

COMPATIBILITY OF WHATSAPP CHATS & EMAILS AS EVIDENCE- Ruchita Yadav¹**ABSTRACT**

Highlighting the importance of technology, frequent use of social media networking sites such as WhatsApp and Emails, the article delves into compatibility of the electronic records as evidences. The article, further addresses provisions of Indian statutes governing admissibility of WhatsApp chats and Emails as evidences. Landmark case laws of hon'ble Supreme Court and High Courts are mentioned to support the facts and arguments.

INTRODUCTION

Technology has advanced and has become an integral part of our lives. With the world getting digitalized, technology has laid foundation of society in contemporary times. Social media networking sites such as WhatsApp is commonly used for communication, for both personal and professional purposes. Emails are used by conglomerates, startups, businesses for carrying out routine professional activities. Coupled with widespread utilization of digital methods to encourage business deals and foster communications, it is critical to address the questions pertaining to inclusiveness of e-records such as WhatsApp chats and Emails as evidence in Indian Legal system. The article highlights adequacy of WhatsApp chats and Emails as evidence with relevant case laws.

MEANING AND NATURE OF e-EVIDENCE

The two important laws governing e-records are Indian Evidence Act, 1872 and Information Technology Act, 2000. Evidence is the available set of facts or information reflecting whether a proposition or claim is true or valid or, it's an information produced to develop confidence in the matter. Evidences are of two types:

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- Oral and Documentary
- Primary and Secondary

S.2(1)(t) of IT Act, 2000 defines e-record as “*data record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche*”. With S.3 of Indian Evidence Act, 1872 defining Oral and Documentary Evidence admits about admissibility of e-records as evidence specifying “*all documents including any e-record produced before the court for inspection can be treated as evidence*”. Further, S.62 of the I.E. Act defines primary evidence as document produced itself for inspection of the court and S.63 of the I.E. Act states meaning of secondary evidence as “*certified copies and oral accounts of the contents of the document*”.

The literal interpretation of the aforesaid provisions of the relevant acts directs that WhatsApp chats and emails can be treated as secondary evidence. The notion of the I.E. Act is that any e-record shall be produced in primary form, putting too much emphasis upon primary nature of evidence. But, generally, the printouts of screenshots of WhatsApp chats and emails are used for evidence.

S.65A and S.65B of the I.E. Act were incorporated in 2000 after much deliberation which deal with the evidentiary value of e-records. S.65A pontifies the contents of e-records may be proved in accordance with the provisions of S.65B. It means certain conditions explained in S.65B(2) needs to be fulfilled to admit secondary nature of e-records as evidence under S.65B.

These conditions are as following:

1. The output of computer/device containing such information shall have been delivered when it was constantly used to handle or store data pertaining to routine activities carried out and individual had legal command over utilization of the computer/ device.
2. Amidst this period, data was consistently entered in the ordinary course of routine exercises.
3. The computer/ device was working properly throughout the period and if it wasn't, it must be indicated that dysfunctionality of the computer/ device didn't influence content of the e-record.

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4. The contained information in the unoriginal copy shall have been reproduced or taken from the data fed into the computer while carrying out ordinary activities.

S.65B(4) of the Act states “*in order to admit the electronic record as evidence, it must be accompanied with a certificate signed by person occupying reasonable official position in relation to operation of relevant device or the management of the relevant activities stating that the electronic record fulfills the above-mentioned four conditions*”, over which the Supreme Court had dissenting views. But Justice R.F. Nariman in recent stance propounded the necessity of a certificate before admitting e-records as evidence.

Also, S.22A of the act emphasizes that until genuineness of e-records presented is proved, the oral submissions as to content of the e-records are not considered relevant in the eyes of law. Therefore, producing printouts of electronic evidence which is transmitted or stored digitally are compatible to be used as evidences. The admissibility of these evidences in courts has been changing from time to time, as evident through the landmark judgments of the Apex Court and High Courts.

COURT PRECEDENTS FOR ADMISSIBILITY OF e-RECORDS

The case, *State (NCT of Delhi) v. Navjot Sandhu*²(2005) dealt with the evidence and admissibility of cell phone’s call recordings.³ The accused argued, since no certificate is provided with the call recordings, so no dependence can be set on the cell phone records. Cross examination from a person familiar with the computer’s functioning established that the manner in which printouts of call recordings were taken was fit to demonstrate it as evidence. The Supreme Court didn’t compare the printouts to e-record and held that though producing certificate isn’t generally necessary and courts could concede printouts and compact discs as prima facie evidence without validation.

This 2005 judgment was later on overruled in *Anvar P.V. v. P.K. Basheer*⁴(2014) in which, the bench held that secondary information isn’t admissible without certificate and can’t be demonstrated by oral evidence.⁵ The Apex Court applied the principle of

²(2005) 11 SCC 600.

³Chandni Joshi, *Are WhatsApp messages admissible in court of law?*, Bhatt and Joshi Associates (May 25, 2021), <https://bhattandjoshiassociates.com/are-whatsapp-messages-admissible-in-court-of-law/>.

⁴(2014) 10 SCC 473.

⁵Santosh Subhash Pawar, *Admissibility and evidentiary value of electronic records*, Blog ipleaders (April 8, 2021), <https://blog.ipleaders.in/admissibility-evidentiary-value-electronic-records/>.

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generaliaspecialibus non derogant, i.e., special law will always preserve over general law and mandated the production of certificate to admit the secondary evidence of e-record.

This judgment was again overruled in *Shafhi Mohammad v. State of Himachal Pradesh*⁶(2018), in which the Supreme Court held that it is not mandatory to produce certificate unless these two conditions are satisfied:

1. Party not possessing the device from which the document is delivered can't be said to produce the certificate for validation⁷ under S.65B(4) of the Indian Evidence Act.
2. The pertinence of authentication being procedural can be relaxed by the court wherever interest of justice so legitimizes.⁸

The Apex Court, then, constituted a larger bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.*⁹(2020) in order to settle the two unique interpretations in above-mentioned cases. The Court stated that production of certificate is necessary obligation under S.65B(4) of I.E. Act to admit any e-record as evidence. The court clarified the difference between original document (the primary evidence) and output of computer containing the information (the secondary evidence). However, it won't be necessary 'only' in cases when original document is produced and oral evidence in place of certificate can't be admitted. The court further, held that secondary evidence is admissible only if it follows S. 65B in the way it expresses and not something else.

In several instances, High Courts have also considered WhatsApp chats as evidence. For example, in *Rakesh Kumar Singla v. Union of India*¹⁰(2021), the Punjab and Haryana High Court relied upon WhatsApp chats while granting a bail application and also held that without certificate it can't be treated as an evidence. The Gujarat High Court referred to WhatsApp chats while granting bail in *C.D.Sulekha v. State of Gujarat*¹¹(2021).¹²

⁶(2018) 2 SCC 801.

⁷Kalas Karnetra, Admissibility of e-evidence: Are WhatsApp chats and E-mails admissible in court?, Legal Services India, <http://www.legalserviceindia.com/legal/article-4632-admissibility-of-e-evidence-are-whatsapp-chats-and-e-mails-admissible-in-court-.html#:~:text=The%20Court%20held%20that%20messages,acknowledged%20the%20communication's%20physical%20copy..>

⁸*Ibid.*

⁹(2020) SCC Online SC 571.

¹⁰CRM-M No. 23220 of 2020 (O&M).

¹¹R/Criminal Miscellaneous Application No. 18834 of 2020.

¹²Santosh Subhash Pawar, Admissibility and evidentiary value of electronic records, Blog ipleaders (April 8, 2021), <https://blog.ipleaders.in/admissibility-evidentiary-value-electronic-records/>.

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The question comes forward now is about admissibility of forwarded messages on WhatsApp as evidence in Court of Law. This question was addressed in *Girwar Singh v. CBI*¹³ (2016) in which the Delhi High Court appointed a committee to check the authenticity of e-evidence. The committee found that evidence was copied numerous times and was neither the original document nor the copy of the original document. The court held such e-evidence to be inadmissible. In *National Lawyers Campaign for Judicial Transparency and Reforms v. Union of India*¹⁴(2019), the Delhi High Court refused to even regard forwarded WhatsApp messages as ‘document’ let alone its admissibility as evidence. Therefore, forwarded messages can’t be admitted as evidence.

Another question that spirals is what if the computer/ device was malfunctioning? The Karnataka High Court appropriately answers this question in *Sri. P. Padmanabh v. Syndicate Bank Limited*¹⁵, in which the court held that if the computer/ device is malfunctioning, then the output or information received cannot be treated as evidence.

The importance of blue tick in WhatsApp messages that’s been sent was addressed by the Bombay High Court in *SBI Cards and Installment Administrations Pvt. Ltd. v. Rohit Jadhav*¹⁶, that appearance of blue tick after sending a message infer the factual verification of the information sent as the Respondent had gotten the notice of message and it’s to be viewed as Legitimate evidence.

The question pertaining to admissibility of emails was addressed by the Calcutta High Court in *Abdul Rahaman Kunji v. State of West Bengal*¹⁷, wherein the court held that an e-mail downloaded and printed from email record of an individual can be proved evidence. The court stated that the declaration of witnesses to produce printed version of emails reflect the e-communication.

CONCLUSION

The Indian Legal system aptly dealt with the changing needs of society by considering WhatsApp chats and emails, in general e-records as admissible evidence thus, enhancing their adequacy for being legally binding as evidence as been evident in case laws. Constant

¹³ (2016) 5 RCR (Cri.) 757.

¹⁴Writ Petition (C). No. 191 of 2019.

¹⁵AIR 2008 Kant 42.

¹⁶2018 SCC Online Bom 1262.

¹⁷(2015)1CALLT318(HC).

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interaction over social media sites and engagement in conversations have been recognized by the government reflecting a positive mindset of Legislature.



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