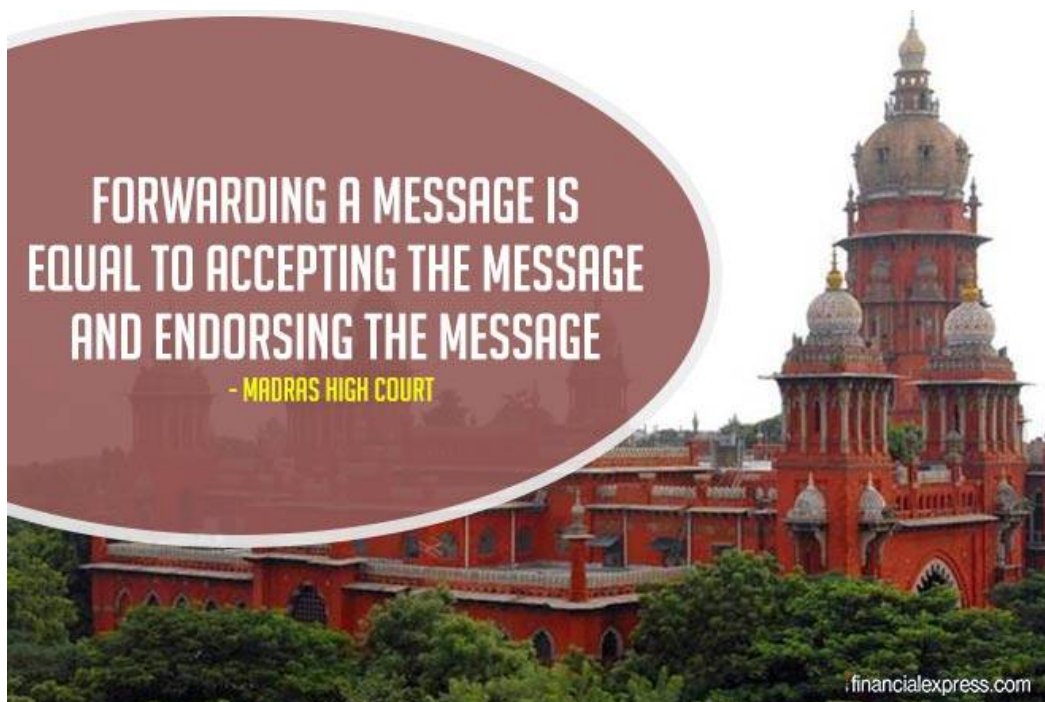



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You can land in jail by sharing or forwarding another person's message on social media, here's what legal experts say

By: [Swapna Raghu Sanand](#) | Updated: May 22, 2018 9:15 PM


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FE Online reached out to eminent SC senior advocates, legal experts and industry stakeholders to understand what the Madras High Court judgment means for the common man.

Recently, the Madras High Court rejected the anticipatory bail of a journalist-turned-party leader for his allegedly derogatory Facebook post on women journalists. Today, a Supreme Court Bench has granted protection to the petitioner mentioned above till the next hearing on June 1. No coercive action will be taken against the petitioner till then. Among some key observations made by the Madras High Court, the most notable

one reads as follows: "Forwarding a message is equal to accepting the message and endorsing the message."

Following this judgment by the Madras High Court, FE Online had reached out to eminent SC senior advocates, legal experts and industry stakeholders to understand what it means for the common man and what pointers to keep in mind so as to avoid getting into any sort of legal trouble. Right at the outset, Mr. Chander Uday Singh, Senior Advocate, had told FE Online, "The only aspect where I don't agree with the Madras High Court judgment is regarding the denial of anticipatory bail to the petitioner. "



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“THE JUDGMENT ONLY RESTATES THE LAW MORE STRONGLY, IN THE CONTEXT OF SOCIAL MEDIA AND SERVES AS A TIMELY WARNING TO PEOPLE. WITH THE USE OF SOCIAL MEDIA AND TECHNOLOGY, IT HAS BECOME SO EASY TO DISSEMINATE CONTENT IN E-FORM AND MORE IMPORTANTLY, THE SHEER EASE OF IT, LEADS MOST PEOPLE TO OVERDO THIS ON SOCIAL MEDIA PLATFORMS.”

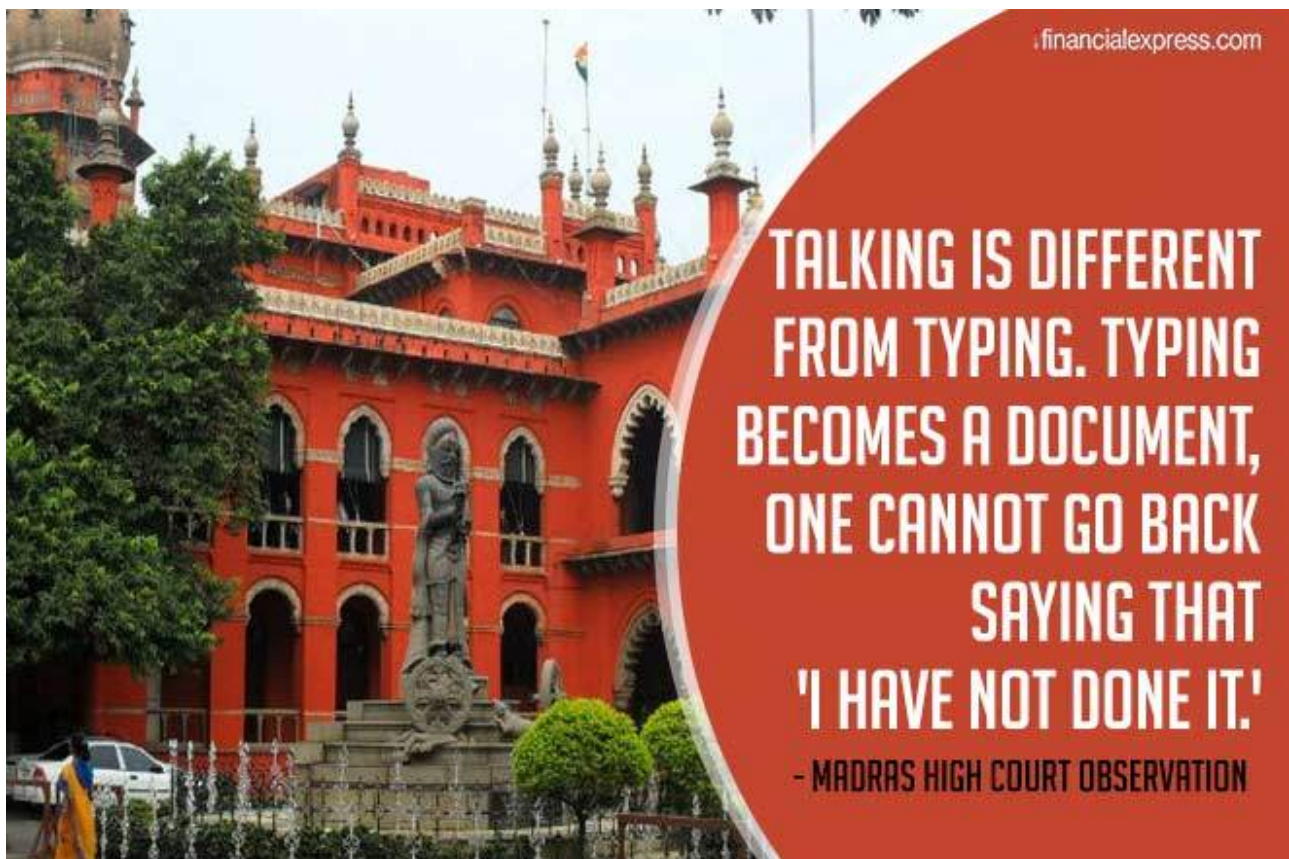
- CHANDER UDAY SINGH, SENIOR ADVOCATE

“The Madras HC judgment only makes the point that re-publication of defamatory content/xeroxing of the same, or dissemination by any other means makes the disseminator equally liable for defamation, which is the well-settled position in law. The judgment only restates the law more strongly, in the context of social media, and serves as a timely warning to people. With the use of social media and technology, it has become so easy to disseminate content in e-form and more importantly, the sheer ease of it, leads most people to indiscriminately spread messages on social media platforms, without checking the content.”

Social Media Sharing and Forwarding: Key observations by the Madras High Court

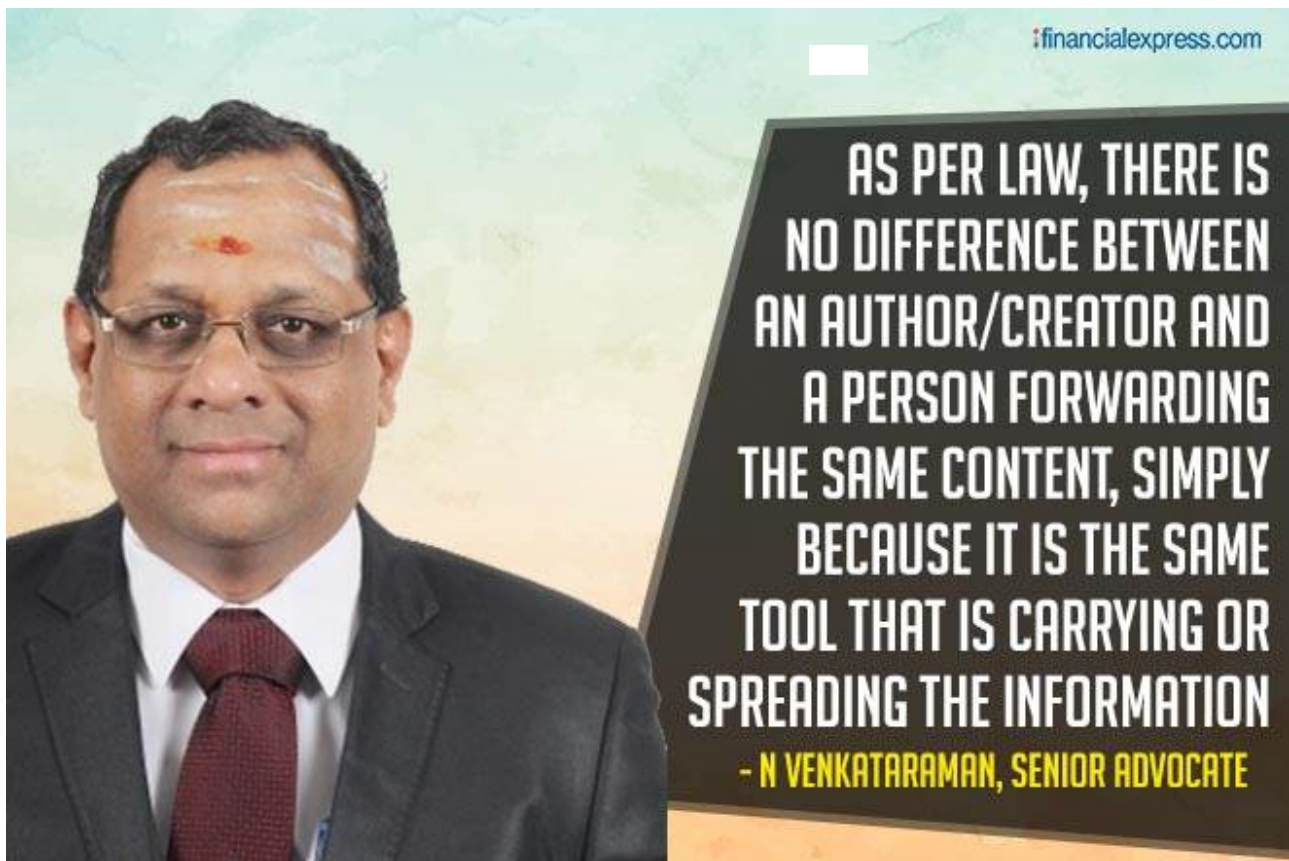
Here are some pointers from the Madras High Court judgment:

1. What is said is important, but who has said it is very important in a society.
2. When a celebrity-like person forwards messages like this, the common public will believe that this type of things are going on.
3. Words from people who are in public life should bring peace and harmony, not incite hatred and disharmony.
4. Talking is different from typing. Typing becomes a document, one cannot go back saying that 'I have not done it.'



What types of content can land you in legal trouble?

So, how does a person identify what type of content can put you into trouble and with dire legal consequences?



Mr. N. Venkataraman, Senior Advocate, told FE Online, “Remember, an offence like this falls under not just the Information Technology Act but under specific provisions of the Indian Penal Code as well as other minor legislation, which does not permit spreading or carrying forward content that is dirty, hateful, perverse, obscene and incorrect. The clear message from the Madras High Court judgment is one that touches upon every sphere of social interaction online, a timely reminder that our social interactions cannot remain de-controlled and unregulated as they are now. Finally, the judgment takes up a specific yet common issue that affects every Indian in some way or the other.”



According to Mr. Pavan Duggal, SC lawyer and leading cyber law expert and Chairman of the International Commission on Cyber Security law, "Ignorance of law is no excuse. You cannot plead that you didn't know the law, because you can be held accountable. You have to exercise caution on sharing or forwarding any kind of content which has defamatory content, carnal interests, online obscenity, abuse of women and children and so on. Act with care, truth and responsibility."

What is the legal rationale for this judgment?

According to Mr. N. Venkataraman, Senior Advocate, "In terms of technology in the context of Indian law, there is no difference between an author/Creator and a person forwarding the same content, simply because it is the same tool that is carrying or spreading the information. Readers who first read the original author and forward the same content belong to the same class legally as their action only increases the readership of the original piece of content with a new group of readers. After such an action, you can't plead ignorance. Mindless forwarding is even more dangerous. The Madras High Court judgment comes as a real wake up call. Simply put, the message is to stop forwarding indiscriminately on social media."

What does the Madras High Court judgment mean for media entities?



Mr. G V Anand Bhushan, Partner and Head – Chennai office, Shardul Amarchand Mangaldas & Co, “This matter is highly likely to be litigated again and will only be settled by a Supreme Court judgment, factoring in the issues of social responsibility, public policy and freedom of speech. As to the immediate question of public liability, truth is always a defense for defamation. As long as the media house is publishing accurate information, and not content that is incendiary, there should be less issues.”

What if you want to share or forward content originally put out by political leaders, celebrities and influencers?

“Somebody else violating law doesn’t mean you can get away with the same. If found guilty, you can get 3 years of imprisonment. In this case, the said person was denied anticipatory bail,” Mr. Pavan Duggal points out.

Sharing his observations, Mr. G V Anand Bhushan, Partner and Head – Chennai office, Shardul Amarchand Mangaldas & Co, spoke to FE Online, “In this judgment, the sentence ‘Who is forwarding the message is important’ forms the crux of the matter. It also raises a pertinent question as to whether the judgment applies to all or specifically to those in public life, as it is in the context of this specific case. At a time when there is an onslaught of fake news and endless trolls, there is a clear need to make people more responsible about what they share on social media on public policy grounds. Now this

judgment renders it legal. However, from an enforcement point of view, one cannot but ponder on how practical it is to see how people interact with others on social media.”

A simple test, Mr. Pavan Duggal adds, “is to check whether the content that you want to forward or reshare would be totally fine with you, if you were the person concerned.”

“Even in today’s world, the nature of content and how it is shared requires a delicate balance in order to make people more aware of what they share. You can delete your comment online but you cannot erase the content forever. The need of the hour is to exercise balance and responsibility while sharing content on social media and at the same time protecting our fundamental right to free speech,” reminds Mr. G V Anand Bhushan, Partner and Head – Chennai office, Shardul Amarchand Mangaldas & Co.

“The Madras High Court judgment encapsulates the accepted principles of law which relates to publishing and sharing content. Simply put, you are held responsible for the content that you share. So, act with care, truth and responsibility. In simple language, according to the Information Technology Act, you are publishing the forwarded message when you forward the message. The judgment is a wake up call as it has only clarified this existing legal principle,” points out Mr. Pavan Duggal.

7 Points to consider before sharing on social media

Speaking to FE Online, Mr. Pavan Duggal listed the following pointers to consider before forwarding or sharing posts on social media:

1. Never be in a hurry to share or forward on social media.
2. Always take a silent count of 1 to 10 – the benefit of doing this is that it may give you a fresh perspective.
3. Let’s not consciously be part of the Great Indian Vomiting Information revolution.
4. Any forward, retweeting or sharing on social media will now have legal consequences. Always be mindful of this.
5. Keep in mind that the Information Technology Act covers ALL your online activities in the cyber sphere. Just because you are sharing or forwarding online does not make you less immune from the law or less accountable.

6. Exercise caution and care before you share on social media.

7. We need to basically do what we want others to do for us in the social circles we move in – if some content can cause harm or hurt another, or if it can be prejudicial to their interest, avoid sharing or forwarding such content.

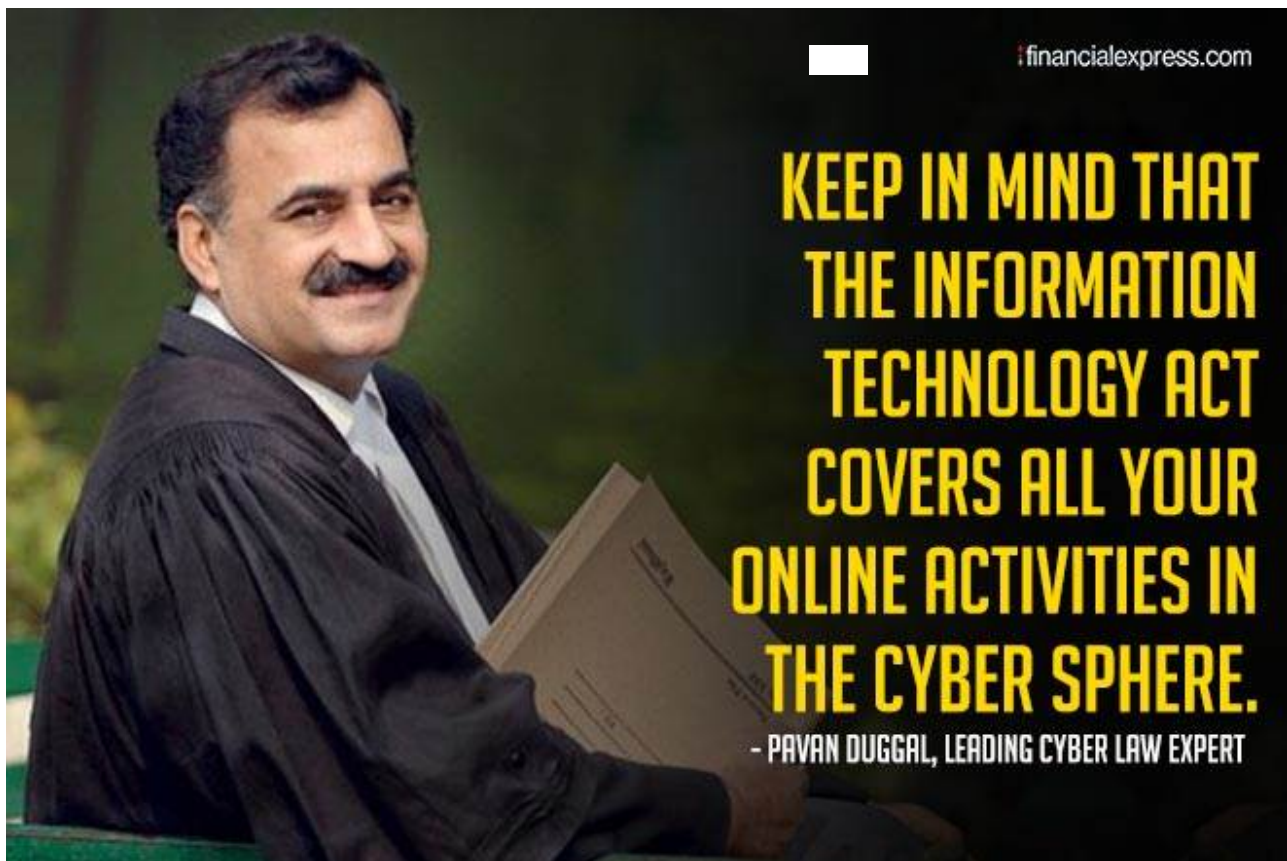
What internal safeguards do organizations put in place to regulate how employees use social media?

Today, when most organizations face new challenges, many companies may run the risk of turning complacent in regulating what their employees do on social media, seemingly waiting for a 'problem' to catch fire and then put the 'fire out'. So, this also raises a pertinent question at an organizational level, what are the safeguards that companies should put in place?

Mr. Chaitanya Peddi, Co-Founder and Product Head at Darwinbox and previously HR Consultant with Ernst & Young and Product Consultant at Verizon, told FE Online, "Organisations have recognized both the risks and the rewards of social media in the current digital age. I believe the recent judgment of the Madras High Court reinforces this realization. Mature organizations contain the reputational risk and liability by enforcing an organizational social media policy. And along side these policies and governance, technology has become a critical support for the HR and legal teams to enable such measures in an easy and cost-effective way."

He further adds, "Interestingly, internal social media networks have also proven equally sensitive to scrutiny as observed in the [Google](#) case. It is here that technological intelligence that we offer on the platform assists HR teams to identify and flag off any posts containing adverse content and act accordingly to pre-empt unwarranted attention."

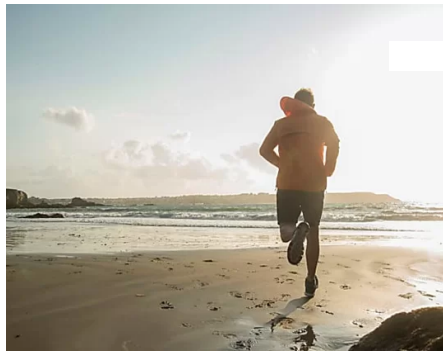
Another aspect that Mr. Chaitanya Peddi points out, "Today many of the organizations that we serve, administer a mandatory online policy sign-off through our platform and also enable quick byte sized e-learning modules to educate employees about the social media policy."



Summing up, Mr. Pavan Duggal, the nation's leading cyber law expert, concludes, "We need to be kinder about the content we share on social media. Cyber etiquette needs to be introduced in Class 1. Remember, cyber security is also an emerging part of day-to-day life. With increasing threats from spyware, malware, be aware that the next level of jurisprudence may hold you (the person who shares or forwards) legally liable for infecting the systems of others with damaging content. So, stick to a mature graph when you weigh your options of how to publish, or share on social media platforms."

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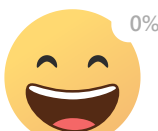


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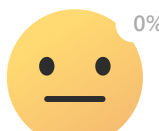
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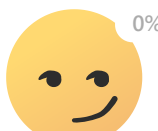
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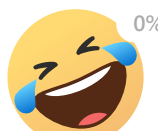
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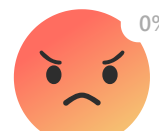
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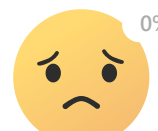
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