communication tools, technologies, applications and devices without knowing the legal implications. The fine print of Terms and Conditions (T&C) should be read and understood. Legal T&C of using WhatsApp are mentioned, before registering to use the tool or at their site but many do not take time to read the T&C; the fine print, between the lines legal import.

It is clearly mentioned that the user must be at least 13years old to use Whatsapp service but we see 'most' school children from primary using their parents WhatsApp and 'few' from middle and high school already owning smartphones with WhatsApp downloaded and chatting with Friends and interacting in groups Teachers have created to share homework.

As per the WhatsApp policy if you don't agree to the T&C, then you cannot use it. Most just blindly check the option of agreeing the T&C assuming its

'safe enough' as others too are using it and not facing any adverse effects; and should anything adversative situation occurring, then they will realise the implication of the foul. Since WhatsApp is a relatively new technology, admins and members may not be coherent with the policies, the T&C etc. Even though majority of the people in India read newspapers, they do not understand the intricacies of the legalese terminology used when reporting about problems that occurred with WhatsApp use/misuse. Most however assume that everyone is using it without any problem, so he/she can use it till a problem crops up; and when that unlikely scenario appears they would surely have company in handling the legal scenario as a group; reasoning - safety in numbers. Few believe that they live in a democratic country and have freedom of speech and expression; a right given by their constitution; few others think they can evade law and most assume that they will plead ignorance and escape. Not only being aware of T&C of the app one should also be coherent of legal boundaries like country of origin of application made; users are citizens of which country; country where they are using the app; infringing nature of the post made, if the user is also an admin, if there is more than one admin of one group and if all admins belong to different countries all impact jurisdiction of the case. Since the WhatsApp spans countries and accessible by anyone who has an Internet connection. Many groups are having members/admins from various countries. If the admins are from various countries then which country law will the jurisdiction fall to settle disputes? Especially if the various countries have their own laws regarding the jurisdiction then there would be conflict.

There were numerous reports online, in electronic and print newspapers regarding Admin being liable for criminal prosecution if objectionable posts are shared on the group. The term 'objectionable' is ambiguous. So what is universally objectionable should be defined first then create awareness before taking action. What is objectionable to one may not be for other. But as a thumb rule anything that is biased (for or against) caste, race, religion, gender, creed, sexual orientation, age or marital status, political affiliations or social status/heritage, education, financial ability, country of origin, citizenship or immigration status, physical or mental ability; religious affiliations can be termed objectionable which can be just information, satire, jokes etc. in form of text, images or videos; which should be strictly avoided.

The most recent case reported in Deccan Chronicle on 3 May 2017 that Karnataka police arrested the administrator of a WhatsApp group 'The Balse Boys' and one member, in connection with sharing of objectionable content against Prime Minister Narendra Modi based on a complaint.

Another incident reported in Maharashtra where administrator was arrested based on video of man slaughtering a cow and abusing the Prime Minister was allowed to be circulated on group. A Press Trust of India (PTI) report states that arrest in Maharashtra was made under sections 153 of the IPC that promoting enmity and ill will, section 34 that deals with roles of Certifying Authorities and section 67 of IT Act, 2000 that deals with obscene content transmitted in electronic media.

It is reported that Supreme Court has struck down Section 66-A of the Information Technology Act, 2000 under which punishments are levied for sending offensive messages via communication services. So now the Indian Penal Code (IPC), 1860 presently applies for handling offence on social media Punishment for offences on social media and punishments vary according to the crime committed.

An incident occurred recently, where a man was indiscrete and posted porn on a group which had SSP of Mathura as a member; the person who posted clip was arrested along with admin of group. It is reported that admins take the blame of any objectionable information is posted on the group they created. As per Indian IT Act, admin is clubbed under same term as an 'intermediary' who creates a service and is under certain obligations under the Act. Being an admin of WhatsApp group puts the admin on same footing as other intermediaries such as telecom, ISPs, web hosting providers etc., there is no demarcation.

Various analogies are provided supporting why admin is held responsible similar to a

- ❖ Boss being responsible for behaviour of those working under him/her
- ❖ Principal responsible for whole school or college including the faculty and student behaviour.

This is dicey and can be explained by a fictitious incident where a female employee (Ambika) filed a sexual harassment complaint against her colleague for a sexually demeaning post sent on a WhatsApp group. What will the authorities do if Ambika herself is the admin of the group? Will they arrest her?

But it is very unfair as the person who created the group or the admin(s) of the groups being held responsible. There are factors to be considered

1. Sometimes the person who created the group changed the mobile number.
2. Sometimes if a person stops using the sim, the mobile carrier assigns the same number to some other person; who can continue using the group without verification; the implications of which are scary.
3. Sometimes if the person who created the group exits the group - the software randomly assigns a person as next admin - without the persons knowledge. No notification provided to the new admin.
4. Sometimes when person who created group out of goodwill gives admin rights to other people, it was noticed that other admins have removed the actual admin who created the group
5. Sometimes there is more than one admin – sometimes from various states/countries.

Admin is only volunteering to administer the group. He/she is not paid by any member or institution to monitor the group. The onus does not lie only on the admin to check what is posted in the group; it should lie with all members. Members should bring objectionable posts to the notice of the admin otherwise they too should be liable for consenting via absence of protest. Sometimes the admin may be busy in personal or professional life and may not have had a chance to see/read all the content posted/ images/pictures/audios/videos; so how can the admin be held responsible for missing an objectionable post which no member got to his/her notice? Admin or any member should only be

responsible if they have given favourable comments to the objectionable post or shared it with other groups. Ideally the law should hold the person posting objectionable information responsible as there are ways to trace the person/number and the group members can vouch for the admin's innocence. All the recipients of the message can see the mobile number of the person posting objectionable messages; so it is very clear from where the message originated. Then why is the law bent on arresting the admin who out of goodwill is administering the group? Admins should be presumed innocent until proven guilty of encouraging objectionable posts, their sharing or favourable comments supporting what is posted. Once posted information cannot be deleted by the member posting, any other member of the group or even admin. So removal of content is not possible. The admin can only request all members to ensure that objectionable content be removed from their devices; whether a member complies or not cannot be ascertained. A member is fully known only if family or friend; but in a professional group all members may not be known by admin; as members are added by admin from a professional acquaintance point of view or suggested by other admins/members. An admin cannot completely be sure regarding the character of the member or if a member would be encouraged to post objectionable information. And once posted by a member, it cannot be undone thereby implicating the admin in allowing objectionable activity on the group.

Unlike Facebook, there is no way on WhatsApp to moderate the posts before posting. So it is technically impossible to hold the admin responsible for the member's objectionable post. This problem is compounded when a member of a group forwards it from another group/individual without knowing the

authenticity or genuineness of the information being transmitted/distributed without checking or confirming details. Especially, information that impacts the peace and is a threat to national security. Examples include geo-tagging selfies with military trucks providing sensitive information to terrorists and enemies.

It is also reported that the police can register such cases under "Section 505 1(B) of the IPC, which forbids making or publishing any statement, with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or disturbing public tranquility"

Examples include spreading rumours like 3,000 armed men were roaming with the intention of kidnapping children in Solapur district. These kinds of messages are forwarded by do-gooders who want to warn people from their area of dangers that are in effect but are penalised and arrested. How different is that from Police issuing alerts and warnings like "Do not open doors for strangers" which also have the potential of creating a scare leading to unintentional consequences; or Media creating a scare that WhatsApp administrators are in danger of being arrested for what is posted on their group. But here we need to consider that police has basis and power to issue warnings and media's job is informing the public; but if a member reposts information without basis or a source then he/she is creating a rumour which has legal implications and the admin is liable if he/she is not moderating the information or taking any action on the person posting objectionable information.

Another challenge is that WhatsApp is billed as one of the biggest sources for morphed photos/images; fabrication of information; sharing untruths and spreading of fake news. District Magistrate of Varanasi, and Senior Superintendent of Police jointly issued an order that the administrators are to only include people 'personally' known which is 'difficult' in professional group as there can be more than one admin who may add friends or colleagues known to them on group. Most admins do not know all the members of their group as they may be more than one admin for one group. Admins also do not insist on Members using their full names with photo display in profile; and if some admins insist, members wonder what the hullabaloo is about.

Pavan Duggal, a cyber-law expert says that's where Section 79 comes into play where the intermediary cannot be held liable for any content posted by a third party but only if they comply with provisions of the IT Act and exercise due diligence and do not conspire to circumvent the law and are cooperative. The admins not be held liable for content posted on their group if they have set T&C and have notified every member and received acknowledgement; cooperate if problem occurs.

Steps an admin needs to take to ensure that they are not tangled in legal web for no fault of theirs is to draft few guidelines/policies/rules which are forwarded to all members to read and confirm abiding by rules then they will not be liable. If objectionable information is posted the admin is supposed to protest formally on group and remove the offending member immediately.

Pointers can be taken from IndiaLibraries drafted rules which are very valid & relevant as it covers all important points. Only people confirming following

rules are added to group as members. A few broadly suggested rules for professional groups are listed below

1st & foremost important rule on any WhatsApp LIS group should be LIS related local, national and international information only to be posted.

Acceptable

- ❖ Information, photos, images, videos on Libraries and Librarians
- ❖ LIS related Activities and Events
- ❖ Awards, Rewards and Felicitations
- ❖ Conferences, Seminars, Symposia, Workshops
- ❖ Journals and Newsletters etc.

Limited Acceptable

- ❖ One member on behalf of group can post text good morning message, festival greetings, congratulatory messages etc.
- ❖ LIS related products, services, software posted only if relevant to query asked in chat.
- ❖ Photos (1 or 2 only) of LIS events conducted. Many photos eats away data
- ❖ Video accompanied with one line description in English to help members decide to download or not

Strictly Unacceptable & Prohibited

- ❖ Posts, information, discussion or sharing of opinion in support of; or as a protest; or against; any sensitive or controversial topic including but not limited to political figures, political parties, religion, caste, race, ethnicity, and sexual content via images, videos, text that is obscene

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or pornographic in nature or to instigate or incite and create panic or encourage discussions that is, defamatory, threatening, intimidating, menacing, harassing, hateful, offensive to any member or admin of the group that may lead to heated arguments or conduct in way that would be considered illegal or disturbs peace or impacts friendly relations with foreign states and geo-tagging military personnel or vehicles that threatens national security.

- ❖ General information, images, videos
- ❖ Good morning images
- ❖ Festival greetings videos or animated images for any occasion
- ❖ No birthday or anniversary greetings
- ❖ Poetry, Memes, Jokes, Moral Stories, Experiences of a person as forward

Exceptions

- ❖ General news unacceptable like Cricket scores; but Breaking News of National or International importance like Disasters etc. acceptable only on first day of occurrence. Subsequent stories on same event unacceptable in following days.
- ❖ English only LIS information acceptable; but Very Important messages in Hindi and Regional languages acceptable only if accompanied with English description by person posting the message!

Disclaimer

- ❖ All admins are voluntarily monitoring group and cannot be held responsible for member posts or opinions.

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- ❖ Rules are posted to every person before joining and those confirming that they understood and promise to follow rules by consenting can be added to a group.
- ❖ All people having smartphones and internet and added onto any professional group as members can be assumed to be mature, learned, well-read and well informed via newspapers and online portals regarding being fully responsible for what they post on professional groups and legal ramifications or implications involved if sensitive or controversial information or opinions are posted or shared.

Dos

- ❖ Display name by going into Settings and Profile; as it helps identify person
- ❖ Behave responsibility
- ❖ Keep professional mode of communication and addressing members.
- ❖ Give source when information is reposted from other group. Its ethical to give credit.

Donts

- ❖ Never change the group name or the image, picture, logo of the group without prior permission of group admin(s)
- ❖ Forwarding chain messages is unacceptable as it may involve publishing falsehoods, forwarding misrepresentations, or misleading people with statements; that is unwittingly spread giving rise to spam, untruths and misinformation.

It is duty of LIS professional to verify and authenticate information by finding out if it is real or fake or scam or untruth before posting or reposting

- ❖ Google keywords from the post to check
- ❖ If website mentioned check
- ❖ If number landline or mobile mentioned then call
- ❖ If email provided write
- ❖ Google all numbers and emails mentioned to find out if similar experiences are shared online

There are many concerns of using WhatsApp as messaging service

The contact discovery is very useful to find who has WhatsApp installed by just saving the persons number under contacts instead of sending friend requests; but a nightmare if the person does not want to be discovered.

Read receipts alerts person sending message when they are read by receivers but it has a disable feature built in just in-case receiver does not want to alert the sender.

A detailed copyright, trademark and other intellectual property infringement T & C is provided at <https://www.whatsapp.com/legal/#ip-policy> where claims can be emailed to ip@whatsapp.com or snail mail to address mentioned on website. IndiaLibraries had blogged a post about how 'LIS International' a LIS WhatsApp group had infringed copyright of IndiaLibraries Image at <https://indialibraries.wordpress.com/2017/04/10/1459/> although no further follow-up is given.

Many people assume that whatever is posted on the Internet is free to use; and do not know that there are licenses and copyrights that need to be

considered. And that one can only use or reuse information, data, images, pictures, videos only if there is a written agreement from the author or copyright holder of that material otherwise it is termed as infringing the intellectual property of the rightful holder and can be legally prosecuted.

Another concern of using WhatsApp is encryption. Most laypersons are not aware of this feature or its implications. WhatsApp started implementing end-to-end encryption in November 2014 and finished in April 2016 which means even the company WhatsApp cannot intercept messages on its own platform; meaning government, police, hackers too cannot intercept. End to end encryption safeguards the privacy of the individual but is creating a problem for governments to battle crime and terrorism and protect the citizens. But citizens have a valid argument based on right to privacy and are against governments snooping into their private lives without their consent with constant surveillance and spying on basis of suspicion thereby compromising security of user data.

Another facet that needs to be considered in the Indian context is that the 40-bit encryption is considered legal in India and services that need to use this type of encryption need to register with the government to implement it; and higher encryption is presently in the gray area as there is no regulatory framework for Internet based Messaging services. WhatsApp uses a higher encryption and is presently illegal in India. Since India lacks data protection laws and there are no guidelines available to ban messaging services that are Internet based as yet; nor has WhatsApp violated any laws or rules of the country; so the service is being used in India as for now.

An RTI activist from Gurgaon has filed a petition with registration number DOTEL/R/2016/50413 in the Supreme Court seeking a complete ban on WhatsApp as one would need a whopping 115,792,089,237,316,195,423,570,985,008,687,907,853,269,984,665,640,564,039,457,584,007,913,129,639,935 key combinations to decrypt, which is a challenge even for a super computer; resulting in trillion of years to decrypt a single 256-bit encrypted message. The implications will be huge for Indian government to fight crime and terrorism and also to safeguard privacy of citizens if analytical data from WhatsApp will be shared with Facebook as per new Privacy policy of WhatsApp which changed after Facebook acquired it. According to WhatsApp the basic information will be tracked by Facebook for marketing purposes including target advertising and friend suggestions. But it will be leading to compromising the privacy rights of user.

As per Article 21 which gives right to life and liberty is interpreted by many with right to privacy. Supreme court of India argued that right to privacy is not a fundamental right of its citizens enshrined in the Indian constitution; so collecting data by WhatsApp will technically not be a violation of that right. But legal interpretations are on-going process.

Delhi High Court directed WhatsApp to delete all data of users from its servers till 25 September 2016 when its new privacy policy comes into effect as there is a 'opt out' feature that can be utilised by users who are conscious of privacy issues. Or one can quit using the messaging service and delete the data available on WhatsApp servers to be assured of security and privacy.

Conclusion

Technology is double edged sword; it can be constructive or destructive; a boon or a bane depending on circumstances; similar to fire. You can use fire to light a lamp or to cook; or it can be used to burn down and destroy. With great power comes great responsibility. WhatsApp users want to use the service for free but want to protect their privacy at the same time. The tools & technologies should be used judiciously to benefit and not to cause harm to self, others and the nation. WhatsApp is a wonderful tool that can be used by a LIS professional for personal updation, professional development and for extending services to users via the messaging service; but be cautious and be within legal framework.

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