

## Comparative Analysis using Digital Evidence in Various Nations

Gunjan Gupta\*

Department of Ergonomics, University of Delhi, Delhi, India

### DESCRIPTION

The world has made technological advancements by leaps and bounds. Technology, digitization, and electronics have taken over majority of our lifestyle. In this internet era we are surrounded by electronic devices that are constantly active as a network or individually at any given point of time. From the busiest metropolitan city to the remotest village every household seems to have at least one working electronic device.

The researcher would like to reiterate the fact that where on one hand technology has created advancements for the betterment of our lives, on the other hand it has also given many criminally minded people opportunities to exploit this very technology for their own ulterior motives. Nowadays every crime scene seems to be comprised of one or more forms of electronic evidence. Every time that technology has evolved, crimes involving such technology have also progressed to become more advanced and intricate.

As it is, the concept of electronic evidence is in itself elaborate and complex. In every crime scene the investigating authority is bound to come across some form of electronic record. These electronic records can either be in the form of solid tangible things such as mobiles, laptops, hard discs, etc. or can be in the form of 'true' electronic data which is intangible in nature. One must keep in mind that even though Indian legislators have classified electronic records as a part of documentary evidence, yet they are a unique form of evidence as compared to other conventional forms. While investigating a crime scene the investigating officers are faced with many challenges when dealing with electronic evidences. At the very outset, the investigating officer has to work out which electronic records are to be considered relevant for the case in point.

Electronic records or evidences are by nature very fragile. Without proper care they are susceptible to damage, manipulation, destruction etc. When it comes to collecting electronic evidences, the investigating officer must be competent and capable enough to pinpoint relevant evidences from the irrelevant ones. It is possible that due to a lack of technical knowledge and expertise, an investigating officer may end up

over-seizing evidences. As regards over-seizing of evidence, the researcher would like to point out that it is also a limitation of the electronic evidence itself that an electronic device contains both relevant as well as irrelevant information. Even if the investigating authority is able to narrow down the device that is relevant to the case it is not possible for him to resolve relevant information fed into the device from the irrelevant ones. This setback can be attributed to the fact that the investigating agencies have neither the technical know-how nor the proper tools to collect evidence specific to their case.

Being unaware of the current trends in the technological field many a times seizing of electronic records by investigating authorities have led to more trouble as there have been cases where data has been removed or destroyed remotely without their knowledge, or disconnecting the device has led to a loss of whatever information/evidence was to be found in the device. Likewise, challenges regarding storage of electronic records have also been faced by investigative agencies. Electronic records are volatile and vulnerable in nature. If not stored properly they are likely to get damaged due to their susceptibility to external forces like extreme weather conditions, electromagnetic waves, extreme shock, etc. If stored carelessly electronic evidences are also in danger of falling into the wrong hands and being tampered with or manipulated.

Maintaining a chain of custody is must in order to retain the veracity of the electronic evidence. In order to do so strict protocols should be followed regarding collection, proper sealing and authority over the evidence till the time it is transported to the forensic laboratories or produced before court. Upon examining all the information collected above, the researcher has come to the conclusion that the investigation techniques are still antiquated as compared to the current trends in technological advancements.

A perusal of the above-mentioned laws has shown that no provisions have been made either in India or on an international level in order to address the challenges faced by investigating agencies while handling electronic evidences. Every law of every country has highlighted the concept of best evidence rule. As per this concept emphasis has been given to the authenticity,

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**Correspondence to:** Gunjan Gupta, Department of Ergonomics, University of Delhi, Delhi, India, E-mail: [gunjanguptaclcdu@gmail.com](mailto:gunjanguptaclcdu@gmail.com)

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reliability, and integrity of evidence. Needless to say, electronic evidence has to adhere to this rule. The authenticity and integrity of evidence relies on the way it has been collected and documented at the very beginning of a criminal investigation. However, the governments and lawmakers of the world have neglected take into account these requirements when it comes to electronic evidence as they have not mentioned any protocols that authorities should follow in order to maintain the veracity of electronic evidences.

From the information gathered by the researcher it can be surmised that the police and other investigating authorities have been left to their own devices when it comes to formulation of rules and principles to be followed while carrying out an

investigation involving electronic records. Police stations come up with their own distinct internal rules that they follow. Such an example can be seen in the UK where the National Police improvement agency has ended up developing training courses that have been set up for investigators within and beyond the borders of UK. The pace at which the investigative processes are evolving is still slow compared to the rate at which the world is moving ahead. It is the need of the hour that law makers and legislators of the world not only find a way to keep up with such advancements in technology at a domestic level but also consider steps that need to be taken to work collectively, in a borderless virtual world created by technology, electronics, and digitization having far reaching impact.