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Impact of social media on **Evidence Law**

Authored By: - Swastik Kumar

Abstract

The introduction and evolution of technology has resulted in the betterment of the society and overall upgrade in the quality of life of majority of people. With the improvement in Information Technology Infrastructure, especially in India, long and tedious legal proceedings have been bettered and due to the global pandemic, the digitalization process picked up pace. The value of evidence in every legal proceeding is very high and very relevant. Now the question arises whether “updates” on social media platform can be admissible in the court of law as evidence and if yes then what is the value of that evidence and whether the authenticity of the evidence can be challenged in the court of law or not. Social Media is 21st century’s one of the most controversial inventions. There are various schools that debate whether social media has a positive impact or a negative impact on the society. This paper mainly focusses on the impact of social media on Evidence Law and as to how its integration in the legal process can be relied upon.

Introduction

Humans have a clear evolutionary advantage over other species because of our ability to communicate through language and gestures. Humans are social creatures, and as such, we require social interaction. Words united us. One of our major accomplishments was our command of the English language. However, with the constantly shifting times, how we communicate with one another has undergone changes. It has been a long journey that began with the earliest cavemen and continued through the earliest civilizations and right up to the current era of globalisation and modernization. The only difference is that we use emojis instead of the symbols that prehistoric people painted on their cave walls. The use of technology has made life easier.

Literature Review

- Purnima Mathur (Impact of social media in the Law of Evidence), she talks about the admissibility of e-evidence in the courts of India, evidentiary value of social media posts in Indian courts and some international cases where social media posts are used as evidence in courts outside India.
- Mohit Kumar Gupta (Admissibility of Social Media Messages as Evidence Before Court of Law), he talks about the status of admissibility of e-evidence in court of law discussed with various case laws, evidentiary value of messages exchanged in social media, admissibility of media evidence and challenges and the present stance of social media messages as evidence in the court of law.

Social Media

Social Media is modern computer-based technology that enables the sharing of information such as ideas, thoughts, pictures, videos, etc. It is all done virtually with the help of smart devices like laptops and mobile phones. Websites, platforms, and programs that allow users to create, share, or exchange data, content, opinions, and ideas in online communities and networks are referred to as social media.

Social media is becoming a need of modern life and is utilized for a variety of activities, including activism, marketing, entertainment, and social interaction. While social media is widely present in developed countries like North America and Majority of Europe, Asian countries like India leads in the amount of Social Media usage.

Social media refers to web-based platforms and programmes that let users connect and communicate online while exchanging content in real time. It has grown to be an essential component of modern life, allowing people to interact with like-minded people, remain in touch with friends and family, and share information and thoughts with a larger audience.

Some of the Popular Social Media Platforms are:

- Facebook
- Instagram
- YouTube
- Twitter
- Telegram
- Onlyfans

The way people communicate, share information, and interact with one another has changed thanks to these platforms and others like them, making the world a more connected and collaborative place.

Evidence Law

The laws and principles controlling the admissibility, applicability, and weight of evidence in legal processes are the subject of evidence law in India. The Indian Evidence Act, 1872 is the main piece of legislation governing Indian evidence law.

Evidence may be categorised as direct, circumstantial, or hearsay under Indian law. Circumstantial evidence is evidence from which the fact in question may be inferred, whereas direct evidence is evidence that directly supports or refutes a fact in question. On the other hand, hearsay evidence is testimony that is based on facts that the witness did not directly experience.

Many laws and principles, including the prohibitions on hearsay, opinion evidence, and character evidence, govern the admissibility of evidence in India. The side who asserts a truth has the burden of proof, and the level of proof varies based on the circumstances.

In some circumstances, assumptions may also be made under Indian law. The Indian Evidence Act acknowledges a variety of presumptions, including conclusive presumptions, presumptions of law, and presumptions of fact.

An essential component of legal processes in India is the examination of the evidence. The judge or jury will evaluate the evidence put forth by the parties and will decide the significance and reliability of the evidence. A fair trial and a just and equitable decision based on the evidence provided are the ultimate goals of Indian evidence law.

Social Media and Law

To ignore how social media affects society as a whole would be ridiculous. Various social changes have been sparked by social media's influence. The legal system has acknowledged its fierce presence as well. Social change and the law are closely related. The social system and

the rule of law are both independent and interdependent. One can study a society's changes by studying its legal system, and one can comprehend those changes by understanding the legal system. Law, then, is a reflection of what society wants and desires.

India currently has one of the highest rates of internet usage and social media usage, and these numbers will only keep rising. Nowadays, almost everyone owns a smartphone that already has a number of social media and other apps preinstalled. You can create your online profile in just a few clicks. No document or ID proof of any kind is required to be submitted. It has frequently been used improperly as a result of this convenience.

Cybercrime is a brand-new type of crime that has emerged as a result of the great and rapid advancement of technology. In the world of social media, cyberstalking and online harassment are very common occurrences.

One of the first steps India took to address various offences related to cybercrime was the Information Technology Act, 2000. The IT Act of 2000 covered not only all types of cybercrimes against people but also those against governments and private property. In addition to laws governing cybercrimes, it also covered laws governing privacy, data protection, and intellectual property.

Social Media and Evidence Law

Social media posts' evidence value is explained by criminal procedure law. There are undoubtedly benefits and sound policy justifications for allowing access to social media information used in legal processes. For instance, images can be immediately uploaded and shared, alerting police to crimes that are being committed or even those that have already been committed. When it comes to the admissibility of social media evidence, accessing the data in a legal manner is crucial. Most frequently, a lawyer looking into a case must visit the public sections of a person's social media account and attempt to determine which of their social media profiles might include evidence important to the case.

According to Common Law, when conducting an inquiry prior to a lawsuit, one must take into account the relevant ethical standards. For instance, circumventing settings or adding someone as a friend in an effort to access private or non-public areas of the subject's account is unethical

and unprofessional. Also, this type of behaviour on social media may render social media evidence inadmissible in court.

Since 2000, India has established a distinct unit for investigating cybercrime and passed separate legislation known as the Information Technology Act, 2000. Other supplemental cyber laws are used to address similar offences in place of this. Such cases are seldom ever brought to the attention of a special court. The screening procedure outlined in Section 22A of the Indian Evidence Act is still used to determine whether or not any online publications, messages, and posts are admissible.

Such evidence is frequently presented in the magistrate's court where there is an ongoing case and needs to be justified in many instances, including major crimes like rape. "Party's parole admissions receivable to prove the contents of a document without notice to prove or without according to the absence of original," is an English law principle. Under Indian law, this is not permitted and applicable.

Role of Digitalisation

Courts and government agencies in India have always relied extensively on paper records and other forms of physical documentation. To improve the effectiveness, accessibility, and transparency of the Indian judicial system, there has been a push towards digitalization in recent years.

The decrease of physical paperwork is one of the main advantages of digitalization for the Indian legal system. This decreases the chance of losing or damaging crucial papers while also saving time and resources. A speedier and more accurate decision-making process has resulted from the digitization of court procedures and case files, which has also made it simpler for attorneys and judges to access and examine case information.

Access to legal services is now easier because to digitalization, which is another significant advantage. Citizens can now obtain legal services and file lawsuits online without physically going to a court or government office thanks to digital platforms like e-courts and e-filing systems. Those with mobility challenges or those who live in distant places have benefited the most from this.

The Indian legal system has also become more transparent as a result of digitalisation. The public now has better access to details regarding open cases and court orders thanks to the digitization of court procedures. This has contributed to a rise in public confidence in the legal system and a decline in corruption.

And even though, the Indian legal system is also facing difficulties with digitalization. The absence of technology infrastructure and skilled labour is one of the major problems. Even if there has been progress in recent years, more technology and training funding is still required to ensure the success of the digitization process.

The requirement for legal reform to account for digital technology presents another difficulty. To fully exploit the advantages of digitalization, there are still several legal requirements and procedures that are not appropriate for a digital world. Overall, the judicial system's digitization in India is a move for the better with the potential to increase access to justice and fortify the rule of law.

Case Analysis

Cases in India

In *Girwar Singh vs CBI*¹, formation of a committee took place whose purpose was to verify the validity of the electronic evidence that was presented in front of the court. It was discovered by the same committee that the evidence presented was neither primary nor secondary evidence, i.e., it was neither original nor a replica of the original. It had been duplicated on numerous occasions and on multiple devices. Therefore, as a result, it was declared inadmissible by the Delhi High Court.

In *Anvar P.V. v. P.K. Baseer & Ors*², the Supreme Court overturned a previous decision in the case of *State (NCT of Delhi) vs Navot Sandhhu*³ that allowed for secondary evidence to be admitted in court using the principle of "generalia specialibus non derogant." This ruling was based on Section 65B of India's Evidence Act which states that certificates are required in order to admit electronic evidence into proceedings. However, later this year, the Supreme Court

¹ *Girwar Singh vs CBI* 2017 (5) ALJ 677

² *Anvar P.V. v. P.K. Baseer & Ors*, 2014 AIR SCW 5695

³ *State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru* on 4 August 2005, Appeal (crl.) 373-375 of 2004

reversed its decision in *Shafhi Mohammed v State of Himachal Pradesh*⁴ and ruled that electronic evidence can now be admitted without a certificate. It stated that electronic records can be submitted as evidence without them having to meet the conditionalities mentioned under Sections 65B(4) (regarding Certificate production). Sections 65A and 65B are now considered additional provisions that help in the clarification and expansion of topic covered by the same section.

The Apex Court once again in the case of *Arjun Panditrao Khotkar vs. Kailash Kushanrao*⁵, gave the judgement that requirements which are mentioned in the Section 65B(4) of the Indian Evidence Act is mandatory for electronic documents to be admissible as evidence in the courts. In the case of *Shamsudin Bin Mohd. Yosuf vs. Suhaila binti sulaiman*⁶, the magistrate gave the ruling that since most part of the contract between the two parties is done on WhatsApp, it amounted to be an oral agreement which was enforceable by the law.

The Patiala House Court in New Delhi denied a complainant's request to have summons service delivered through email and WhatsApp. The court ruled that the system for delivering such services, which does not currently exist, is not suitable for judicial purposes. However, in rare cases where an electronic media can be used specifically for this purpose, it may be employed by the court.

International Cases

- Romano vs Steelcase Inc.⁷

It was a case of Personal Injury from September 2010, New York. The plaintiff's "current and historical Facebook and Myspace accounts as well as pages, including pages that have been deleted and have relevant information, even though the information was not initially publicly available," were duly granted access to the defendants by the court. This was permitted because, despite her claims that she had suffered injuries and was primarily confined to her bed, she was seen smiling broadly in a photo taken outside the boundaries of her home on her Facebook profile. The Court subsequently decided to grant the plaintiff permission to use website privacy settings that they had independently set as a defence. The main objective of social media

⁴ Shafhi Mohammad v State of Himachal Pradesh is (2018) 5 SCC 311

⁵ Arjun Panditrao Khotkar v. Kailash Kushanrao, Civil Appeal Nos. 20825-20826 Of 2017

⁶ Shamsudin Bin Mohd. Yosuf v. Suhaila binti sulaiman [2017] MLJU 2236

⁷ Romano vs Steelcase Inc., 907 N.Y.S.2d 650 (2010)

websites is to make it possible for people to share information about their social lives. In turn, this runs the risk of denying the opposing party access to information that might be relevant to guarantee a fair trial. The court concluded that regardless of the privacy settings that were in place, there is no privacy exception.

- Zimmerman vs Wels Market Inc.⁸

It was also a personal injury case. On the basis of the publicly available information displayed on the plaintiff's Facebook page, it was acknowledged that there was content that was privately protected content and that this content is relevant to the case. The plaintiff's Facebook page displayed recent images of the plaintiff with a black eye and his motorcycle after an accident as well as information about the plaintiff's interests in "riding" and "bike stunts." The defendants were then granted access to the plaintiff's Myspace account and non-public portions of his Facebook page after the court ruled in their favour and granted them permission to conduct discovery. This was done to disprove claims that the plaintiff's health and wellbeing had been permanently damaged.

- Largent vs Reed⁹

Largent v. Reed is a case that involved personal injury claims stemming from an accident between a car and motorcycle. The defence moved to compel the release of the plaintiff's Facebook username and password, claiming that at a time after the accident the profile was set to public. When viewed publicly, they found relevant photos that contradicted the plaintiff's claims of serious and permanent physical and mental injuries, pain, and suffering.

The case was heard in Court of Common Pleas Judge Richard J. Walsh's court in Franklin County, Pennsylvania. The case features a detailed and instructive 14-page opinion from Judge Walsh that is a must-read for anyone remotely interested in the topic of electronic discovery of social media.

⁸ Zimmerman vs Weis Markets, Inc., PICS Case No. 11-0932 (2011)

⁹ Largent v. Reed, 2011 WL 6739440 (Pa. Com. Pl. Nov 2011)

WhatsApp Messages as Evidence

In the recent Aryan Khan Case¹⁰, the accused was arrested on the basis of the WhatsApp chats obtained by Narcotic Control Bureau (NCB) officials. Lawyer Ali Kashif Khan, on behalf of all the accused argued that WhatsApp chats are inadmissible as evidence in court.

(Arjun Panditrao Khotkar Case), the three-judge bench of the Supreme Court passed the judgement wherein it stated that a “certificate” must be accompanied from the appropriate “authority” that has ownership of the device during which the electronic communication was created. In the absence of such certificate, the communication does not qualify to be admissible in the court as evidence.

It was also clarified by Justice RF Nariman that the device if produced along with the owner or the authorised user before the court, then the “certificate” mentioned above is not mandatory. Over the years courts have laid down various principles regarding the admissibility of electronic evidence:

- The electronic record including the statement must be identified by a certificate.
- The certificate must explain how the electronic record was created.
- The certificate must include information on the machinery used to create that record.
- The certificate needs to address the relevant circumstances listed in Section 65B(2) of the Evidence Act.
- A person holding an official position related to the functioning of the relevant device must sign the certificate.

A court might consider WhatsApp chats as secondary evidence. The four main requirements for the admission of electronic documents as evidence in a court are outlined in Section 65B. Which are:

- The message's production/creation must have occurred while the person with legal control over the computer/device was regularly using it;
- The data or message must be of the kind that is regularly and customarily applied to the activity;
- When the message was produced, the computer or other equipment had to be in good working order.

¹⁰ Aryan Shah Rukh Khan & Ors vs Union of India

- The duplicate copy submitted to the court must have the same information as the original electronic record.

WhatsApp communications may be used as evidence in court if these four requirements are met. In the State of Delhi v. Mohd Afzal¹¹ case, also known as the Parliament Attack case, it was determined that the electronic evidence met these four criteria and was therefore admissible.

In the landmark case of Ambalal Sarabhai Enterprise Ltd. Vs KS Infraspace LLP Limited & Anr¹², the Apex court ruled that “the WhatsApp messages, which are virtual verbal interactions, are a subject of evidence with regard to their meaning and substance to be established during the trial by evidence in chief and cross-examination.”, shedding light on why WhatsApp conversations are considered to be evidence or not in the eyes of the law.

"The WhatsApp messages, which are virtual verbal communications, are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence- in -chief and cross-examination. The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not," said the Supreme Court.

Instagram Messages as Evidence

Social media posts are becoming accepted as evidence in courts all over the world. The plaintiff in "Largent v. Reed⁹" claimed that a recent accident had made her life very difficult. However, the defendant presented the court with post-accident pictures of the plaintiff that she had placed on her Facebook page, showing that she had gone to the gym and appeared to be in good enough health to go about her daily activities. The plaintiff was required by the court to provide her Facebook login details so that an investigation could be conducted.

Courts adhere to tight guidelines when analysing the validity and reliability of electronic evidence, including chats on social messaging platforms, chat engines, and emails. Electronic evidence can be altered or changed in some situations. The court has the right to exclude

¹¹ State vs Mohd. Afzal & Ors. 2003 VIIAD Delhi 1, 107 (2003) DLT 385, 2003 (71) DRJ 178, 2003 (3) JCC 1669

¹² Ambalal Sarabhai Enterprise Ltd. Vs KS Infraspace LLP Ltd & Anr AIR 2020 SC (Civil) 738

evidence if there is any doubt regarding its veracity. By using screenshots, conversations on internet messaging services can be preserved. Nevertheless, because the screenshots are preserved as images, anyone can easily tamper with them, jeopardising the photos' legitimacy. The onus of proof, however, rests with the challenger.

Instagram interactions may be used as evidence under Section 65B of the Indian Evidence Act. Instagram chats can be used as evidence because the information provided on Instagram's parent firm Facebook was produced in the aforementioned precedent. Nonetheless, a judge can contest the veracity of the screenshots of Instagram interactions.

Conclusion

As a result of various judgements by the Hon'ble Supreme Court, it can be understood that as long as the court is satisfied that the conditions are being fulfilled under the section 65A and 65B of the Indian Evidence Act, 1872.

When submitted with a certificate from the authorised person as required by Section 65B(4) of the Indian Evidence Act, electronic evidence can be presented in court and has evidential value. However, it was stated in the judgement of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others⁵ that the provision of a certificate as required by Section 65B(4) can only be used when the individual generating the electronic evidence is the owner of the device. Sections 63 and 65 of the Evidence Act cannot be used if the individual providing the evidence does not own the device. In such a situation, the procedure outlined in the aforementioned section can undoubtedly be used, and if it is not, it will be unfair to the person who has legitimate evidence but whose evidence is not taken into account by the court because the person has not provided a certificate of proof. Thus, it is not necessary to comply with section 65B(4)'s certificate requirement. The Supreme Court of India ruled that electronic evidence is legitimately admissible in a court of law in the case State of Delhi v. Mohd. Afzal & Ors¹¹. The High Court of Bombay ruled in SBI Cards & Payments Services Pvt. Ltd. v. Rohidas Yadav¹³ that WhatsApp communications are admissible as evidence in court as long as the requirements outlined in Section 65B of the Indian Evidence Act are met. Yet, on the contrary A bench consisting of Chief Justice N V Ramana, Justices A S Bopanna, and Justice Hrishikesh Roy reportedly stated the following: *"What is the evidential value of WhatsApp messages these*

¹³ SBI Cards & Payments Services Pvt. Ltd. v. Rohidas Jadhav, 2018 SCC OnLine Bom 1262

days? "Anything can be created and deleted on social media these days." ("WhatsApp Chats have no Evidentiary Value - Lexology") We do not attach any value to the WhatsApp messages."

It can be observed that depending on the specific scenario and specific circumstances, different type of electronic evidence is admissible or inadmissible in the eyes of the Courts of India.

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