
LEGAL STATUS OF SOCIAL MEDIA EVIDENCE IN INDIA: AUTHENTICITY, RELIABILITY, AND THE ADEQUACY OF THE EXISTING LEGAL FRAMEWORK

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ABSTRACT

The emergence of social media sites has changed the landscape of Indian courts regarding the use of evidence. The most common types of evidence that you will now find in criminal, civil, matrimonial, commercial, and constitutional litigation are posts on Facebook, messages on WhatsApp, photographs on Instagram, communications on Twitter, videos on YouTube and exchanges on LinkedIn. Nevertheless, in India, the framework of law governing the admissibility of evidence from social media platforms is fragmented, judicially unsettled, and patently inadequate to address the specific challenges of authenticity and reliability posed by it. The mutability of social media evidence, along with its ease of fabrication, accessibility, storage, and mediation, makes it different from traditional documentary evidence. These features complicate the authentication and verification of reliability processes which are conditions precedent to admissibility.

The present paper engaged in critical analysis of social media evidence' legal status in India, mainly on the point of authenticity and reliability. It analyzes the existing legislative framework under the Indian Evidence Act, 1872, the Information Technology Act, 2000, and the Bharatiya Sakshya Adhiniyam, 2023, and reviews landmark judicial pronouncements on the admissibility of social media evidence. It also identifies the major authenticity and reliability challenges and evaluates how far the existing legal framework can ensure that only authentic and reliable social media evidence impacts judicial outcomes. The conclusion deals with some reform recommendations for strengthening the legal framework of social media evidence in India.

Keywords: Social Media Evidence, Legal Status, Authenticity, Reliability, Section 65B, Indian Evidence Act, Bharatiya Sakshya Adhiniyam, Digital Forensics, WhatsApp Evidence, Admissibility.

I. INTRODUCTION

The development of social media from a niche communications innovation to an omnipresent dimension of contemporary human life has affected almost every sphere of professional activity. Law is no different. In India, as compared to 2024, there are over 600 million internet users, about 500 million WhatsApp users, more than 400 million Facebook users, and hundreds of millions active users on Instagram, Twitter or X, YouTube, Telegram, Snapchat, and ever-increasing universe of other platforms. The extensive and diverse communication, transactions, relationship and activity being conducted on these platforms is staggering. Correspondingly, it is not surprising that social media is becoming an increasing source of evidence in virtually all spheres of law in Indian litigation.

Courts across India encounter evidence from social media platforms today in contexts as diverse as murder investigations where a Facebook message indicates prior threats or confessions; matrimonial disputes where an Instagram photograph or WhatsApp conversation constitutes evidence of adultery or cruelty; commercial cases where a LinkedIn message or email chain records a contract negotiation or fraudulent representation; defamation proceedings where an offensive tweet or Facebook post is cited as the plaintiff's cause of action; and electoral disputes where social media content is adduced to prove corrupt practices or undue influence. Very few would dispute that in modern litigation, the impact and evidence of social media content are undeniable.

This remains highly contested whether current law is sufficient to ensure that social media evidence brought to Indian courts is authentic and reliable. The twin needs of authenticity and reliability lie at the very foundation of any system of evidence law. However, they pose unique and significant challenges in the sphere of social media.

Social media content is easy to fabricate, as there are tools notoriously publicly available; screenshots, which are a common method to produce social media evidence, are easy to falsify and generally do not leave a trace; contested ownership of accounts and authorship of particular posts or messages; platform-generated data: timestamps may be affected by time zone errors, etc.; and the technical and material processes by which social media content is obtained, saved and reproduced for court may introduce multiple errors or opportunities for tampering.

In this context, the present article seeks to address the central research question: Does the existing legal framework in India suitably authenticate social media evidence. At present, a qualified negative is the answer to this question the paper argues. The structure provided by the provisions of Sections 65A and 65B of the Indian Evidence Act, as interpreted through Supreme Court jurisprudence, and as recently modified by the Bharatiya Sakshya Adhiniyam, 2023, provides a framework to give the electronic record, including the social media content, in a system and admissibility. However, in practice, it falls short of sufficiently ensuring the authenticity and reliability of social media evidence. The need is for judicial reforms, legislative actions and institutional repairs to meet the inadequacy dimensions discussed ahead in the paper.

The structure of the paper is as follows. The paper presents the research questions that guided the study in this section II. Section III explores what social media evidence is and its unique features. The legal framework pertaining social media evidence in India is analyzed in section IV. This section reviews landmark judicial pronouncements on the admissibility of social media evidence. The main authenticity and reliability issues are identified and analyzed in Section VI. The current legal framework is to be evaluated in section VII. Section VIII of the article looks at a comparative perspective from other jurisdictions. The recommendations for reform are presented in Section IX. Section X closes.

II. RESEARCH QUESTIONS

1. Whether the current legal framework in India adequately ensures the authenticity and reliability of social media evidence?

This primary research question addresses the central concern of the paper the sufficiency of the existing legislative and judicial framework in guaranteeing that social media evidence presented in Indian courts meets appropriate standards of authenticity and reliability before it is permitted to influence judicial outcomes.

2. What are the unique challenges of authenticity and reliability of social media evidence which differentiate it from other electronic evidence and how do these challenges impact its admissibility as per the existing Indian law?
3. How have Indian courts interpreted and applied the provisions of Section 65B of the

Indian Evidence Act to social media evidence, and what inconsistencies or gaps have emerged in judicial practice?

4. What changes in the legislative framework, judicial practice, and forensic infrastructure should ensure that the social media evidence in Indian courts are of a good standard of reliable and authentic?
5. What can India learn from the measures already adopted in other jurisdictions such as the U.S., U.K. and the European Union to develop a more robust framework for social media evidence?

III. THE NATURE AND DISTINCTIVE CHARACTERISTICS OF SOCIAL MEDIA EVIDENCE

A. Defining Social Media Evidence

Evidence obtained through social media refers to any content generated, transmitted, stored or made available via social media which is sought to be adduced as evidence. The definition embraces a surprisingly wide range of content types including text posts and status updates, private and group messages, photographs and videos, audio recordings and live-streams, location check-in and event invitations, reactions and comments, hyperlinks and shared content, profile information, account metadata and logs of activity generated by the platform itself. The different media forms of social media evidence create immense challenges for a legal framework that designs around more homogenous categories of documentary evidence.

There are several forms of social media evidence produced in court. The most common form is the screenshot a capture of the digital image of the relevant social media content appearing on a device screen. Screenshots may be taken on a device where they are viewed or generated by investigators using specialized software. This software simulates how content would appear on the original platform. Another type is printed-out material a printout of the relevant social media content, printed from an internet browser or generated from a screenshot. To run the third form, the retention and retrieval of data is done directly from the device i.e. the phone, computer or tablet on which the relevant social media application was downloaded, and relevant content was received or generated. The fourth form refers to data received directly from the service provider via lawful process; e.g., a subpoena, court order or mutual legal

assistance request.

B. Distinctive Characteristics Creating Authenticity and Reliability Challenges

Social media evidence displays different characteristics from traditional documentary evidence and from other electronic evidence that creates unique authenticity and reliability issues.

Social media content is fundamentally capable of being changed. The post can be either edited or erased by the account holder, usually without leaving traces visible to all about the original and edition. Messages can be removed from both the sender's and receiver's devices. Platforms may automatically remove content after certain periods of time. A user can deactivate or delete their account entirely along with the account content. Social media evidence often suffers from mutability. Thus, by the time it is served in court, that original digital content may not exist (in its original form or otherwise) and the evidence used could be a screenshot or printout taken at some prior point whose accuracy and completeness cannot be verified independently.

Little expertise required: Social media evidence can be fabricated with basic technical skills by nearly anyone. Image editing software like Adobe Photoshop, or free-to-use online tools, can edit screenshots and make changes to the messages, the name of the sender, the time displayed or even add fake material. Temporary modifications can be made to the profile pages to take a screenshot. Accounts created to impersonate a real person or organization can be used to generate false content. The Indian courts and investigating agencies do not carry out routine forensic examination to detect these fakes.

Platform Dependency and Ephemerality: Social media evidence is produced within and dependent on the technological environment of the platform that generated it. Across platforms, there are noticeable variations in the display format, timestamp presentation, metadata structure, and data storage architecture. The accuracy of evidence reproduced outside the original platform environment, for example, in a screenshot or printout, depends upon the extent to which all relevant aspects of the original platform display have been captured.

Furthermore, some platforms, mainly Snapchat, are specifically designed to create content that disappears after a finite time, which it is easy to see will complicate evidential issues.

The platforms may provide storage of social media data outside India in locations such as the US, EU, Singapore, depending on jurisdiction the data is stored is the US. Storing data in multiple jurisdictions raises complex legal issues regarding access and authentication in relation to Indian evidence law for data that is created domestically and stored abroad. Securing authentication or certification of social media data from the platform provider requires international legal cooperation mechanisms which are slow, uncertain and often unsuccessful within the timeframes of Indian litigation.

A social media account may be registered in somebody's name, but the person operating the account is another. Multiple people can access and use a single account. User accounts are susceptible to being hacked and compromised. The username or display name on the account isn't intended to be a real person. The possibilities imply that even authenticated social media content that is found to have genuinely appeared on a particular account may not be attributable to the person in whose name the account is registered, or who is claimed to have authored the content in question.

Social media companies propagate information that is not a direct reflection of user content. Rather, the information is mediated by an algorithm. For example, in 2020, Facebook restricted the movement of large groups of users because it felt their messaging was harmful. It did not take those groups offline but rather restricted their movement. The protesting groups felt it was Facebook propagating dissent. This is an example of what social media influences, and it can help people understand when thinking of the influence of social media. The social media material is affected by algorithmic mediation in ways that cannot be gleaned from the material itself. Take filter bubbles, for instance. Filter bubbles affect the informational environment in which people form their opinions. Or take amplification: implementations of algorithms may amplify certain forms of content in ways that affect useful measures of engagement, such as likes, shares, and comments, that may also be offered in proof.

IV. THE EXISTING LEGAL FRAMEWORK GOVERNING SOCIAL MEDIA EVIDENCE IN INDIA

A. The framework of Indian Evidence Act, 1872

The Indian Evidence Act, which originated in the year 1872, does not have any provisions or sections regarding social media evidence. Social Media Evidence is a sub-set of Electronic

Records. Electronic Records have, in fact, been given a special status by the insertion of Sections 65A and 65B by the Information Technology Act, 2000. The other provisions of the Act which deal with documentary evidence, that is, primary and secondary, hearsay, best evidence, presumptions, etc. would also be applicable to Social Media Evidence unless displaced by the specific provisions in respect of Electronic Records were given special status.

The hearsay rule always excludes out of court statements and is not admissible if the party offering it relies on them for the truth. Thus, this rule will apply to any statement on social media. A Facebook post or WhatsApp message containing a statement of fact is an out-of-court statement, and, if offered to prove the truth of its contents, it would normally attract the exclusionary hearsay rule. Notably, many statements that are inadmissible in common law systems like England and the USA will find admission under Indian law instead. This discrepancy is primarily due to the application of the hearsay provisions under the Indian Evidence Act. The Indian jurisprudence has not widely analyzed how hearsay evidence is related to social media evidence. This is a significant doctrinal gap.

B. Sections 65A and 65B: The Electronic Records Framework

According to section 65A of Indian evidence, the contents of electronic records may be proved in accordance with the provisions of section 65B. According to the provision contained in section 65B, the conditions under which electronic records can be admitted as secondary evidence have been stated. Additionally, the certificate requirement which needs to be satisfied has also been provided for. As social media evidence is an electronic record defined to be in Section 2(1)(t) of Information Technology Act, it falls under the purview of Section 65A and Section 65B. Moreover, it must fulfill the requirements of the above sections to be admissible.

However, the invocation of Section 65B to electronic records generated on social media platforms or those generated on the home pages of such platforms has nuances of challenges which did not arise in respect of conventional electronic records. The certification ideas in Section 65B were constructed in a model in which a computer produces an output, a printout or other electronic record from data that was regularly fed into it in the ordinary course of activities. The evidence that comes from social media does not fit. Messages, such as those sent through WhatsApp, are saved in a distributed manner on the devices of the sender as well as the recipient and possibly on WhatsApp servers too. A smartphone that has the WhatsApp application installed and not a computer in the usual Section 65B sense produces the

screenshot of a WhatsApp conversation. The existing framework does not sufficiently address the practical question of who is the person in responsible official position that can sign the Section 65B certificate for a WhatsApp screenshot.

C. The Information Technology Act 2000

The Information Technology Act 2000 is relevant to social media evidence is an amendment of the Indian Evidence Act but has other aspects too which are relevant to it. The Act states that “electronic record” includes data, record or data generated, image or sound that is stored, received or sent in an electronic form or microfilm or computergenerated microfiche. Social media content surely falls under this definition. The Act also provides for the recognition of electronic signatures and digital signatures, which may assist in authentication of electronically signed communications.

The IT Act's Section 43A was added in the 2008 amendment. It imposes obligations to adopt reasonable security practices and procedures to protect sensitive personal data. The obligations apply to corporate bodies. Mainly a data protection provision, Section 43A is argued to be indirectly relevant to the reliability of social media evidence as it imposes obligations on platform providers. More specifically, section 43A requires platform providers to secure user data. According to Section 69 of IT Act, the government can intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource just like the police can listen to your phone calls. The evidence obtained from such interceptions can be presented in court, provided that the procedural requirements necessary to do so are observed.

D. The Bharatiya Sakshya Adhiniyam, 2023 (BSA)

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), which will replace the Indian Evidence Act effective from December 2023 has made several modifications to the framework relating to electronic records which shall have repercussions for social media evidence. Section 57 of the BSA, which replaces section 65B, retains the basic certification framework with some definitional expansions and procedural modifications.

The BSA's new increased definition of what is an electronic record, which includes data stored in the cloud and in distributed computing environments, endorses social media evidence, which is typically stored across servers and jurisdictions. This liberalization of the definition

recognized the reality of cloud storage which the old definition in Section 65B did not. Thus, the adequacy of the legislative framework in that regard has improved with the proposed amendment.

The BSA includes allowances for electronic documents to be the primary evidence in certain cases. It is done to align the statute with what the court had clarified in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* regarding the admissibility of an original electronic record without the certificate. Where contents of social media are created in the device itself on which it was created or received, the BSA framework would classify it as primary evidence not requiring a certificate which is a practically significant simplification.

Nonetheless, the BSA creates no specific provision addressing the authentication issues as faced by social media evidence, nor does it create any mechanism for obtaining authenticated data from foreign social media platform providers, nor does it address the evidentiary status of fabricated or manipulated screenshots. There are significant gaps in the BSA framework's adequacy for social media evidence, it was contended.

V. JUDICIAL PRONOUNCEMENTS ON THE ADMISSIBILITY OF SOCIAL MEDIA EVIDENCE

A. The Supreme Court's Comprehensive Digital Evidence Framework

In India, the admissibility of social media evidence does not depend upon any cases dealing with social media content but rather on the Supreme Court's electronic evidence jurisprudence. However, High Courts and trial courts applied the general electronic evidence jurisprudence to social media evidence by extension. Four landmark Supreme Court judgments on section 65B state (*NCT of Delhi v. Navjot Sandhu* (2005), *Anvar P.V. v. P.K.* (2 words) Paraphrasing of this (35 words): In *Basheer* (2014), *Shafhi Mohammad v. State of Himachal Pradesh* (2018), and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020), a governing parameter was established for the admissibility of all electronic records including social media evidence.

The final position laid down by *Arjun Panditrao Khotkar* is that a Section 65B certificate is essential for the admissibility of electronic records filed as secondary evidence, but it is not required in a case where the electronic record is produced as primary evidence from the

generating device. According to the law on digital evidence, for a screenshot or printout of social media content to qualify as evidence, it requires a Section 65B certificate so that it can become admissible. This law says that producing the device on which social media content was generated or received and then showing this content in court will not require a certificate but will become primary evidence.

As regards the practical implication, investigating agencies and litigants who seek to produce social media evidence in the more common form of screenshots or printouts will need to comply with the Section 65B certification requirements, whereas those capable of producing the original device may do so without a certificate.

B. Judgments of High Court on WhatsApp Evidence

The admissibility issue of WhatsApp messages in various High Courts have produced a case law which not only illustrates the application of the Section 65B framework to social media evidence but also shows the different kinds of difficulties that arise with respect to them.

In *Rakesh Kumar Singhal v. State (NCT of Delhi)*, the Delhi High Court discussed the issue of WhatsApp messages and their admissibility in a criminal investigation. The court ruled that since WhatsApp messages are electronic records within the meaning of Information Technology Act, they are subject to Section 65B and require a certificate from a person in responsible official position for admissibility as secondary evidence. The Court mentioned the difficulty which arises in identifying the certifying authority in case of WhatsApp messages. The investigating officer who has extracted the messages from the device could in appropriate circumstances be treated as occupying the relevant responsible official position.

The Supreme Court of India dealt with the issues concerning WhatsApp messages in a commercial dispute in *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.* The Court observed that it was crucial for WhatsApp evidence to be properly authenticated. The party must prove the authenticity of WhatsApp messages and their attribution to the alleged author. The Court notes that screenshot evidence of WhatsApp messages, without more, may not suffice to prove these matters. Additional corroborating evidence may be required. Forensic verification may also be necessary.

In the case of *Shafiq-ur-Rehman v. State of Uttarakhand*, the Uttarakhand High Court was

faced with the prosecution's challenge of using WhatsApp messages as evidence. The court noted that such messages can in principle be accepted as electronic evidence under Section 65B. However, the prosecution's burden of proof does not stop there. Not only must the technical admissibility be established through proper certification, but the authenticity of such messages must be proved. Specifically, the prosecution must show that the messages were indeed sent or received by the accused and were not fabricated or manipulated and that such certification must be made according to law. The Court noted that it is very easy for an individual to make a fabricated screenshot of a WhatsApp conversation and warned the trial courts to examine it with due diligence.

C. Evidence Through Facebook and Social Media Posts

Indian courts have been called upon to assess the admissibility as well as evidentiary value of Facebook posts, tweets, and social media content for a variety of litigations.

In the case of *Dharambir v. Central Bureau of Investigation*, the Delhi High Court ruled on the admissibility of electronic records, issued in a corruption case and laid down important observations on social media and reliability requirements. The mere production of a printout/screenshot of a social media post along with a Section 65B certificate, does not conclusively prove the authenticity of the content, the identity of the account holder or the authorship of the specific post, says Court. According to Court, A section 65B deals with admissibility of electronic records but does not settle the issue of authenticity, attribution, reliability which remains subject matters of evaluation on totality of evidence.

The Punjab and Haryana High Court addressed the admissibility of Facebook messages in a case over sexual harassment involving Vikas Garg and the State of Haryana. The Court held that Facebook entry were admitted in evidence which were printed and submitted with the Section 65B certificate. Moreover, the Court stated that the evidential weight of these messages will depend on the establishing the authenticity of the account from which these messages were sent. Furthermore, the author of the message cannot be assumed from the name associated with the account.

In *Suo Motu v. State of Kerala* (the Kerala High Court initiated contempt proceedings against State of Kerala over social media posts) the Court dealt with the evidential and constitutional issues surrounding social media posts. The Court made important observations on the standard

of authentication required before social media posts can be attributed to a person involuntarily for contempt purposes.

D. Matrimonial Cases and Social Media Evidence

In India, social media evidence has grown ever more common in matrimonial litigation, especially in divorce proceedings under the Hindu Marriage Act and in cases of domestic violence under the Prevention of Women from Domestic Violence Act. The WhatsApp chat, Facebook messages, Instagram snaps, location maps, etc. produced by spouses in various courts to support cruelty, adultery, desertion and other matrimonial grounds for relief.

Family courts in India have been open to examining such evidence with more sophistication. A few courts have let in screenshots of social media content without any Section 65B verification or forensic authentication, putting their emphasis on the claims of the parties for substantive justice. Other courts have applied the Section 65B framework so harshly that it has excluded such evidence. The varying perspectives of different courts succinctly demonstrate that there are a lot of uncertainties within the judiciary as far as the application of the electronic evidence framework to social media content is concerned.

VI. AUTHENTICITY AND RELIABILITY CHALLENGES: A DETAILED ANALYSIS

A. The Problem of the Screenshot

Research indicates that in Indian courts, social media evidence tends to come in the form of a screenshot (or screen grab). However, the screenshot is also the form that is most likely to be fabricated or manipulated. What is a screenshot? A screenshot is basically a picture that shows what was on your screen at any given time. It's not a forensic copy of the underlying data. It's a visual representation of data as opposed to data. This distinction is important for authentication because the visual representation can be modified while leaving the data unchanged, and the change may leave no traces visible to a non-expert examiner.

The use of manipulated screenshots as evidence in Indian courts has become a known issue. There are instances where WhatsApp screenshots were forged by temporarily modifying the name of the sender and part of the text before taking the screenshot. Other times, the screenshot was forged using applications that simulate a WhatsApp interface where the user specifies the

text they want. The third was an alteration of the screenshot after taking it. For want of the necessary forensic infrastructure and technical expertise, Indian courts generally are unable to distinguish between genuine and fabricated screenshots. As a result, there is often a risk of the effect of fabricated social media evidence on judicial outcomes.

B. The Allocation Problem

The authenticity of social media content is an issue. Even where it is established that certain content did indeed originate from a particular social media account, the further question of whether it can be attributed to a particular person is a separate but equally tricky issue. The operation of a social media account in the name of the accused or the complainant may be by some other person with or without the knowledge/ consent of the account holder. Account credentials could have been exposed, compromised or misused by hacking, phishing or by multiple users from family or friends.

In criminal trials, the prosecution often attributes social media content to the accused, labelling that content as a threatening message, an incriminating post, evidence of a conspiracy and so on. The fact that content appeared on an account in the name of the accused does not prove that the accused was the author of or posted that content. Unless there is more material linking the accused to the act of authorship – for instance, device forensic evidence showing that the post was made from the accused's device or IP address logs showing that the account was accessed from an address linked to the accused at the relevant time – attribution is uncertain.

There has so far been no clear and consistent standard by Indian courts on what degree of attribution evidence is required before social media content can be attributed to an individual. Some courts are satisfied with proof that the account is in the defendant's name, while others require further proof. Definitive attribution is a critical step in a typical online infringement case. However, the lack of coherence between countries creates uncertainty for litigants and risks the innocent wrongful attribution of content and the wrongful exculpation of actual authors operating through alternative accounts or whose content is attributed to others.

C. Integrity of Information Relating to Date and Time

Timestamps refer to the time at which a message was sent, and a post was published, a photograph was taken or an account was accessed. They are some of the most important pieces

of metadata associated with social media evidence. Nonetheless, the reliability of timestamps appearing in social media evidence is susceptible to several sources of uncertainty. Social media platforms generally save and show timestamps in Coordinated Universal Time (UTC) and convert it to local time based on the device's time zone. If the time zone of the device was wrongly configured, the timestamp displayed may not reflect the correct time of the relevant activity.

Moreover, users can adjust device clocks manually and this raises the potential for intentional manipulation of timestamps. Several social platforms allow the posting of tweets to be scheduled at a certain time. Thus, a tweet which is displayed to have been sent at a particular time may have been created a long time before they appear on the feed.

Photographs and videos include metadata containing timestamps from various sources, the device clock at capture time, the uploaded timestamp and when the platform published where may not all agree and which must be carefully evaluated in establishing a timeline of events.

In Indian courts and investigating agencies, the lack of technical expertise to adequately and critically evaluate timestamp evidence, particularly in social media records, is routine. Expert forensic testimony on the reliability of timestamps is generally not called for and presented.

Source: Forward Press – “Xerox copy” of a document or message, what does it mean? (2023)

<https://www.forwardpress.in/2023/02/xerox-copy-of-a-document-or-message-what-does-it-mean/> Courts and lawyers tend to accept timestamps as useful evidence that accurately reflect the actual timing of social media activity. However, this uncritical acceptance creates a risk of evidential error that is not addressed.

D. Content Removal, Temporary Content, and Destruction

The fact that content can easily be deleted from social media and that social media users generally have no legal obligation to preserve content that may be relevant to anticipated litigation creates evidentiary difficulties. A party who is or may be involved in litigation may delete relevant social media content before that info is preserved or collected as ESI. In many cases, that deletion is irreversible. In fact, even platform providers often do not retain deleted social media content indefinitely.

The legal structure for spoliation of social media evidence in India is weak. Remedies exist for the destruction of evidence in civil procedure, namely adverse inference instructions (which are rarely applied rigorously in the deletion of social media content). The crime legislation under section 204 of the Indian Penal Code (now Section 238 of the Bharatiya Nyaya Sanhita) prescribes stiffer punishments for the crime of destruction of evidence, but prosecution is rare in social media evidence deletion. Failure to have solid spoliation remedies makes it less appealing for parties to adhere to social media evidence, resulting in not a little chance that evidence will be lost that is directly related before it can even be collected and authenticated.

E. Collaboration and Jurisdictional Barriers of Platform Providers

The ideal authentication of social media evidence “verification from the provider” would confirm that what was created as evidence in court exists on the provider’s servers as well; that the account from which the content was obtained is registered to the individual identified; and that the timestamps and other data are correct. But it would be practically and jurisdictionally challenging to get verification from the platform providers.

Major social media platforms are incorporated and based primarily in the US, and US law regulates their response to requests from foreign law enforcement authorities and courts for disclosure of user data. The law known as ECPA in the US restricts user data from being shared with foreign governments other than through an MLAT or mutual legal assistance treaty process. India and the U.S.’s MLAT requests are routed through the Ministry of Home Affairs and the US Department of Justice, and they are notoriously slow, often taking one to three years to get results and their outcome is uncertain.

Platforms offer limited cooperation via their online law enforcement portals. These portals allow Indian law enforcement agencies to file requests for user data in certain case categories. Nonetheless, the information available on these portals is generally not accompanied by the requisite metadata and authentication information for Section 65B certification and is typically not in a form that meets the specialized requirements of the Indian evidence law.

VII. EVALUATING THE ADEQUACY OF THE CURRENT LEGAL FRAMEWORK

A. In Connection with the Main Research Question

The existing legal framework in India does not adequately certify the authenticity and reliability of social media evidence. This is the conclusion reached based on the analysis of issues involved in answering the primary research question.

The structure relating to certification under Section 65B, which has emerged as the key mechanism to establish the authenticity and reliability of electronic records, particularly social media posts, was devised in a technological environment different from present-day social media. The framework considers a simple model in which a specified computer produces an output from data fed into it, and a person in a responsible official position in relation to that computer certifies the output. This model does not adequately capture the nature of social media data, which is distributed, platform-dependent, cross-jurisdictional, and algorithmically mediated.

Though a valid admissibility safeguard, requirement of a certificate doesn't ensure authenticity or reliability of social media evidence on its own. A certificate under Section 65B confirms only that an electronic record was produced by a device or system of the nature described. It does not confirm that the content has not been tampered with, that the account from which it was produced was operated by the alleged author or that the timestamps and other metadata are accurate. The courts evaluate the totality of the evidence. However, courts lack the technical expertise and forensic infrastructure to evaluate the evidence. Without expert forensic evidence, this evaluation cannot effectively take place, leaving the question unresolved.

Though VSA's reforms improve the prevailing regime, these do not address the concerns related to the authenticity and reliability of social media evidence. While the new and expanded definition of electronic records is a positive step, it is important to note that just having a definitional expansion does not alleviate the practical challenges associated with authentication, attribution, timestamp reliability, screenshot fabrication, or access to crossjurisdictional evidence. The failure to include authentication of social media messages, standardized forensic protocols, and a mechanism to obtain authenticated data from foreign platform providers, indicates that the reforms do not go far enough.

The letter B is often used to signify a "bad" status, such as in a "B-grade" film. Likewise, there are other explanations that pertain to the letter's geometric properties. Read here to find out more about the significance of the letter B in numerology.

The letter A holds a special significance in the English language. As the first letter of the alphabet, A is often considered to be a special letter. In 2015, Chinese Emperor Wu declared it to be the fifth letter of the alphabet. The letter A has also been recognized in the Greek alphabet as a “vowel”.

Other uses of the letter B include the berry. As a fruit, the berry is not as popular as other fruits. However, some garden berries like blackberries, raspberries, and strawberries are cultivated.

A further explanation of this can be found in an explanatory letter. The letter B appears in the explanatory letter. The explanatory letter is a clear case of suspension.

Explaining the meaning of the letter B is no problem since I would never do anything in writing. I am writing to state the position of LOUB. The letter B means that suspension from phase two is not authorized.

B. Furthermore, Limitations to Judicial Practice

The review of judicial decisions on social media evidence reveals inconsistencies in the approach of Indian courts to the existing framework. A few judges have rigorously applied the Section 65B requirements and refused to accept uncertified social media evidence while others have admitted such evidence. This was based on the general principles relating to secondary evidence, but on a substantive rather than a formal basis. Some courts have been careful in verifying the authenticity and attribution of social media content while others have accepted screenshots without forensic scrutiny.

This lack of consistency is troublesome as it engenders uncertainty for litigants, leads to potentially unjust results in individual cases, and compromises the systematic reliability of social media evidence in Indian courts. The differences in interpretation and application are worth noting. On the one hand, they reflect a genuine difficulty in applying a framework designed for a different technological environment to the unique challenges presented by social media evidence. On the other hand, it also indicates the limited technical literacy of many judicial officers in relation to digital forensics and social media technology.

C. The Deficit of Forensic Infra

The most important practical constraint on the adequacy of the existing framework is the lack

of forensic infrastructure and expertise required to implement even the existing requirements. India has a limited number of digital forensic laboratories possessing the capability of carrying out advanced social media forensics. This includes the extraction and analysis of social media data from devices, the detection of screenshot manipulation, recovery of deleted social media content and forensic examination of metadata. Many of these labs are in metropolitan areas, resulting in geographic variations in forensic services. There is considerable variance in the quality and reliability of forensic reports from different laboratories, without clear court guidance or standards of forensic practice to which such reports should adhere.

Due to the lack of forensic stamping, even where the legislation creates requirements for proving the authentication and reliability of electronic evidence, the practical capacity to show compliance is limited. A legal regime cannot be said to be adequate in practice if it cannot be implemented due to infrastructure problems, however, adequate it may be in theory.

VIII. COMPARATIVE PERSPECTIVES

A. The United States: Federal Rules of Evidence

According to the Federal Rules of Evidence, the U.S. developed a relatively sophisticated case law for the authentication of social media evidence. Federal Rules of Evidence Rule 901 applies in Federal Courts that require evidence be authenticated by evidence sufficient to support a finding that the item is what the proponent claims it is and courts have developed specific methods for applying that standard to social media evidence.

The US approach highlighted in *Griffin v. State* (Maryland Court of Appeals, 2011) and further developed in other federal and state court decisions calls for social media evidence to be authenticated through direct and circumstantial evidence. Direct authentication evidence may include the account holder's testimony, evidence from the supplier or forensic evidence linking the activity to a device or geographic location. Circumstantial evidence of authentication may include the contents of the communications themselves; cross-references to other evidence; and evidence about the account's history and characteristics.

The US approach's focus on the sufficiency of authentication evidence rather than on a specific certification requirement lends more flexibility for handling the diverse way social media evidence can manifest. Yet, the lack of a specific certification mechanism also means that the

authentication standard may be weaponized differently by different courts and judges. This is another form of unpredictability.

B. Laws governing justice matters in the UK

The authentication of digital evidence in the UK is primarily guided by the Civil Evidence Act 1995 and the Police and Criminal Evidence Act 1984 (PACE). Under the Act, there is a presumption that computer-generated evidence is reliable. This presumption can be rebutted through evidence that the machine was defective or tampered with. Section 69 of the Police and Criminal Evidence Act originally required a certificate of proper functioning for computer evidence for use in criminal proceedings, but this provision was repealed by the Youth Justice and Criminal Evidence Act 1999. This repeal can be interpreted as a legislative judgment that the presumption of reliability is more appropriate than the requirement for certification.

According to the UK approach, the Post Office Horizon IT scandal is a classic case of getting punished for being too smart. The innocent sub postmasters were convicted on flawed computer evidence which courts assumed to be reliable. The UK approach has been accused of being too lenient of accepting digital evidence without adequate authentication checks. In the UK, this cautionary tale has rekindled interest in the adequacy of the evidentiary framework relating to digital evidence. It has also raised again the possibility of reintroducing stricter authentication requirements for evidence originating from complicated and opaque computer systems.

C. The European Union: GDPR and Evidence as an Effect

The General Data Protection Regulation (GDPR) of the European Union has indirectly important implications for the use of social media evidence in EU member state courts. The requirements of data minimization, purpose limitation, and data subject rights in GDPR impose restrictions on collecting, storing, and using social media data which impact the evidence-gawking avenues available to public authorities and private litigants. The GDPR's provisions on the right to erasure and the right to data portability are especially relevant to social media evidence as they enhance the ability to collect evidence (data portability) while also facilitating the destruction of evidence (erasure).

The upcoming AI Act and Digital Services Act of the EU impose mandatory transparency

obligations on the major social media platforms, as well as requirements for human oversight of algorithmic decision-making, to the extent that it becomes evidence. With increased transparency of the platforms, prescribed by these regulatory instruments, it may be possible in the future to rely less on the unilateral cooperation of platform providers and more on verifiable tools.

IX. RECOMMENDATIONS FOR REFORM

A. Enact Specific Rules To Authenticate Apparent Social Media Evidence

The legislative reforms most urgently required are those relating to the introduction of provisions specifically to regulate the authentication of social media evidence by way of amendment of the Bharatiya Sakshya Adhiniyam or through a separate digital evidence legislation. The provisions should create a tiered authentication regime for social media evidence that distinguishes between different categories of evidence and prescribes authentication requirements appropriate to each.

For direct evidence obtained from the Platform Provider through legal means, the Platform's attestation of the accuracy and completeness of the information provided should be treated as authentication. The first authentication mechanism for the evidence taken from devices through forensics is their forensic examination report from certified labs. In case of absence of forensic examination of screenshots, there should be a presumption of inauthenticity unless corroborated by other evidence. This is the opposite of the present de facto presumption of authenticity which many courts apply to screenshots.

B. Make it Compulsory to Have Social Media Evidence Forensic Standards.

The government, through a technically competent agency, should lay down mandatory forensic standards for the collection, preservation and authentication of social media evidence with representation by law enforcement, digital forensics, academia and the legal profession. The social media forensic standards must investigate the challenges of social media forensic investigations. It must include procedures related to device examination, data extraction, metadata preservation, screenshot verification, and the chain of custody of social media evidence. To admit forensic reports on social media evidence, it is suggested that compliance with certain criteria and standards should be a prerequisite.

Furthermore, these standards must be published, updated regularly, and made freely available to all parties concerned.

C. Create a mechanism for fast-track data requests from platform providers

India should consider negotiating bilateral agreements with the home countries of the major social media platforms, particularly the US, as most major platforms are incorporated there. This would help in expediting the processing of requests for social media data from Indian law enforcement agencies. The current framework of MLAT cannot suffice the timesensitive need for digital evidence in Indian litigation. A dedicated fast track mechanism for requesting social media evidence will greatly enhance availability to platform-verified authentication data. The effective functioning of the MLAT framework depends on the establishment of a proper inquiry and criminal charges against individuals within the jurisdiction of requesting states.

D. Establish a National Digital Forensics Infrastructure

The government must devote serious consideration and investment in establishing a national network of accredited digital forensic laboratories, capable of performing social media forensics according to international standards. It should incorporate federal laboratories with advanced capabilities that are centralized, as well as regional laboratories with more distributed access for state/territory law enforcement and courts. Laboratory accreditation must be made mandatory and should be subjected to periodic audits by an independent technical body. Forensic reports from non-accredited laboratories must not be admitted in evidence as expert evidence.

E. Establish court programs on digital evidence and forensics

The National Judicial Academy, in partnership with Supreme Court, High Courts and relevant technical institutions, should develop and implement comprehensive training programmes for judges and judicial officers in digital evidence. The training programme must have a specific module for social media evidence, screenshot authenticity, metadata analysis and scrutiny of digital forensic reports. All new judicial officers should be given such training at the time of induction. Serving judges should be given continuing education on the same. It should be made mandatory that all judges being appointed to the court regularly dealing with cybercrime, commercial or matrimonial cases involving substantial digital evidence complete training

modules on digital evidence.

F. Impose obligations for evidence preservation

The law should impose mandatory preservation obligations on parties who foresee litigation and who know of the relevant social media evidence. The obligations require the parties to preserve relevant social media content in its native digital format, and not mere screenshots. To maintain records of the preservation process which establishes chain of custody. To disclose all the relevant social media evidence to the other parties and to the court. When a party fails to comply with their preservation obligations, particularly the offending party, robust sanctions should flow, including adverse inference instructions, cost orders, and even in appropriate cases, contempt of court findings.

X. CONCLUSION

The evidentiary value of social media accounts for an increasingly significant part of litigation in India; however, the legal framework dealing with its admissibility, authentication, and reliability is obviously insufficient to meet the scale and complexity of the challenge. Based on the main research question that examines whether current law is sufficient to validate and verify the authenticity of social media evidence, the analysis of this paper leads to a conclusion. In particular, the current law is not nearly adequate in several ways.

The Section 65B certification framework provides a general mechanism for the admissibility of electronic records, including social media content. However, it does not address the specific challenges regarding the authenticity and reliability of social media evidence. These are issues which would include a lack of forensic endorsement regarding the ease of screen-grab fabrication, the attribution problem, the issue of good faith service provider error, the unreliability of timestamps, and the challenge of cross-jurisdictional access to data. Of equal significance is the implicit forensic infrastructure deficit, impacting on the effectiveness of even these existing requirements. Despite introducing some useful amendments, the Bharatiya Sakshya Adhiniyam, 2023 fails to comprehensively address these issues.

Judicial jurisprudence on social media evidence is developing but is inconsistent and insufficiently sensitive to the distinctive technical challenges posed by the authentication of social media evidence. Different levels and jurisdictions of Indian courts apply different

standards of scrutiny in the authentication of social media evidence leading to unpredictability for litigants and potentially causing injustice in individual cases.

The proposed reforms outlined in this paper including specific social media authentication norms, mandatory forensic standards, fast-track mechanisms for international cooperation, development of national forensic infrastructure, judicial training, and mandatory evidence preservation obligations represent a comprehensive legislative, institutional, and capacitybuilding agenda to strengthen legal framework for social media evidence in India. Carrying out this agenda needs sustained political will, inter-institutional coordination, and considerable investment but the stakes the reliability and integrity of evidence in Indian courts warrant no less.

In India, the impact of social media is not limited to the social or economic domain but is also making inroads into the political and other spheres of life. Hence, the evidentiary questions that social media raises will continue to grow in significance and complexity. The question of whether the law is adequate for social media has fundamental importance. We discuss if social media evidence is reliable enough, and if we should allow courts and other institutions to use them to produce just outcomes. India should act to make sure it is not too late for India's response.

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