

IMPACT OF SOCIAL MEDIA IN THE LAW OF EVIDENCE

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INTRODUCTION

Development with technology is the way forward for the coming generation. In this fast-moving world, every citizen is involved in using social media platforms, like WhatsApp, YouTube, Instagram or Facebook, some of its uses are virtuous while some are corrupt. Social media can be defined as interactive computer-mediated technologies via virtual communities and social networking websites that simplify the creation and sharing of ideas, information, opinions, career interests and other types of expression.¹

With the increase in the technology there has been an inclination in crime rates and the crimes committed through this technology. Popularly known as Cybercrimes. Cybercrimes were not always recognized or believed to be existing but it is now studied as a branch of studies and proficiency. For the purpose of cybercrimes, communication has to be presented before the accused, but can communication that takes place through this medium, shared on a social media platform be used as evidence under the law of evidence in a court of law? Can social media posts be considered as admissible evidence, as many people disapprove of its accuracy. However, it is not just cybercrime where e-communication has to be presented before the court to prove the existence of the crime. E-communication, like comments and posts are also required in court where seriousness of certain crimes is to be proved, example defamation. Seriousness of social media evidence can be duly realised when we receive something as simple as a wedding invitation through the means of social media.²

Investigating agencies in India who are also called intelligence agencies and police forces, have recently started producing messages posted by individuals on Twitter, Facebook and other social media platforms. They do that under the ambit of Indian Evidence Act. Recently, during a press meet in the year 2016, the Union Home Minister Rajnath Singh has recently accepted that the government has developed a blueprint on social media strategy against the IS for the purpose of effective monitoring of the undiscovered side of the web, like the Dark

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¹Vivek Dubey, *Admissibility of Electronic Evidence: An Indian Perspective*, 4 FRCIJ (2017).

²*Id.*

Web. Any medium of communication that intends to connect the world through network and electronic devices are called cyberspace.³

ADMISSIBILITY OF E-EVIDENCE IN INDIAN COURTS

The Indian Evidence Act stands amended now, especially to provide for the admissibility of electronic evidence (record) supplemented with paper-based documents as evidence in Indian Courts. Significant amendments contain granting the status of documents for the purpose of adducing evidence to electronic records.⁴ Moreover, the definition of ‘admission’ was changed and amended to contain in electronic form, thereby suggesting that any interference as to any fact in issue or any other relevant fact. Section 22A, on the other hand, was added to provide for the relevancy of oral evidence. In order to provide for the relevancy of oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic records that are produced is in question.

Conceivably, one of the most important amendment to the Evidence Act is the introduction of Section 65A and 65B under the second schedule of the Information Technology Act.⁵ This provides for a procedure, that is different and special in nature for adducing evidence in relation to electronic records. Section 65B states that any information contained in an electronic record is deemed to be a document and is admissible in evidence without further proof of the production of the original. It also sets out conditions for the admissibility of evidence and all are to be satisfied. They are:

- i. At the time of creation of the electronic record, the computer output containing the relevant information was produced from a computer that was used there used regularly to store and/or process information for the purpose of any activities that are regularly carried on over that period by that person lawfully controlling the use of the computer.
- ii. The type of information that is contained in the electronic record was regularly fed in to the computer in the regular course of activities.
- iii. The information that is contained by the electronic records is the reproduction of the original electronic record.

³P. Sathish Kumar & Arya R, *A Study on Electronic Evidence Act under Law of Evidence*, 120 IJPAM (2018).

⁴Indian Evidence Act, 1872, No. 1, Act of Parliament, 1872 (India) § 3.

⁵ The Information Technology Act, 2000, No. 21, Act of Parliament, 2000 (India) § 92.

- iv. During the material part of the period, the computer was operating properly or, if not, the computer was out of operation for some period, but was not such to the affect the electronic record.

EVIDENCIARY VALUE OF SOCIAL MEDIA POSTS

Criminal Procedure Jurisprudence explains the evidentiary value that social media posts carry. Certainly, there are advantages and good policy reasons for accessing social media evidence used in criminal proceedings. For example, photos can be uploaded quickly and shared within seconds; this alerts authorities regarding crimes in progress or even those already commissioned. Accessing the information in a permissible manner is the key when it comes to the admissibility of social media evidence. More often, a lawyer investigating a case needs to access the public portions of an individual's social media account and try to recognize if any of their social media profiles may have evidence relevant to a case. As per Common Law, one must consider the applicable rules of ethics for conducting investigation prior to the litigation. For instance, it is unethical and inappropriate to bypass settings or add someone as your friend in an effort to gain access to private or non-public segments of the subject's account. Furthermore, this kind of conduct on social media can eliminate the admissibility of social media evidence in court.

Since 2000, in India, we have formed a separate division of cyberspace crime investigation along with a separate legislation which is called the Information Technology Act, 2000. This is substituted by other supplementary cyber laws to deal with such offences. Hardly anytime, such cases are brought to the notice of a special court. The screening process involved in the admission of all online articles, messages and posts for its admissibility remains the same as detailed in Section 22A of the Indian Evidence Act⁶.

In many cases, including serious crimes like rape, such evidence is often displayed in the Magistrate's Court before whom there lies a pending case and needs to be justified. The English law principle of "party's parole admissions receivable to prove the contents of

⁶Ashwaq Masoodi, *Prisoners of memes, social media victims*, LIVEMINT ,(Dec. 5, 2018, 11:02 AM) <https://www.livemint.com/Politics/sWTiTg8jscRZpKwSPN25UN/Prisoners-of-memes-social-media-victims.html>

adocument without notice to prove or without according to the absence of original”. However, this is not acceptable and applicable under Indian law.⁷

INTERNATIONAL CASES

In the case of *Romano v. Steelcase Inc.*⁸, (a New York personal injury case from September 2010) in which the Court duly granted the defendants access to 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. This was allowed due to the reason that her Facebook profile showed her smiling happily in a photograph outside the confines of her house even though she claimed that she sustained injuries and was principally confined to her bed. The Court then ruled that giving the plaintiff the permission to take the defence of self-set privacy controls on a website. The main purpose of which is to enable the sharing of information about how they lead their social lives. This in turn risks depriving the opposite party of access to material that may be applicable to ensure a fair trial. The court reasoned that there is no exception of privacy, irrespective of what privacy settings were used.

Another important case with respect to admissibility of social media posts in court of law is *Zimmerman v. Wels Market Inc*⁹, which was a personal injury case. In that case, it was recognized that there was content that was privately protected content, which stands relevant to the case based on the public information shown on the plaintiff’s Facebook page. The Facebook page of the plaintiff showed that his interests included ‘riding’ and ‘bike stunts’ and also displayed recent pictures of the plaintiff with a black eye and his motorcycle after an accident. The Court then ruled in favour of the defendants and gave them the permit to discovery and they gained access to the non-public segments of the Facebook page of the plaintiff along with his MySpace account.¹⁰This was done in order to refute the charges of permanent injury to the health and wellness of the Plaintiff.¹¹

⁷Tejas Karia et al,*The Supreme Court of India re-defines admissibility of electronic evidence in India*,Digital Evidence and Electronic Signature Law Review, 12 (2015).

⁸*Romano v. Steelcase Inc.*, 907 N.Y.S.2d 650 (2010).

⁹*Zimmerman v. Weis Markets, Inc.*, PICS Case No. 11-0932 (2011).

¹⁰*Supra note 7.*

¹¹*Bradley v. State*, 359 S.W.3d 912 (2012) ; *Elonis v. United States*, 192 L. Ed. 2d 1 (2015).

CONCLUSION

The problem is that the social media companies are less than cooperative in court matters. Many a times, people posting on Facebook or other platforms are doing the posting themselves, so it's infrequent that's what causes the problem. The problem lies in getting the company to provide access to the user data so you can prove that's the person. Facebook is not an Indian company, so getting a Facebook representative to turn over information is where the difficulty arises.

Social media posts that serve as evidence can positively be of grave importance as when we think of the purpose a social media post may serve to a civil or a criminal case. Social media postings have been previously used as we saw above and can meet a person's claim in court, that may have been otherwise difficult to prove. The difficulty with social media evidence is ensuring that there is enough evidence presented to validate and uphold the posting to be what it claims to be as the Fundamental rule of admissibility of any evidence is its relevance to a given case and if this principle is applied to a case where social media is in question, then the admissibility will no longer be a problem in a court of law.