

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 4

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

A Concise Examination of the Legal Profession in the Context of Social Media

AARTI SANJAY SALUNKHE¹

ABSTRACT

The advent of social media has transformed the landscape of communication and interaction in the digital era. Its widespread adoption has turned social media platforms into significant repositories of potential evidence within the legal realm. This article delves into the impact of social media on the legal domain and the legal profession, encompassing aspects such as the law of evidence. Additionally, it scrutinizes the challenges and opportunities that social media presents to legal practitioners.

The exponential surge in social media usage has broadened the horizons of electronic evidence available in legal disputes. Social media content, comprising posts, messages, photos, videos, and comments, can play a pivotal role as evidence in a range of legal cases, spanning from civil disputes to criminal investigations. However, the authentication of social media evidence poses a considerable challenge, given its susceptibility to manipulation, fabrication, or deletion.

Furthermore, the utilization of social media evidence gives rise to privacy concerns, prompting courts to balance the imperative for relevant evidence with the safeguarding of individuals' privacy rights. Introducing social media evidence often involves navigating the intricacies of the hearsay rule, a task made complex by the prevalence of out-of-court statements on these platforms.

Preserving social media evidence is imperative to prevent spoliation and uphold data integrity. Legal professionals are tasked with educating their clients about the obligation to safeguard social media content when litigation is anticipated or initiated.

Social media investigations have become an integral component of the pre-trial process, empowering lawyers to gather information about opposing parties, witnesses, or jurors. However, ethical considerations and adherence to rules of professional conduct are crucial to maintaining the integrity of such investigations.

Keywords: legal, social, evidence, challenges.

I. INTRODUCTION

The rise of social media has marked an era of unparalleled connectivity and digital interaction, fundamentally altering the dynamics of communication and information-sharing. With billions

¹ Author is a Principal at Subhash Desai Law College, Kandivali (East), Mumbai, India.

of users spanning various platforms, social media has seamlessly integrated into modern society, exerting influence across nearly every facet of human existence, including the legal landscape.

In recent times, the impact of social media on the law of evidence has become a compelling and intricate subject of discussion within the legal community. The copious amounts of data generated daily on these platforms present a rich source of potential evidence in legal proceedings, spanning from civil litigation to criminal trials. Legal professionals, judges, and scholars are now contending with the challenges and opportunities arising from this rapidly evolving digital realm.

This article explores the profound influence of social media on the legal profession, examining how this technological phenomenon has redefined the collection, presentation, and evaluation of evidence in contemporary legal practice. We will delve into the advantages of social media as a valuable evidence source, as well as the intricate legal considerations surrounding its admissibility in courts.

Furthermore, we will scrutinize the authentication challenges posed by social media evidence, where content is susceptible to manipulation or misattribution. Privacy concerns also stand out as a crucial aspect, requiring courts to navigate the delicate balance between obtaining pertinent evidence and safeguarding individuals' privacy rights in the digital age.

Additionally, the preservation and potential spoliation of social media evidence present practical challenges for legal professionals. The obligation to safeguard relevant data and the potential repercussions of failing to do so demand meticulous consideration in the pursuit of justice.

Lastly, we will address the emergence of social media investigations as a vital component of pre-trial strategy. Lawyers now leverage these digital investigations to gather intelligence on opposing parties, witnesses, and potential jurors. However, ethical considerations and adherence to rules of professional conduct are imperative to preserve the integrity of such investigations.

II. SOCIAL MEDIA AS SOURCE OF EVIDENCE

(A) Utilization of Social Media as Evidence in Legal Matters

Social media has emerged as a substantial and influential source of evidence across various legal contexts. The extensive amount of user-generated content on social media platforms renders them invaluable repositories of information applicable to a diverse range of legal

proceedings. The following key points underscore the significance of social media as a source of evidence:

1. **User-Generated Content:** Social media platforms encourage users to publicly share their thoughts, opinions, experiences, and interactions. Consequently, individuals' posts, messages, photos, videos, and comments can serve as potential evidence in legal cases.
2. **Real-Time and Spontaneous Nature:** Social media content is often posted in real-time, offering an immediate reflection of the user's thoughts and emotions. This provides valuable insight into a person's state of mind, intentions, and actions at a specific moment.
3. **Demonstrating Events and Relationships:** Social media posts can establish the existence of relationships, events, or interactions crucial to a case. This includes demonstrating personal relationships, alibis, timelines, and activities of individuals involved.
4. **Publicly Accessible Information:** Social media content is often publicly accessible, eliminating the need for a subpoena or court order to obtain and use it as evidence.
5. **Impeachment of Credibility:** Inconsistencies between statements made on social media and those presented in court can be used to challenge a person's credibility as a witness.
6. **Digital Footprint:** Social media content leaves a digital footprint, valuable for tracking individuals' actions, associations, and interests over time, especially in cases involving cyberbullying, harassment, or online threats.
7. **Identifying Relevant Witnesses:** Social media aids in identifying potential witnesses or individuals with pertinent information who may not have been initially known to the parties involved.
8. **Discovery and Litigation Strategy:** Lawyers conduct social media investigations during the discovery process to gather evidence supporting their case or undermining the opposing party's arguments.
9. **Business and Intellectual Property Cases:** Social media content serves as evidence in cases involving intellectual property infringement, defamation, false advertising, or contractual disputes related to online activities.
10. **Social Media Metadata:** Besides content, social media metadata, including

timestamps and location data, is crucial for establishing the authenticity and context of presented evidence.

(B) Authentication Challenges

Authentication challenges pose significant hurdles when using social media as evidence in legal proceedings. The dynamic and digital nature of social media content makes it susceptible to manipulation, fabrication, or misattribution. Ensuring the authenticity of social media evidence is crucial for establishing its reliability and credibility in court. Key authentication challenges include:

1. **User Identity Verification:** Determining the true identity of a social media user is critical due to the ease of creating and impersonating usernames, profiles, and handles.
2. **Account Privacy Settings:** Accessing private content without proper authorization or consent raises privacy concerns and can impact evidence admissibility.
3. **Content Editing and Deletion:** Establishing the authenticity of social media content is essential, considering posts can be edited or deleted after publication.
4. **Fake Accounts and Trolls:** Distinguishing between authentic content and that generated by malicious actors on social media platforms is challenging but essential for accuracy.
5. **Screenshots and Digital Manipulation:** Screenshots of social media content may be altered, necessitating proper attribution and validation of authenticity.
6. **Metadata and Timestamp Verification:** Careful examination is required to ensure the authenticity of metadata, which may include timestamps and location data.
7. **Chain of Custody:** Documenting the collection, storage, and handling of social media evidence establishes a proper chain of custody, ensuring integrity.
8. **Platform Changes and Updates:** Lawyers must adapt to changes in social media platforms that may affect the presentation and appearance of evidence.
9. **Jurisdictional and Cross-Border Challenges:** Authentication of social media evidence from international platforms may involve different legal standards and procedures.
10. **Hearsay and Authenticity:** The prevalence of out-of-court statements in social media content requires careful assessment of relevance, reliability, and admissibility.

(C) Privacy Concerns

Privacy concerns present complex challenges in using social media as evidence in legal proceedings. Although social media platforms offer a wealth of potentially relevant information, accessing and using this data raises ethical and legal dilemmas related to individuals' privacy rights. Key privacy concerns include:

1. **Public vs. Private Information:** Lawyers and investigators must exercise caution when accessing private information without proper consent or legal authorization.
2. **Expectation of Privacy:** Users may have a reasonable expectation of privacy for certain content shared on social media, especially in direct messages or private groups.
3. **Third-Party Involvement:** Collecting social media evidence may involve third parties, and revealing their private information without consent can raise significant privacy concerns.
4. **Location and Geotagging:** Location data through geotagging in social media posts can be sensitive, especially in cases where privacy is a primary concern.
5. **Cyber Stalking and Harassment:** Social media evidence may expose individuals to harassment or stalking, especially when private information is disclosed without consent.
6. **Data Retention:** Concerns arise about the storage duration of user data on social media platforms, even after deletion or deactivation of accounts.
7. **Identity Theft and Fraud:** Social media content may be exploited for impersonation or fraud, emphasizing the need to safeguard personal information shared on these platforms.
8. **Inadvertent Sharing:** Using unintentionally shared information as evidence may raise ethical concerns, highlighting the importance of considering the unintentional disclosure of sensitive information.
9. **Cross-Border Data Transfer:** Storage of social media data in multiple jurisdictions raises questions about which privacy laws apply and ensuring compliance with different regulations.
10. **Minimization of Collection:** Adhering to the principle of data minimization when collecting social media evidence ensures access and use of only specific information directly relevant to the case.

(D) Investigations in Social Media

Social media investigations involve the collection and analysis of information from social media platforms for legal, corporate, or investigative purposes. The prevalence of these investigations has risen due to the extensive information voluntarily shared by individuals on social media. Various entities, including legal professionals, investigators, law enforcement, and private organizations, conduct social media investigations to gather intelligence, evidence, or pertinent information about individuals or events. Below is an overview of social media investigations:

1. **Scope of Investigations:** Social media investigations encompass a broad spectrum of legal and non-legal matters, including criminal investigations, civil litigation, background checks, employment screening, insurance fraud, intellectual property disputes, and more.
2. **Open-Source Intelligence (OSINT):** Social media investigations often fall within the domain of open-source intelligence (OSINT), involving the gathering of information from publicly available sources. This information is accessible to investigators and others without the need for authorization or hacking.
3. **Public vs. Private Content:** Social media investigations focus on gathering publicly available content. Accessing private or restricted content without proper authorization is considered unethical and potentially illegal.
4. **Legal and Ethical Considerations:** Social media investigators must adhere to legal and ethical guidelines. Respecting individuals' privacy rights is crucial, and investigators should refrain from engaging in deceptive practices or misrepresentation to gain access to private information.
5. **Platform-Specific Tools:** Investigators utilize specialized tools and software to streamline data collection and analysis across various social media platforms. These tools assist in monitoring, searching, and efficiently capturing relevant content.
6. **Verification of Information:** It is imperative for investigators to verify the authenticity and accuracy of the information obtained from social media. Relying solely on unverified information can lead to misinterpretations or erroneous conclusions.
7. **Geolocation and Timestamps:** Social media platforms often provide geolocation data and timestamps on posts, valuable for establishing the time and location of events or activities.
8. **Impact on Legal Cases:** Social media investigations can significantly influence legal

cases by providing evidence, locating witnesses, uncovering potential motives or inconsistencies, and corroborating or impeaching witness statements.

9. **Ethical Boundaries:** Investigators must be mindful of ethical boundaries when conducting social media investigations. Practices such as direct contact with subjects, impersonation, or creating fake accounts should be avoided.
10. **Admissibility in Court:** Social media evidence gathered through legal and ethical means can be presented in court, subject to authentication and relevance requirements. Courts may scrutinize the methods used to obtain the evidence and the accuracy of the presented data.

III. INTERNATIONAL CASES

United States v. Meregildo (2013)²: This case addressed the admissibility of Facebook posts as evidence and highlighted the importance of properly authenticating social media content.

Largent v. Reed (2015)³: This case involved the use of social media evidence to challenge a plaintiff's credibility, emphasizing the role of social media in influencing legal outcomes.

Lester v. Allied Concrete Co. (2014)⁴: In this case, a juror's Facebook post about the trial resulted in a mistrial, illustrating the impact of social media on juror conduct and the potential for bias.

CMC v. Salazar (2015)⁵: This case discussed the privacy concerns surrounding social media evidence and the need to strike a balance between accessing relevant data and respecting individual privacy rights.

State v. Nucci (2015)⁶: The court in this case ruled that social media evidence could be considered hearsay unless the original poster testified or other exceptions applied.

Lorraine v. Markel American Insurance Co. (2007)⁷: This case addressed the duty to preserve social media evidence and the implications of spoliation if relevant data is intentionally destroyed.

IV. WHAT IS A SOCIAL MEDIA TRIAL

The Internet provides access to vast amounts of information in mere seconds and allows users

² 883 F. Supp. 2d 523 (S.D.N.Y. 2012)

³ PICS Case No. 11-4463 (C.P. Franklin Nov. 8, 2011) Walsh, J.

⁴ [736 S.E.2d 699 \(Va. 2013\)](#)

⁵ CASE NO. 08-CV-2142-IEG (NLS) (S.D. Cal. Mar. 12, 2009)

⁶ 19-cv-01434-LB (N.D. Cal. May. 26, 2022)

⁷ 2002241 F.R.D. 534 (D. Md. 2007)

to broadcast their thoughts to millions and receive near-instantaneous responses through web-based “social networking” or “social media” services. These services include well known social networks like Facebook and Twitter. Social media refers to websites and applications which enable people to share content quickly and efficiently. Social media has become an integral part of each individual’s life as it is accessible through smartphones, computers, and tablets. Aristotle described the man as a social animal. Social media is a platform that makes this objective easily accessible. However, the intervention of the media in under-trial cases has become a common phenomenon. With social media into play, each person can indulge in freely giving their opinions without any communication barrier. The absence of any communication barrier reflects that the opinions or views expressed are at a global portal, and these opinions might play an effective role in framing the views of others.

Reincarnated as the public court, the media separately starts an investigation and forms public opinion. Under the democratic form of the government, it’s healthy to have a social media functionary to express opinions freely under freedom of speech and expression. However, most of the time, the freedom of expression controversy is created due to the sub-clause (2), Article 19 of the Constitution of India. It does not embrace the freedom to contempt of court. Though social media helps to bring change in society sometimes it is driven by selfish or fake reasons.

Social media trial is an intrusion and an ethical breach. It has become a trend that social media performs the function of the judiciary of investigating the truth. The judiciary system has the key responsibility to provide justice to society in stipulated time. Nonetheless, practically it is now hardly seen. Not only people wait to obtain justice for years, but also they sometimes become bound for oblation to buy justice. Thus, in the developing countries, media trials are getting prominent day by day due to the extreme pendency problem and decreasing trend of faith in the judicial system, the public supports the trend of trial by media.

V. IMPACT ON THE SOCIETY AND LEGAL SYSTEM

Social media trial is wherein the individuals themselves do a separate investigation and form public opinion against the accused even before the court takes cognizance of the case. It creates prejudices in the public and sometimes even judges. Due to this the accused, instead of being assumed innocent is presumed to be a criminal. It not only interferes with the “administration of justice” but also propagates a false message to society. The society starts forming their opinions based on their own notions rather than relying on the judiciary.

Social media is a very powerful medium that affects and molds public opinion. Through reporting inadmissible evidence and putting it into the public domain, the media draws the

judge's attention to details that are not to be addressed in adjudicating the case and could subconsciously influence the judge's judgment. The other thing is organizational fairness. The court's judgment is based on biases and challenges in the path to justice and fairness. Under our law a suspect/accused has the right to a fair trial and is presumed to be innocent until proven guilty in a court of law. Thus, their prejudices emerge as a vice to society that influences public minds. The most famous example is the KM Nanavati Case ⁸, where the public opinion affected the conviction of the accused.

Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression and Article 19(2) allows for reasonable restrictions to be imposed by law for the purposes of 'Contempt of Court' including. Art. 19(2) does not apply to 'administration of justice,' but interference in the administration of justice is specifically referred to as contempt in the definition of 'criminal contempt' in Section 2 of the Contempt of Courts Act, 1971 and Sec. 3 thereof. Consequently, publications that interfere with or appear to interfere with the administration of justice constitute criminal contempt under that Act, and where the terms of that Act enforce restitutions in order to avoid such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

The Supreme Court in *A.K. Gopalan v. Noordeen* ⁹ held that a publication which is made after the 'arrest' of a person amounts to contempt if it is biased to the suspect. Criminal contempt is divided into three types: scandalizing, prejudicing trial and hindering the administration of justice. The principle of natural justice states that "every accused has a right to a fair trial" and the principle "justice may not only be done it must also seem to be done" reflects the need of a fair trial. Contempt was introduced to prevent unjust and unfair trials. Publications of any sorts should not poison the minds of jurors or attempt to intimidate the witnesses in which the administration of justice is impossible, amounts to contempt.

VI. CONCLUSION

The undeniable significance of freedom of expression in a true democracy necessitates an effective platform for expressing opinions. Social media wields immense power, and if misused, it can severely harm a nation. Individuals bear the responsibility to ensure no harm is committed, and the public should enhance media literacy to discern fact from fiction. While social media serves as a platform for people's voices, recent cases like the bois locker room incident demonstrate its negative impact. A 12th-grade student's suicide resulted from false

⁸ 1962 AIR 605, 1962 SCR Supl. (1) 567

⁹ 1969 (2) SCC 734

allegations posted on social media, highlighting the toxic nature of such accusations. This emphasizes the need to halt instant social media trials.

Social media content, encompassing posts, messages, photos, videos, and comments, has become a significant source of evidence in various legal matters, ranging from civil disputes to criminal investigations. It proves useful in establishing relationships, demonstrating intent, impeaching credibility, and corroborating or refuting claims. However, the rise of social media evidence poses authentication challenges, with content susceptible to manipulation. Establishing authenticity has become critical, involving metadata analysis, digital forensics, and expert testimony.

The Judiciary and the Media constitute the third and fourth pillars of a democratic setup, indispensable for smooth system functioning. While the former should consider the latter's freedom and right to cover and disseminate court news in an open justice system, the latter should exercise due diligence and caution while reporting to preserve the former's sanctity and ensure a free and fair trial. Regulating the media through the Court's contempt jurisdiction is deemed appropriate, preventing breaches of the basic code of conduct. Social media's freedom of speech and expression must not prejudice the trial itself.

An ideal proposal currently suggests disallowing trials on social media, promoting regulated media coverage until media benefits shift from profit and sensational considerations. Social media should act as a facilitator rather than favoring one party. Challenges arise due to the widespread use of social media, the perception of social media discussions being less 'official,' and easy access to jurors' online information, presenting unique challenges to the justice system.

In the legal profession, social media's role will continue growing, impacting visibility and connections positively. By developing thoughtful strategies and adhering to best practices, legal professionals can maximize their online presence and positively influence their practice in a constantly evolving digital landscape.

In today's digital age, social media's impact spans industries and borders, and the legal profession is no exception. As lawyers and legal firms establish an online presence, understanding how social media changes the game becomes crucial. Analyzing and taking necessary steps to curb potential harm is imperative in this evolving landscape.
