



WHITE BLACK
LEGAL
LEGAL

VOLUME 2 : ISSUE 2

|| June 2020 ||

Email: editor@whiteblacklegal.co.in

Website: www.whiteblacklegal.co.in

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published,

White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

EDITORIAL TEAM

EDITOR IN CHIEF

Name - Mr. Varun Agrawal

Consultant || SUMEG FINANCIAL SERVICES PVT.LTD.

Phone - +91-9990670288

Email - whiteblacklegal@gmail.com

EDITOR

Name - Mr. Anand Agrawal

Consultant|| SUMEG FINANCIAL SERVICES PVT.LTD.

EDITOR (HONORARY)

Name - Smt Surbhi Mittal

Manager || PSU

WHITE BLACK
LEGAL

EDITOR(HONORARY)

Name - Mr Praveen Mittal

Consultant || United Health Group MNC

EDITOR

Name - Smt Sweety Jain

Consultant||SUMEG FINANCIAL SERVICES PVT.LTD.

EDITOR

Name - Mr. Siddharth Dhawan

Core Team Member || Legal Education Awareness Foundation

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

WHITE BLACK LEGAL: THE LAW JOURNAL

RESEARCH PAPER

TOPIC-USAGE OF SOCIAL MEDIA WITH LEGAL PERSPECTIVE

Submitted By : Mehak Ahuja

DECLARATION

I, **MEHAK AHUJA**, hereby declare that this Research Paper entitled “ USAGE OF SOCIAL MEDIA WITH LEGAL PERESPECTIVE” is a record of bona fide research carried out by me under supervision of my mentor **DR. GAZALA SHARIF**, AMITY UNIVERSITY NOIDA.



PLAGIRISM DECLARATION

Title of Research Paper is “USAGE OF SOCIAL MEDIA WITH LEGAL PERSPECTIVE”

I declare that:

- (a) The work presented for assessment in this Research Project is my original work, that it has not previously been presented for any other assessment and that my debts (for words, data, arguments, and ideas) have been appropriately acknowledged.
- (b) Work conforms to the guidelines laid by the University.
- (c) Plagiarism in the report is 9 % according to Turnitin (permissible limit is 15%).

MEHAK AHUJA

A3221516206

BBA LLB(H)

Batch - (2016-2021)



ACKNOWLEDGEMENT

I would like to express profound gratitude to my Faculty Supervisor **Dr GAZALA SHARIF**, Amity Law School, Noida, for his invaluable support, encouragement, supervision, and useful suggestions throughout this research work. Her moral support and continuous guidance enabled me to complete my work successfully. Her intellectual thrust and blessings motivated me to work rigorously on this study. In fact this study could not have seen the light of the day if her contribution had not been available. It would not be an exaggeration to say that it is her unflinching faith and unquestionable support that has provided the sustenance necessary to see it through to its present shape.

I must also thank and express my heartfelt gratitude to my parents and my friends for supporting me to write the research paper.

Thank You
MEHAK AHUJA



TABLE OF CONTENTS

<u>SERIAL NUMBER</u>	<u>CONTENTS</u>	<u>PAGE NUMBER</u>
1	List of Figures	8
2	Abstract	9
3	Statement of Problem	9
4	Scope of Research	9
5	Objective of Research	9
6	Methodology of Research	10
7	Introduction	11-12
8	Statics of social media usage	12-13
9	Various social media platforms	13-15
10	Pros and cons of social media	15-19
11	Crimes on social media	19-20
12	Laws in India for social media regulation	21-29
13	Protection against infringement on social media	29-30
14	Conclusion Recommendation	31 32
15	References	33-34

LIST OF FIGURES

SERIAL NUMBER	CONTENT	PAGE NUMBER
1	Figure 1.1	8

ABSTRACT

Social media is the most controversial topic in today's time. Where some of the people think that social media destroys human interaction and real-life human relationships. While other people think it is the best innovation done by mankind which makes human interaction much more convenient and much faster. Social media has made life much easier as people can communicate and interact with each other anytime from any part of the world. People can stay connected to their families and loved ones no matter how much far they are from each other. As the coin has two sides, we can say even social media has two sides that are positive and negative. Positive side when used for gaining knowledge and learning new things, enhancing self-being while the negative side people commit heinous crimes by misusing the platforms provided. To regulate this certain laws have been made by government like crime against defamation, copyrights, trademark and many more which will be discussed further in research.

STATEMENT OF PROBLEM

If social media sites are not used as per the regulations set by the government of India, they can lead to severe crime. The basic problem lies with enforcement of laws which have been established by the government for the welfare of society. A number of laws have been implemented and many others have been amended. The most effective law which was made (section-66a) of IT act and proved unconstitutional.

SCOPE OF RESEARCH

In the near future there will be increase with number of crimes related to technology and their social media sites. There will be several new laws made for regulation and welfare of society. The scope of study includes social media introduction, usage of social media, various platforms of social media, pros and cons of social media, crimes on social media, laws in India for regulation of activity on social media, how can one be protected from infringement and conclusion.

RESEARCH OBJECTIVES

1. What is percentage usage of social media accounts ?
2. What are various platforms of social media?
3. What are the pros and cons of social media ?
4. What are crimes committed on social media ?
5. What are terms and conditions of social media sites?

6. What are the laws made by government related to social media ?
7. What are protection measures taken by individual from any kind of infringement?

RESEARCH METHODOLOGY

The nature of the study is analytical and expository. The content has been collected from various sources like text book law relating Intellectual property Rights by V.K Ahuja and some bare act like Copyright act 1957, The Patents Act 1970, Trade Marks Act 1999. Articles like social media update 2016 by Shannon Greenwood, Andrew Perrin and teens, social media and privacy by Mary Madden, Amanda Lenhart. Usage of Google scholars and government sites to gather some information.



INTRODUCTION

Social media is a platform which comprises of websites, applications, documentation that allow people to connect to each other whenever possible irrespective of the time location. The only thing required is the great connectivity of the internet then everything is on our fingertips. We can have access to our social media accounts on laptops, desktop, mobile phones nowadays even on television. In terms of technology our world is rapidly advancing at high speed, a lot of development is going on. The main focus of social media is communication, interaction, collaboration among people, and sometimes used for business purposes too.

There are about more than 4.5 billion ¹people using the internet in the year 2020 and about 3.8 billion people who are active on social media sites. Nearly about 60% of people are already active on social media sites and approx 8,00,000 ²new users everyday.

Social media is termed as a coin that has both the positive sides and the negative side to it. It entirely depends on the kind of usage by a person. Getting in touch with people who live far from each other. Many business companies use social media for their brand promotions, campaigns, collaborations, and make the platform just like a market where everything and anything is available at any time.

When a thing is overused than its limit there are consequences also to that. which are generally more harmful. In the case of social media overuse we will see further on how difference has been created among the family and their close ones, there is no time left or even brands use these sites for misleading their customers and increasing their sales.

The biggest market of social media websites is Amazon, myntra, Nykaa, snapdeal where they not only just provide clothes but also provide other services too like household items, gift items, luxury items. These are also called virtual market. They make our busy lives helpful by delivering items to our doorsteps.

Social media sites are developed in such a manner that they are easily accessible by all age group people from toddlers to old age adults. These sites are so easy and addictive. Most famous social media platforms are Facebook, Instagram, Snapchat, Twitter, TikTok, and many more.

¹ <https://thenextweb.com/growth-quarters/2020/01/30/digital-trends-2020-every-single-stat-you-need-to-know-about-the-internet/>

² <https://datareportal.com/global-digital-overview>

Nowadays social media has become the main source of income to many people, they have started opting for social media sites as their income source by promoting various brands and their products. For such promotion they get highly paid. The remuneration earned is high above the expectation. They work as a freelancer there is no tension of deadlines and working hours of 9am-5pm. It is a very dreamy job where they are getting highly paid with no tension

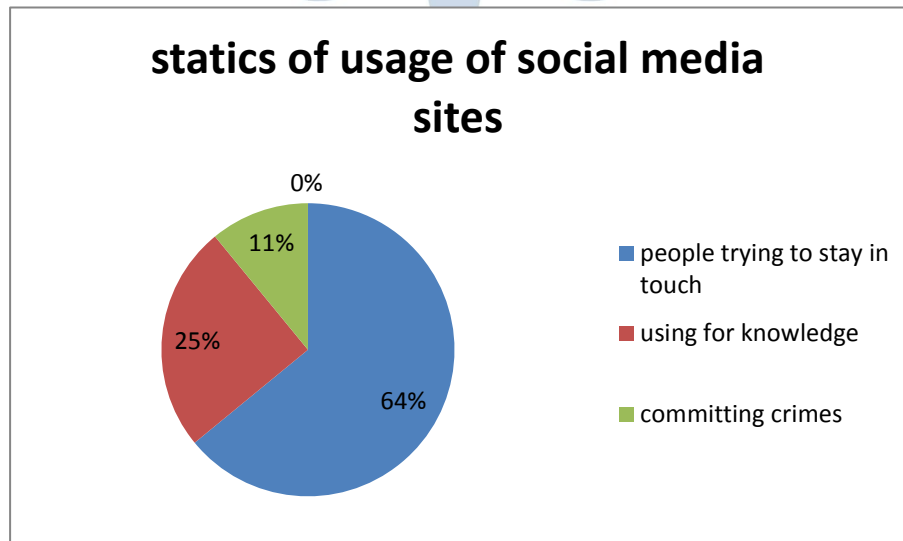
Or any of the deadline but it has a lot of competition. To survive that competition the person has to be extremely outstanding and convincing to the public.

People who do such job are called vloggers and bloggers. They are their own boss they get a lot of free trips and products as royalty.

Social media at large has mainly been helpful for us but for many of them it has also created a dig in which they don't want to get in. further in the research I will discuss about drawbacks of social media and discuss about various other subheads of the social media like the pros and cons of these social media sites, various famous platforms, types of crime that occurred on these sites and laws of protection and how can they be self-protected.

STATICS OF SOCIAL MEDIA USAGE

Figure 1



According to statics of 2019 There are about 2.95 billion³ people using social media sites worldwide and the number of people getting active on social media is constantly increasing day by day.

There are about 64% of people who use these social media sites to stay in touch with their family members and friends who live far from them. It is a platform for them to stay updated

³ <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>

with their lives. Most used sites are – Facebook, Instagram where people upload their pictures and videos related to personal life.

There are about 25% of people who use social media and the internet to gain knowledge and study. The most famous platform will be Youtube where many institutes and coaching centres upload their videos and teach students on an online basis. Students keep regular track of these videos and learn new things. Women in households use these sites for DIY(do it yourself) hacks even cooking these sites have become very helpful for all the generation age.

There is about 11% of the people who are misusing these sites for the way of earning money, to defame others or to commit other heinous crimes which are unlawful.

VARIOUS SOCIAL MEDIA PLATFORMS

These are the various famous sites that provide a platform where any person can keep their point of view and build connections with each other at any point in time. There are no restrictions of caste, culture, religion everyone is treated equally therefore everyone has the right to share whatever they want to.

The following are the various sites that enable a person to build a connection with another by using these famous social media sites.

- **FACEBOOK**

It is the most famous site which is widely used by people. It was the first site social media site who crossed 1 billion ⁴users around the world. The number of active users per month is about 1.59 billion approx.

It is a site that enables a person to stay connected with thier friends, relatives, and loved ones. The working of Facebook is super easy and friendly where any one generation of an individual can easily use it.

It provides features like sharing a photo, text, feelings, or sending/accepting friend requests or even has a great feature of check-in at a location.

Apart from providing personal information platform it also enables businessmen to operate their business by promotions, sharing photos, or using Facebook ads feature.

It is a very user-friendly application created by Mark Zuckerberg along with his college mates. ⁵

⁴ <https://www.thehindu.com/sci-tech/technology/internet/facebook-reaches-1-billion-users-in-one-day/article7589821.ece>

⁵ <https://www.businessinsider.com/how-facebook-was-founded-2010-3?IR=T>

- **WHATSAPP**

It is a messenger app owned by Facebook.⁶ It allows users to send text messages, voice notes, and video calls with a maximum of 4 people to each other.

It is a very easy and user-friendly platform that only requires a contact number and good internet access. Whatapp is only available on mobile phones but also on laptops or computers by the name of WhatsApp web.

It has even launched many of these new features one of them is called WhatsApp business⁷ this is a very helpful feature for small businessmen who can now easily segregate their personal information from the business information which causing any cache.

- **INSTAGRAM**

One of the most used social media platforms by users, it enables a person to share their photos and videos. It has a unique feature where a person can edit their photo before uploading it by using numerous filters. It converts a simple looking picture to a masterpiece.

This app is distinguished from others because of the different features they have provided.

One of them is tagging and usage of hashtag from which we can see the trend which is going on.

For example in the year 2020 in the month of April and May the famous trend which is going on is #brushchallenge, #stayhome, #jeetegaIndia etc.

It also enables us to like and share the content of users.

Another feature is highlight created by the Instagram team which is recently added by the Instagram team, it enables a user to save their story on the top of the feed.

During pandemic 2020, Instagram has added many new features like you can donate the amount you wish too, by simply clicking on donate button present on feed.⁸

Even Instagram is planning to add more interesting feature where a user can directly share their live video chat directly on IGTV⁹. As this will help in boosting engagement and provide maximum content for users to watch of the profile.

It is an app which is used by everyone but it divides the audience in general public and influencers

⁶ <https://www.investopedia.com/articles/investing/032515/whatsapp-best-facebook-purchase-ever.asp>

⁷ <https://www.indiatoday.in/technology/news/story/whatsapp-new-features-from-disappearing-messages-to-multi-device-support-all-features-coming-soon-1663253-2020-04-04>

⁸ <https://adespresso.com/blog/instagram-updates-you-need-to-make/>

⁹ <https://www.socialmediatoday.com/news/instagrams-testing-a-new-option-to-re-share-live-videos-to-igtv/573967/>

Influencers are the ones who share their life in the virtual world by posting about their day to day activities like makeup, grooming, beauty hacks, fitness, and cooking ideas.

These things are very helpful and followed by people.

- **YOUTUBE**

It is an online video sharing platform where users can watch, subscribe, comment, like the videos uploaded by content creators. The videos are uploaded in high-quality resolution with topics like beauty, fashion, technology, news, interview.

Many vloggers (content creators of youtube) upload there videos on a regular basis and make money from it. It is so friendly and diverse app which has everything you name it there will be a video on that topic available because of the feature every generation person an easy access and love watching it.

- **TIK TOK**

It is a Chinese app with about 800 million active users¹⁰. It is an app that allows a user to make short videos related to dance, lip-syn, cooking, pranks, or even used as promotion many celebrities are registered on TikTok and make their videos and it becomes a trend. Now their fans reshoot them with there own touch and upload it.

It is a worldwide famous app which is globally used by everyone and has more than 800 million active users.

- **TWITTER**

It is a social media site used for interaction among individuals by tweets. Users can like, share, comment, and follow the verified users(profile with blue tick) for regular updates and trends.

Mostly used by famous personalities where they share their thoughts and view about a particular topic. Then it is further used as a way of connection among celebrities and their fans.

Now there are more than 321 million monthly tweets¹¹ which makes twitter on top 10 most used social media profile

PROS AND CONS OF SOCIAL MEDIA

Social media is the most controversial topic in today's time. Where some of the people think that social media destroys human interaction and real-life human relationships. While other people think it is the best innovation done by mankind which makes human interaction much

¹⁰ <https://wallaroomedia.com/blog/social-media/tiktok-statistics/>

¹¹ <https://www.washingtonpost.com/technology/2019/02/07/twitter-reveals-its-daily-active-user-numbers-first-time/>

more convenient and much faster. Social media has made life much easier as people can communicate and interact with each other anytime from any part of the world. People can stay connected to their families and loved ones no matter how much far they are from each other.

As the coin has two sides, we can say even social media has two sides that are positive and negative. Positive side when used for gaining knowledge and learning new things, enhancing self-being,

Social media is a platform that helps people in connecting and in developing networks with each other worldwide. Despite having such unique advantages of social media it is considered to be one of the most dangerous elements of society. As overuse of anything is harmful. If accounts created are not monitored then it can lead to big trouble such as infringement of privacy, hacking of accounts, or even cyber bullying. That can cause many health-related issues like anxiety, fear pressure, or even mental health diseases can be started.

Social media sites are often used by all age group people whether say a toddler watching cartoons on youtube or an adult making TikTok videos.

But when anything is overused it comes with a cost.

Such kinds of costs refer to heinous crimes committed by people which will be discussed further on.



PROS OF SOCIAL MEDIA SITES

- **HELPS IN STAYING CONNECTED**

As there are numerous people who are living separate from each other due to education or working environment or any other reason. While these social media sites help in staying in touch with each other from any part of the world and at any time. People upload their personal family pictures on Facebook or Instagram their friends then comment, like that is how connection stays in touch.

- **GAINING KNOWLEDGE**

Several people use these platforms to increase their knowledge in education, cooking, fitness, or even beauty. Many influencers and vloggers share their hacks and help the general public to seek advantage of them. Even many institutes or coaching classes teach online where people can watch their sessions and gain knowledge.

- **LOW-COST MARKETING**

Marketing is a very tough job in traditional form as a large number of audience is not present, people have to do tedious working hours for the search of them but As social media doesn't require much efforts only a good internet connection and good applications and have a large number of active users. Where only by posting a picture or video can go viral on the internet.

Many businessman use these sites to make people aware of the brands by advertisements, articles, blogs. Plus these sites are cost-effective and energy effective.

- **TRACK ON REGULAR UPDATES**

Being active on social media sites helps to stay updated on the latest news, technology, laws, etc. It helps to keep a track of the easy manner.

- **PROMOTION AND COLLABORATION**

As social media provide a large number of audiences at a low cost, the marketers approach the influencers to promote their products to the audience, this type of system is called collaboration.

Where influencers receive products from marketers and promote it to their audience. Followers then buy these products as trial purposes due to benefits claim by their influencers.

- **NO LONELINESS**

As social media is a very simple and easy site to be accessed on by any generation person so people find their pass time to scroll to their Instagram feeds or watch youtube videos or any other series. By this time get easily passed away and a person never feels bored or alone.

- **USEFUL DATA AVAILABLE**

There are several number of sites available on the internet with the great research work done by researchers. The most search engine used is google for any information required at any point of time and anywhere.

- **USEFUL FOR MARKETERS**

As social media is a low-cost market, it also enables a consumer to write feedback of the product they have purchased. Due to which the manufacturer of the product gets to know

whether his product is being favored or not. He even gets to know if there is anything which he is lacking that can be fulfilled according to the consumers requirement.

CONS OF SOCIAL MEDIA

- **NO PERSONAL INTERACTION LEFT**

Due to the social media sites available people are now more active on them rather than personally meeting each other. They are busy watching some webseries or playing games or even reading online.

They do not have time to meet their close ones because of their busy schedules and working environment.

- **TIME CONSUMING**

These social media sites are so addictive that if a person just open his/her Facebook or Instagram he keeps on scrolling down viewing other friends profile the time gets vanish away.

Even if a person starts watching a web series on any of the platform time simply gets flown away as each episode is for 30 or 40mins.

- **FALSE INFORMATION PRESENT**

There are numerous sites available on social media and there is no restriction on opening new. People post their content openly with any fear and it gets circulated easily because of the large audience present. For example false information circulated on WhatsApp.

So it is always advised to read guidelines from an authentic source that has some recognition.

- **NEGATIVE FEEDBACKS**

As social media is a site where a large number of audience is present and everybody has the freedom to post anything. Some of them misuse it and post comments which are either to defame a person or with the intention to cause hurt. Just because people are sitting behind the screen that doesn't mean they can type anything they want to.

- **RAPIDLY CHANGING TRENDS**

social media sites trend change even sooner than weather changes itself. As there are numerous of people using these sites they keep up coming up with new trends to stay in popularity mostly happen in industries like fashion, web series, makeup or games, etc.

- **NO FAMILY CONNECTION LEFT**

As people are busy on their mobile phones using their social media accounts they do not have time to communicate with their family members. But ironically they are connected to each other through social media as a medium.

- **MISLEADING PRODUCTS AVAILABLE**

There are several marketers and their influencers who are promoting products with its false information to earn money through sales. Not all the things said by them are true about the product for example sale of fairness creams in India. Every marketer knows brown skin tone problems they intentionally sell their products with false advertisements and earn profits.

PROS OF SOCIAL MEDIA	CONS OF SOCIAL MEDIA
Helps in staying connected	No personal interaction left
Gaining knowledge	False information available
Low cost marketing	Negative feedbacks
No loneliness	No family time
Useful for marketers	Rapidly changing environment.
Promotions and collaboration	Misleading products

CRIMES ON SOCIAL MEDIA

Social media plays a major role in our lives. It is a huge platform that is used by everyone from governments to celebrities and commoners. There is no discrimination on usage anyone can use it for any of their purpose. But if usage is not regulated it can lead to the commitment of heinous crimes.¹²

These are the unlawful acts committed by a person through the medium of computers, mobile phones, or any other technological device where social media accounts can be used.

The following are the crimes committed on social media sites¹³ -:

¹² <https://blogs.findlaw.com/blotter/2017/02/5-common-types-of-social-media-crime.html>

¹³ <http://www.cybercelldelhi.in/socialmediacrimes.html>

- **ONLINE THREATS**

It is most commonly report problem on social media sites. Any threat or warning given by a person to the victim to cause any bodily harm, to defame him, or to do any unlawful act against him can be called an online threat.

Legal provision available in India- lodging of FIR to any nearest police station by showing screenshots as evidence.

- **HACKING**

It is an attempt of usage of private data without any authorization. As the number of audience and their accounts are increasing on social media sites it gives a hacker a great opportunity to hack any personal account and use it for unlawful activity.

Most of the accounts are hacked to seek revenge or to do any fraudulent activity.

Legal provision available in India- **Section 66(2) of IT Act,2000** ¹⁴prescribes punishment of imprisonment up to 3years and fine up to 2lakhs or both

- **CREATION OF FAKE ACCOUNTS**

An act done by a person with harmful intension to cause another person damage by using his reputation to do an act knowingly he is not the owner of the account. The act is done without any authorization given.

WHITE BLACK
LEGAL

Legal provision available in India – **section 66D of IT amendment act 2000** ¹⁵prescribes if a person cheats shall be punished for imprisonment up to 3 years or fine up to one lakh or both.

- **WITHOUT AUTHORISATION COPY OF CONTENT**

It is an act where a person copy the content which is available on social media sites without seeking any authorization and use it for self-benefit.

Legal provision available in India - Indian Copyright act 1957 provides protection of websites by literary work where computer programs, database, tables can be protected.

¹⁴ Section 66(2) of Information Technology Act, 2000

¹⁵ Section 66D of Information Technology Act, 2000

LAWS IN INDIA FOR SOCIAL MEDIA REGULATION **IN CONTEXT WITH INFORMATION TECHNOLOGY ACT**

➤ **SECTION 43**

Section prescribes if any person without seeking permission of the owner or any person who is in charge of a computer, computer system or network of computer

- accesses or secures access to such computer
- he downloads or copies any data from computer
- Or puts introduces a virus to the computer or system
- Causes to damage or damage any data or program on computer
- disrupts or disrupts any computer,
- tamper or manipulate data available on computer
- destroy, steal, alter or delete any information from computer with intention of causing damage

such person shall be held liable to pay compensation to the affected person.¹⁶

For example in case of **RELIANCE JIO DATA LEAK**¹⁷

The owner of Reliance is Mr. Mukesh Ambani. He registered an FIR against the computer course dropout student of Rajasthan in Mumbai police station. The FIR was lodged for the issue of data theft of company personal details in the form of information received by falsely making downloads copies or extracts any data from the computer base.

All the JIO Telecom company data was accessed by dropout student of Rajasthan and he leaked the information about JIO customers on website Magicapk.com. through which he could make money out of it. It was a serious crime committed by dropout student on which the strict charges shall be imposed. As Reliance Jio is a very well known and big company which has more than 1million subscribers. All the data of the customers were at stake.

Therefore the immediate and strict action was taken by the police of Maharashtra detained dropout student of Rajasthan for leaking data of about 1million customers of JIO telecom services.

¹⁶ Section 43 of Information Technology Act, 2000

¹⁷ <https://www.hindustantimes.com/india-news/reliance-jio-data-leak-computer-course-dropout-arrested-from-rajasthan-will-soon-be-brought-to-mumbai/story-iwPODWwaDLoo5Tv55fLIFJ.html>

- **SECTION 66- OFFENCES RELATED COMPUTER**

This section prescribes if any person, by means of fraudulent activity or dishonestly perform any act as per mention in **section 43**, the he shall be punished with imprisonment for up to a term of three years or even with fine that may exceed up to five lakh rupees or even with both.

18

For example in the case of -

SANSKAR MARATHE v/s THE STATE OF MAHARASHTRA ¹⁹

Aseem Trivedi is a Free speech campaigner in Mumbai. He was arrested by Mumbai police for showcasing cartoons of parliament on his website and Facebook page. The cartoon displayed was about mocked parliament and corruption in high places.

The caricatures created were then shared on other social media which went viral. Trivedi's cartoons depicted the parliament as a giant commode and national emblem was showed with wolves instead of lions.

He was punished for 2 weeks of imprisonment

IN CONTEXT WITH CONSTITUTION OF INDIA.

ARTICLE 19(1)(A)

Article states that all citizens of India have the right to freedom of speech and expression.²⁰ It includes a citizen of India has the right to express his or her opinion, views on any of the issue irrespective of their caste, culture or religion.

They can be expressed in any form through any media like words by mouth, written statement, picture, movies, or any act. Etc.

However **Article 19(2)** of the Constitution provides to every citizen that freedom of speech and expression is not an absolute right. It has “reasonable restrictions” that may be imposed on the exercise of the right. ²¹

¹⁸ Section 66 of Information Technology Act, 2000

¹⁹ <https://indiankanoon.org/doc/57916643/>

²⁰ Article 19(1)(a) Constitution Of India

²¹ Article 19(2) Constitution Of India

IN CONTEXT WITH INDIAN PENAL CODE

SECTION 499 OF IPC – “DEFAMATION”

As per section prescribe defamation means any statement which is intentionally passed for causing harm to a person by using harsh words, sign, symbol, or any visible representation²².

Defamation falls into two categories:

1. “*Libel*” – A defamatory statement that is published in a written form.
2. “*Slander*” – A defamatory statement that is said in a verbal form.

Similarly, any act done with the intention of causing harm to another person by using harsh words, signs, symbols on an online platform leads to be called **cyber defamation or online defamation**.²³

For example:- Publishing of a defamatory statement on Facebook, Instagram, Twitter, or any other online platform or even by sending emails containing defamatory content with the intention to defame another person leads to cyber defamation.

SECTION 469 OF IPC- CYBER DEFAMATION

Says that whoever commits forgery, with an intension to cause harm to the reputation of another party through document or electronic record. Shall be punished for fine or even imprisonment term which may extend to three years.²⁴

CYBER DEFAMATION AND SOCIAL MEDIA PLATFORMS

As by each passing day, social media users are rapidly increasing, which is giving rise to new forms of crime

People use social media platforms to defame another person out of rivalry or ego. People sitting behind the digit screens comment harsh words, give signs or symbols with wrong intentions of causing harm.

²² Section 499 Indian Penal Code

²³ <https://www.lexology.com/library/detail.aspx?g=d3075f4d-afb5-4920-bf59-26cf5d054ab8>

²⁴ Section 469 Indian Penal Code

Person performing such activities are sacred of no one. They presume they have freedom speech as provided in article 19(1)(a) of the constitution of India, so they can write or say anything they wish too.

There was a famous case of “**SWAMI RAMDEV v/s JUGGERNAUT BOOKS²⁵**”

Facts of the case were - Ramdev, the Plaintiff who is a public figure and yoga guru in India. The book was written on Ramdev with titled ‘Godman to Tycoon – the Untold Story of Baba Ramdev’ by author Ms. Priyanka Pathak Narain. There were certain part of the book which were defamatory. In 2018 court held publishers can sell books if they remove defamatory parts of Ramdev. But publisher challenged the order in the supreme court. Then a video of a summary of the book was published online on platform of face, Instagram, youtube, and many more which went viral. The video contained defamatory parts as mention in the book were highlighted

In 2019 the Court passed an interim order for an injunction, by directing the Defendants to remove or disable content only in the domestic boundaries of a country which are offending URLs and web links. Then none of the Defendants had any objection to takedown the content available on sites in India but the objections was raised globally to take down content

IN CONTEXT WITH INTELLECTUAL PROPERTY RIGHTS

WHAT IS INTELLECTUAL PROPERTY RIGHTS?

The term intellectual property rights refers to invisible/intangible legal rights granted to protect the creation done by an intellect. By seeking the protection it helps an intellect to develop something unique in art, science, technology, or any other creative work through which they can earn rewards too.

Intellectual rights can be further divided into two distinct

1. **LITERACY AND ARTISTIC** -: it includes books, paintings, musical compositions, plays, acts, movies, radio shows, tv programs, and other artistic work.

This kind of work protected under COPYRIGHT as a form of intellectual property right.

2. **INDUSTRIAL PROPERTY**:- it includes any idea, invention, or concept made for industry and commerce for commercial use.

²⁵ <https://indiankanoon.org/doc/112277185/>

This kind of work is protected under patents, trademark, trade secrets.

Many believe any photo, video, writeup, or any creation which is available on the internet is freely assessable and useable. So everyone presume that it can be used by everybody. But this is not a case, if anything is available on the internet it is owned by a brand that uses social media as a platform for their promotion of the product which can be in the form of write-ups or photos/ videos. It does not allow everyone to use it without seeking any permission or license.

What if anyone uses content that is uploaded on the internet without any permission/ license?

The usage of content which is available on the internet without permission/license can amount to infringement of intellectual property rights COPYRIGHTS, TRADEMARK, PATENT²⁶

• WHAT IS COPYRIGHT?

Copyright is a form of intellectual property right which provides legal protection to the original content creator for their work. It is also called as bundle of many rights as the owner of a copyright can be assigned and licensed for each work done in a project separately.

Section 13 of the copyright act, prescribes the list of work that is protected under copyright as a form of intellectual property rights. It includes :-

- Literacy work
- Dramatic work
- Musical work
- Artistic work
- Cinematographic work
- Sound recording.

REGISTRATION OF COPYRIGHT.

There is no formal registration required for obtaining the protection of copyright. It arises automatically on the creation of original work. The protection is for lifetime and generally lasts for 70 years after the death of the owner.²⁷

²⁶ <https://www.wipo.int/about-ip/en/>

²⁷ <https://www.lexology.com/library/detail.aspx?g=057250f1-c78f-4bc6-a7f2-38f047b266c0>

COMPLEXITY OF COPYRIGHT WITH SOCIAL MEDIA

Copy right might seem very simple but it is the most difficult concept to be understood that too in the generation of the internet. Copyright relationship with social media is way too complex.

The owner who creates anything original, new, and innovative in any of the fields of literacy, artistic, dramatic, etc is automatically granted with copyrights.

There was a case of **MONEY TAKING SELFIE**²⁸,

In year 2011, British photographer David Slater travelled to a national park in Indonesia, to capture some pictures of the local wildlife. There was a group of monkeys loitering around, he placed his tripod and manage to get some close-up shots of monkeys. Then he changed the setting of the camera and monkey then clicked his photo. The photo captured by the monkey was full of joy and happiness.

After this amazing shot, David circulated the picture to many publishers it was then finally published by Daily Mail and picture got viral. Then in 2015 there was a dispute between People for the Ethical Treatment of Animals (PETA) and Mr. Slater that monkey owns the copyright of the photo (selfie) taken by him. As the photo was taken by a monkey using the camera of a photographer.

Then the court held that they cannot register the copyright for “a photograph taken by a monkey” as it is not created by a human. Then further it was said copyright belongs to the author of a work. Therefore the court dismissed the case.

As social media sites are increasing rapidly by passing each day it is also giving rise to a new form of crimes on it. The most common crime on social media is copying the content of the owner without his permission.

Or usage of content by any third party without permission.

There was another copyright case on

famous American fashion model Gigi Hadid (Cepeda v. Hadid)²⁹

She was sued for infringement of copyright in 2017, where she has upload a post on her Instagram account. It was her photo which was taken by photographer Peter Cepeda. The

²⁸ https://www.wipo.int/wipo_magazine/en/2018/01/article_0007.html

²⁹ <https://thetmca.com/files/2019/01/Gigi-Complaint.pdf>

photographer Cepeda had properly obtained registration of his photo from Copyright Office. He even got licensed it through Instar Images for the use in their articles in the journal of The Daily Mail and TMZ. Gigi Hadid uploaded the photo on her two social media accounts without seeking a license or permission.

She is a famous model with many fans following on her social media account therefore after uploading photo she got millions of likes. As soon as she uploaded photo it got viral on other social media accounts various, copied by online publications to post the photo. They gave credits to Hadid for an amazing shot instead of Cepeda. After watching this photographer Cepeda then filed suit against Hadid for violation of his exclusive rights by reproducing and distributing of his work which is copyright, but soon the case was settled out of court.

• **WHAT IS A TRADEMARK?**

Trademark is a sign, pattern used by companies, organizations to distinguish their products and services from rest. So it is capable of being unique, different that can be presented graphically, and is capable of distinguishing services from one another.³⁰

Trademark can be in the form of a symbol, heading, label, shape, signature, word, etc.

There are 3 important purposes for getting a trademark registered.

1. protect service from confusion in public domain
2. Protect goodwill and reputation of owner
3. Protection against commercial misuse

Complexity of trademark with social media

Social media is rapidly increasing which in result giving rise to new types of crime. People sit behind the screens and violates the rights.

For example in the case of

FLIPKART INTERNET PRIVATE LIMITED V/S WWW.FLIPKARTWINNERS.COM & ORS³¹.

Flipkart, the e-commerce site, filed for a suit against www.flipkartwinners.com before the Delhi High Court requesting for a permanent injunction to stop the site from using their

³⁰ <https://www.shopify.in/encyclopedia/trademark>

³¹ <https://indiankanoon.org/doc/82029942/>

registered trademark 'Flipkart' or similar name which is identical to Flipkart's. The lucky draw contest hosted by www.flipkartwinners.com will amount to a trademark infringement. As customers of Flipkart site will get confused with flipkartwinners as websites giving false representation to the public that such websites originate from or are associated with Flipkart which leads to a big confusion among the public.

Court held that www.flipkartwinners.com will be restrained from using Flipkart as mark as it was already been registered.

SOCIAL MEDIA SITES AND THEIR TERMS AND CONDITIONS **RELATING TO IPR**

There are about 99% of people who do not read terms and conditions while of the registration of their account. They just simply click on accept.

There are certain terms and conditions mentioned by social media sites that a person must take care of about most of them are related to intellectual property rights.³² Which a person is going to be used when he/she post a write-up or photo, video etc.

- **PINTEREST**

Pinterest's terms and condition includes anything that you post including photos, comments, or other material. You make your content available on our products which are referred to as "user content" you retain all your rights and solely responsible for the content you share.

The Content you to post can include photos, comments and videos etc. anything posted by you automatically becomes your content from which you retain all your rights relating to IPR. You solely become responsible for material uploaded on Pinterest. All the rights have been retained which means everybody can now access to the data that is uploaded by you.³³

- **FACEBOOK**

Facebook terms and conditions include the content that is posted on account will be transferable, licensable, royalty-free but you can have control through your privacy setting that who all can view the content shared.³⁴

The content uploaded can be in the form of photos, videos, text, or any other means on the personal account page. It can be either public account where there is no restriction on who is

³² <http://www.iprhelppdesk.eu/blog/intellectual-property-and-social-media>

³³ <https://policy.pinterest.com/en/terms-of-service>

³⁴ <https://www.facebook.com/terms.php>

viewing the content or it can be a private account where only restricted people can view the content.

- **TWITTER**

Twitter terms and conditions include content posted or displayed on twitter get worldwide license, transferable, royal free rights where any can use, modify, transmit, adapt, copy or distribute the content on all media or anywhere he feels like.³⁵

There was a famous case in the United States. It was a dispute between -:

HAITIAN PHOTOGRAPHER DANIEL MOREL AND PRESS AGENCY.

36

The fact of the case were- Daniel was present at Haiti at the time of earthquake 2010 and took several photos which he posted on his Twitter account. Though the third party had access to the photos, they used them and sold them around the whole world to other media companies without any authorization.

The agency sold photos without giving credit to Daniel for photos clicked by him. This lead to infringement of intellectual property right namely copyrights. Later after 3 years of litigation press agency had to pay a heavy fine amount of \$12,00,000 as compensation for violation of IP rights.

Copyright was infringed on the grounds that, contrary to the argument posed by the agency that everything which we post on twitter can be used without any authorization. But twitter has mentioned in their terms and conditions that it doesn't allow to use content available on twitter for commercial purposes.

PROTECTION AGAINST INFRIDGEMENT ON SOCIAL MEDIA

With each day passing by, social media accounts are rapidly increasing in number. Which in return are giving rise to new forms of crime.

So as wisely said prevention is better than cure therefore an individual should keep certain things in mind before uploading content on the internet.

³⁵ <https://help.twitter.com/en/rules-and-policies>

³⁶ <https://www.reuters.com/article/us-media-copyright-twitter/photographer-wins-1-2-million-from-companies-that-took-pictures-off-twitter-idUSBRE9AL16F20131122>

- **MINIMAL DATA UPLOAD**

Try to upload as minimum as possible data on social media sites. It is never known who is the one who might just misuse the data uploaded. So it's better in advance to restrict the data uploaded.

- **RESTRICT YOUR REACH**

Try to have control over your reach. Don't make your account public visible. Social media sites like Facebook, Instagram has a feature that permits a person to control their reach by making their profile visible to the public or only their friends.

- **USE ROYALTY-FREE, LICENSE-FREE SITES**

Try to use sites and websites that don't take away your license or infringes your intellectual property rights. If you are a public figure like blogger, you can create your own website where you will be the boss of your content instead of using such platforms

- **UPLOAD CONTENT FROM YOUR SITE**

Try not to use common social media platforms if you are a public figure. You can create your own website or blog where you can post your content as per your terms and conditions. In that case you can claim your rights if they are infringed by someone.

- **UPLOAD CONTENT WITH WATERMARK OR LOGO**

Try to upload content on any social media by adding watermark or any of your personal logo which is different from others. If a post is uploaded with watermark or logo attached the risk of getting misuse of content can be minimal. As the watermark and logo gives recognition of owner tells about whose content is this without even registering for copyright or trademark.

For example- the trending most photography studio which is recognised by name of studio Kelly photography which does luxury cinematic wedding photo shoot, pre-wedding shoot, candid and kids shoot. So whenever they upload their content on any social media site they put logo to it which is every easy to recognise by customer as the logo is being attached. Which act as trademark.

CONCLUSION

Today we live in a computer generation where social bonds are more stronger than personal bonds.

In today's time, everyone has their presence on social media where they can showcase their talents, or connect to people irrespective of territorial boundaries. But we must take care of usage an individual does on the internet whether the usage is done for benefit like staying connected with friends or family, or for an education point of view. Or either is done to give rise to heinous social media crimes. With the rise to social media platforms, laws in India have been made for regulation smooth and easy functioning of these sites. For example, the Information Technology Act, 2000 has been made for the regulation of activities done on the internet.

Laws made for the regulation of social media are less known to the public due to extreme illiteracy in context to intellectual property rights. It is our duty to create awareness of laws created by the government so that before committing any crime an individual owns the consequences.



RECOMMENDATION

My recommendation will be the laws made for the welfare of citizens should be well aware of the law and their consequences. The proper enforcement should be done of the IT Act, Copyright Act, Trademark act.

In my opinion 66A of the Information Technology Act should be proven constitutional by making necessary changes as an offensive message send on social media sites is the most common crime practiced. There must be changes in provision where no one misuse the powers provided.

As per the **Shreya Singhal v/s Union of India**

The Supreme Court struck down Section 66A of the IT act because the powers were been misused by Police. There was an infringement of right provided in the constitution of India as freedom of speech guaranteed under Article 19(1)(a).

In my opinion if there is a proper system of checks then no one will be able to misuse the powers provided.



REFERENCES

PRIMARY SOURCES

- Bare Acts
The Indian Penal Code 1860
The Constitution Of India, 1949
The Copyright Act 1957
Trade Marks Act 1999
- Books
The Indian Penal Code (36th edition) by Ratanlal & Dhirajlal, Lexis Nexis
Sakar's Commentary of the Indian Penal Code, 1860 in 2 vols (5th edition) by Justice Indra Shah, Sweet & Soft
Introduction to Intellectual Property Rights 2019 edition by CHAWLAHS OXFORD & IBH PUBLISHING
Lexis Nexis law relating to Intellectual Property Rights [IPR] by V.K. Ahuja

SECONDARY SOURCES

- <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>
- <https://www.thehindu.com/sci-tech/technology/internet/facebook-reaches-1-billion-users-in-one-day/article7589821.ece>
- <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>
- <https://www.businessinsider.com/how-facebook-was-founded-2010-3?IR=T>
- <https://www.investopedia.com/articles/investing/032515/whatsapp-best-facebook-purchase-ever.asp>
- <https://wallaroomedia.com/blog/social-media/tiktok-statistics/>
- <https://adespresso.com/blog/instagram-updates-you-need-to-make/>
- <https://www.socialmediatoday.com/news/instagrams-testing-a-new-option-to-re-share-live-videos-to-igtv/573967/>
- <http://www.cybercelldelhi.in/socialmediacrimes.html>
- <https://blogs.findlaw.com/blotter/2017/02/5-common-types-of-social-media-crime.html>
- <http://www.legalserviceindia.com/legal/article-1905-section-66a-of-the-it-act.html>
- <https://www.lexology.com/library/detail.aspx?g=d3075f4d-afb5-4920-bf59-26cf5d054ab8>
- <https://indiankanoon.org/doc/112277185/>
- <https://www.lexology.com/library/detail.aspx?g=057250f1-c78f-4bc6-a7f2-38f047b266c0>

- <http://www.iprhelpdesk.eu/blog/intellectual-property-and-social-media>
- <https://www.thebalancesmb.com/copyrights-and-social-media-issues-397821>
- <https://policy.pinterest.com/en/terms-of-service>
- <http://www.diva-portal.org/smash/get/diva2:883305/FULLTEXT01.pdf>
- <https://business.pinterest.com/en/business-terms-of-service>
- <https://www.facebook.com/terms.php>
- <https://qz.com/1266835/facebooks-terms-of-service-translated-so-you-understand-your-data-and-privacy-settings/>
- <https://help.twitter.com/en/rules-and-policies>
- <https://www.reuters.com/article/us-media-copyright-twitter/photographer-wins-1-2-million-from-companies-that-took-pictures-off-twitter-idUSBRE9AL16F20131122><http://photographmag.com/news/daniel-morel-wins-suit-against-getty-imagesafp/>

