



## WhatsApp group administrators – Civil and criminal liability for posts by group members

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WhatsApp has become an integral part of our daily communication and correspondence requirements. It has evolved as a one stop shop application, which not only enables you to text/ chat and call one-on-one, it also enables formation of groups of people for them to chat and call thereon. WhatsApp Groups bring together several people on a common platform, thereby enabling easier communication amongst them. The members of such group can share a plethora of data in terms of messages, voice notes, videos, songs etc.

A feature of WhatsApp groups is that every group will have one or multiple WhatsApp Group Administrators (Admin). These Admin/s have certain powers bestowed upon i.e. adding/ removing a member etc. Hand-in hand with these powers come certain downsides too. Misinformation with regards to different subjects have spread through the digital media rampantly, WhatsApp being one of the major carriers. Due to lack of moderation of these groups, the members therein are at almost free reign to post/ share any kind of data that they wish too. This is exactly when it turns dangerous for the Admin. In this context, it is vital to ascertain legal consequences and potential liabilities for the Admin/s, stemming from objectionable posts on their Groups.

While it can broadly be surmised that an Admin cannot be held liable for posts by members of the WhatsApp Group, following cases are noteworthy:

- In the matter of *Kishor v. State of Maharashtra & Anr*<sup>1</sup>, the High Court of Bombay dealt with similar issues in terms of the liability of the Admin resulting from an indecent post shared by another member on the WhatsApp group. In this matter, an Application under Section 482 of the Code of Criminal Procedure (CrPC) was filed to quash the charge sheet filed by the Police department against the Applicant, who was charged for being the Admin of a WhatsApp Group in which one of the members of the group had allegedly used foul language along with sexually coloured remarks against another member of the same group. Consequently, the admin was charged with allegations of sexual harassment under the following sections:
  - **Section 354-A** of Indian Penal Code (IPC), words, gestures or acts intended to outrage the modesty of a woman
  - **Section 509** of IPC, punishment for publishing or transmitting obscene material in electronic form
  - **Section 67** of Information Technology Act (IT Act) and abetment under **Section 107** of IPC

Deciding on this matter, the High Court held that *‘a Group Administrator cannot be held vicariously liable for an act of a member of the Group, who posts objectionable content, unless it is shown that there was common intention or pre-arranged plan acting in concert pursuant to such plan by such member of a WhatsApp Group and the Administrator.’*

<sup>1</sup> Criminal Application (Apl) No. 573 of 2016

- In the matter of *Ashish Bhalla v. Suresh Chawdhary & Ors*<sup>2</sup>, the Delhi High Court observed that *defamation and defamatory statements made by any member of the group cannot make the Administrator liable therefor. It is not as if without the Administrator's approval of each of the statements, the statements cannot be posted by any of the members of the Group on the said platform. Hence, it was held that the Admin of WhatsApp group cannot be held liable.*

One of the common links in such type of cases whereby the Admin has been arranged as an accused for transmission/ circulation of an indecent post by another member of a WhatsApp group, is the regular invocation of the provisions of IT Act wherein the Admin is treated as an 'Intermediary' as per the provisions of the IT Act. In this context, the High Court of Bombay, in the matter of Kishor (supra) drew a distinction between an Admin and an intermediary under the IT Act. The Court clarified that creation of a WhatsApp group by the Admin does imply that the said Admin had published or transmitted unwanted or objectionable material over the internet.

In the aforesaid matter, the High Court of Bombay held that the term 'intermediary' refers to an individual who receives, stores and/or transmits any electronic file or data on behalf of another individual. In the backdrop of such a definition, the Court was satisfied that the Applicant/ Accused applicant has neither published or transmitted or caused to be published or transmitted any electronic form, any material which is obscene in nature. Therefore, the FIR and consequent chargesheet were quashed against the Applicant/ Accused.

## Conclusion

As has been held by both the Bombay and Delhi High Courts, the only privilege enjoyed by the Admin of a WhatsApp Group over other members is that the Admin can either add or delete any of the members from the Group. They do not have physical or any control otherwise over what a member of a group is posting thereon. As a means to reduce such incidents of indecent posts being shared on WhatsApp, an option to report such posts must be given to not only the Admin but also other members of the group, to report such indecent posts/ messages to WhatsApp, who can in-turn as per their policy guidelines, either ban or suspend the member responsible for publication and transmission of such indecent posts. However, this does not limit the ability of any group member to report such indecent posts if they are violative of any law/s of India.

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<sup>2</sup> 2016 SCC OnLine Del 6329

