



**DISSERTATION**  
**ON**  
**Digital Evidence and Its Character as the Best**  
**Evidence Rule in the Law of Evidence in Bangladesh**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

**Submitted To: Dr. Nabaat Tasnima Mahbub**  
**Assistant Professor, Department of Law**

**Submitted By: Adhora Ema Barua**

**ID: 2018-1-66-028**

**Date of Submission: 22-05-2022**

---

## Consent form



The dissertation titled “**Digital Evidence and its Character as the Best Evidence Rule in the Law of Evidence in Bangladesh**” prepared by **Adhora Ema Barua ID- 2018-1-66-028** submitted to **Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law** for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

.....

Signature of the Supervisor

Date:

---

## **Acknowledgement**

Firstly, I would like to thank the respected Chairperson and Assistant Professor of Department of Law, Dr. Md. Mehedi Hasan for facilitating the research program with such discipline.

I would like to acknowledge and give my warmest gratitude to my supervisor Dr. Nabaat Tasnima Mahbub (Assistant Professor, Department of Law, East West University). Her guidance and advice carried me through the completion of this Dissertation. And I would like to thank all of my faculty members of the law department who guided me to overcome my weaknesses throughout the journey of studying Law.

Finally, I would thank my family members and friends who supported me and encouraged me to pursue my dream.

---

## **Declaration**

I, Adhora Ema Barua, bearing student ID: 2018-1-66-028, declare that the work in this dissertation titled “Digital Evidence and its Character as the Best Evidence Rule in the Law of Evidence in Bangladesh” has been carried out by me. This is my original work and information used for this research has been duly acknowledged. I have not published this work in any Journal, Newspaper or Article.

---

## Table of Contents

<b>Abstract</b>	1
<b>List of Abbreviations</b>	2
<b>Introduction</b>	3
<b>1.1 Introductory Statement</b>	3
<b>1.2 Research Question</b>	3
<b>1.3 Research Justification</b>	3
<b>1.4 Research Methodology</b>	4
<b>1.5 Literature Review</b>	4
<b>1.6 Scope and Limitations of the Study</b>	4
<b>1.7 Dissertation Outline</b>	5
<b>Chapter 2</b>	6
<b>Best Evidence Rule &amp; Digital Evidence</b>	6
<b>Conceptual Understanding, Background and Significance</b>	6
<b>2.1 Introduction</b>	6
<b>2.2 Concept of Evidence in Law</b>	6
<b>2.3 Background and History of Best Evidence Rule</b>	7
<b>2.4 Origin, Concept, and Objectives of Digital Evidence</b>	7
<b>2.5 Potential and Importance of Digital Evidence in Bangladesh</b>	9
<b>2.6 Conclusion</b>	9
<b>Chapter 3</b>	10
<b>Digital Evidence in Bangladesh: Significance and Need for Reform</b>	10
<b>3.1 Introduction</b>	10
<b>3.2 Judicial Decision on the Admissibility of Digital Evidence in Bangladesh</b>	10
<b>3.3 Guidelines regarding the Application of Digital Evidence in Bangladesh</b>	12
<b>3.4 Reform in incorporating Digital Evidence in Bangladesh Legal System</b>	13
<b>3.5 Importance of Digital Evidence and its status as Best Evidence rule</b>	13
<b>3.6 Effects of Considering Digital Evidence as Primary and Direct</b>	14
<b>3.6 Conclusion</b>	15
<b>Chapter-4</b>	16
<b>Scope and Application of Digital Evidence in other countries</b>	16
<b>4.1 Introduction</b>	16
<b>4.2 International Standard of Digital Evidence</b>	16
<b>4.3 Use and Application of Digital Evidence in Other Countries</b>	18

---

<b>4.4 Conclusion</b>	22
<b>Chapter 5</b>	24
<b>Conclusion</b>	24
<b>5.1 Findings</b>	24
<b>5.2 Recommendations and Suggestions</b>	25
<b>Bibliography</b>	26

---

## **Abstract**

Civilization is evolving and progressing. The transition was brought about by science and technology. People are becoming increasingly reliant on science and technology. Dependence not only makes people's lives simpler, but it also has bad repercussions. The growing use of digital technologies has affected humans and their lifestyles. Likewise, crime has diversified. It has become critical to adopt new strategies to combat crime to sustain the rule of law in society. Digital proof may help deter such crimes. With its attributes, digital evidence can collect and analyze data to draw findings. Digital evidence can help ensure that justice is served in court. To convict and prevent crime, digital evidence may be one of the most effective strategies to use in Bangladesh's judicial system. The current dissertation attempts to provide insight into the notion, potential legal applicability, and limitations of digital evidence as to the best evidence in Bangladesh.

## List of Abbreviations

ATM	Automated Teller Machine
CD	Compact Disc
DNA	Deoxyribonucleic Acid
GPS	Global Positioning System
HMDEAA	Harmonized Model for Digital Evidence Admissibility Assessment
ICC	International Criminal Court
UK	United Kingdom
USA	United States of America
UNCITRAL	United Nations Commission on International Trade Law



# Chapter 1

## Introduction

### 1.1 Introductory Statement

Laws are binding norms for all community members. Laws protect our civil liberties and public safety. The rules of evidence in court are governed by the law of evidence. Evidence Law outlines the fundamentals of collecting evidence. The court can only make inferences based on evidence. Our lives have become digital and internet-based. The increase in data has led to electronic evidence. It was initially used to punish computer crimes. But nowadays practically every crime has a digital artifact. Evidence abounds on the web because computers, phones, and GPS devices are becoming more prevalent, digital evidence processing becomes more important in criminal investigations and prosecutions. Data in court includes fingerprints, blood samples, DNA samples, witness testimony, and electronic data. Despite this, digital evidence is not covered by Bangladeshi law. The emergence of Digital Evidence in Bangladesh will open up new possibilities. The research will look into the feasibility of using digital evidence and considering digital evidence as best evidence in the Bangladesh legal system.

### 1.2 Research Question

Research questions in the paper will be of two types including both the main research question and subsidiary research question. The subsidiary research question will be key to answering the main research question.

Main Research Question- What are the prospects and challenges of the admissibility of digital evidence within the scope of the best evidence rule in the law of evidence in Bangladesh?

Subsidiary Research Question- To what extent digital evidence and its admissibility within the ambit of the best evidence rule may be regarded as a convenient tool for securing ends of justice?

### 1.3 Research Justification

Evidence is the key by which a court renders a decision. Without evidence law, there will be no proof, and with no proof there will be no verdict. Thus, Evidence possesses tremendous relevance in both civil and criminal procedures. But not all evidence is acceptable in the court, because not all evidence can serve the objective of providing fair and just judgment.

Whereas the best evidence rule in Evidence law puts considerable focus on the original evidence holding the notion that only the original of the document will be accepted unless there is a justifiable cause that the original cannot be utilized. On the other side, Digital Evidence can be easily created, edited, or distorted. It is difficult for the court to verify the validity and admissibility of digital evidence gathered without any modification. To verify the facts and avoid a legal error. Determining whether digital evidence is the best evidence in Bangladesh will be the focus of the research paper. Also, the Evidence Act of Bangladesh does not address or include digital evidence. Thus, the fundamental goal of the research is to establish a legal framework for incorporating Digital Evidence into the Evidence Act, 1872, Bangladesh.

#### **1.4 Research Methodology**

The research will be conducted following the qualitative research method. The tools in books, journals, articles, and legal perspectives regarding Digital Evidence of various countries will be discussed and analyzed to reach the purpose of this research. As primary Sources, this dissertation has relied on Acts of parliament and Judicial decisions. And as Secondary Sources, it has relied upon books (textbooks, literary criticism), Editorials and commentaries, Encyclopedias, Journal articles, Reviews, Theses, etc.

#### **1.5 Literature Review**

Digital Evidence is progressively making its way into many judicial systems, and it has sparked a slew of legal debates about its relevance. The research is depended on the journal *Relevancy and Admissibility of Digital Evidence: A Comparative Study*, Shweta & Ahmed, provided a comparative analysis of the admissibility and challenges of Digital Evidence in India, the UK, and the USA. The author also took suggestions from *The Electronic Paper Trail: Evidentiary Obstacles to Discovery and Admission of Electronic Evidence*, Christine Sgarlata Chung and David J. Byer, the authors discussed the significance and legal framework of Digital Evidence and why it is difficult to discard, and how easily it can be manipulated. The author also consulted *Electronic evidence and its authenticity in forensic evidence* by Ahmad Fekry Moussa, and *An overview of the Use of Digital Evidence in International Criminal Courts* by Aida Ashour & Caleb Bowers.

#### **1.6 Scope and Limitations of the Study**

The research heavily relies on Journal articles available on the internet. For the research, no field study was conducted due to the lack of time and the Covid-19 Pandemic.

## **1.7 Dissertation Outline**

The scope, use, and significance of Digital Evidence in the present day in the context of Bangladesh will be the topic of the research study.

The second chapter of this dissertation will focus on the conceptual framework, background, and history of both Digital Evidence and Best Evidence Rule and their potentiality and importance of it in Bangladesh.

In the third chapter, this research will focus more on a comparative analysis of the judicial decisions and guidelines regarding the admissibility of digital evidence, a demonstration of whether digital evidence aids or hinders the path to justice in Bangladesh, and try to find the answer to whether Digital Evidence can be deemed the best evidence.

In the fourth chapter, the focus will be on the international and national standards for the application of digital evidence and identifying digital evidence as to the best evidence.

Lastly, the fifth chapter of this dissertation will infer the overall finding and possible anticipatory recommendations.

## Chapter 2

### Best Evidence Rule & Digital Evidence

#### Conceptual Understanding, Background and Significance

##### 2.1 Introduction

The Evidence Act was enacted under colonial legislation in the Indian Subcontinent many years ago. And it remains Bangladesh's most significant weapon for ensuring justice access. However, Technology has become a need as a result of its revolution and continued growth, as well as its creeping dependency on human existence. Science and technology breakthroughs have both benefits and drawbacks. As its wide applicability is contributing to increased crimes and more crimes are committed in cyberspace utilizing computer and digital technologies, it is now more important than ever to emphasize the use of digital evidence as a useful instrument in the legal system and for resolving real-world problems.

Thus, considering the issue, this chapter will discuss the concept of both the Best Evidence Rule and Digital Evidence alongside the origin, historical background objectives, and potentiality of Digital Evidence in Bangladesh.

##### 2.2 Concept of Evidence in Law

The law of evidence is an essential legal proceeding for the judicial system of any country. It encompasses the rules of legal principles that govern the proof and facts in a legal proceeding. The term "evidence" originally meant "the state of being obvious, plain, apparent, or notorious." However, it is used to describe something that tends to produce evidence or proof. The words uttered and things presented by witnesses before a Court of Justice are commonly referred to as "evidence" in English law.<sup>1</sup> In other instances, it refers to the facts established by such words or things and used to draw inferences about other fittest not so established. It is commonly used to assert that a particular fact is important to the subject under investigation.<sup>2</sup> The rules of evidence vary depending on the type of case. The law of evidence has certain norms, standards, and criteria for each litigation.

---

<sup>1</sup> Sumit Kumar Suman, *The Concept and Historical Background of the Evidence Law*, Academike, (April 4, 2015), < <https://www.lawctopus.com/academike/concept-historical-background-evidence/> > Accessed 10<sup>th</sup> March, 2022

<sup>2</sup> Ibid

## 2.3 Background and History of Best Evidence Rule

“The Best Evidence Rule” is a legal principle of great importance in the law of evidence. The origins of this rule date back to the 1800s. This rule states that if original evidence exists or can be obtained, no other evidence may be admitted in lieu of the best evidence. If the original is lost or damaged, a copy will be acceptable. However, a witness must attest to the copy's contents and affirm that it is an exact copy of the original. This rule first originated in 18<sup>th</sup> century British Law. It was further developed in the case OMYCHUND VS BARKER (1780)<sup>3</sup>, where Lord Hardwicke remarked that “there is but one general rule of evidence, the best that the nature of the case will allow”.<sup>4</sup>

However, with the introduction of electronic communications, some have questioned whether the best evidence rule is still valid. For example, In the UK the honorable Lord Denning stated that ‘nowadays we do not confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight and not to admissibility’.<sup>5</sup> In addition to this, The US Judicial system also denoted that secondary evidence is admissible if the original document is not available and that the best evidence rule applies in cases when a party attempts to substantiate a non-original document submitted in a trial.

## 2.4 Origin, Concept, and Objectives of Digital Evidence

### 2.4.1 Concept of Digital Evidence

Digital Evidence is a process of finding evidence and of Identification, preserving, extracting, and documenting such evidence derived from digital media like computers, mobile phones, servers, or networks which are or can be used in the court of law to solve or adjudicate case law. <sup>6</sup> Digital Evidence is basically of probative value. It is stored or transmitted in a binary form though later it was transformed from binary to digital. Computer evidence, digital audio, digital video, cell phones, and digital fax machines are all examples of digital evidence.<sup>7</sup>

---

<sup>3</sup> [1744] 125 ER 1310; [1744] Willes 538

<sup>4</sup> Fletcher W. Mann, *Best Evidence Rule--When Applied*, [1929], V 35, WUV The Research Repository, Issue 3, Article 9, P 1

<sup>5</sup> Garton v. Hunter [1969] 1 All ER 451 [1969] 2 QB 37

<sup>6</sup> Lawrence Williams, Digital Forensics, ‘What is Digital Forensics? History, Process, Types, Challenges’, 5<sup>th</sup> March, 2022, <<https://www.guru99.com/digital-forensics.html#:~:text=In%202000%2C%20the%20First%20FBI,identified%20issues%20facing%20digital%20investigations>> [10th March, 2022]

<sup>7</sup> Carrie Morgan Whitcomb, ‘An Historical Perspective of Digital Evidence: A Forensic Scientist’s View’ [Spring, 2002], Volume 1, Issue 1, International Journal of Digital Evidence, 4

Evidence found on digital devices such as telecommunications or electronic multimedia devices can also be considered. Electronic evidence includes emails, digital photographs, ATM transaction logs, word processing, documents, instant message histories, files saved from accounting programs, spreadsheets, internet browser history databases, contents of computer memory, backups, printouts, GPS tracks, and digital video or audio files.<sup>8</sup> Digital evidence is information or data saved on, received by, or transferred by an electronic device. A party to a lawsuit may use digitally stored or transmitted evidence at trial. It is "probative information stored or transmitted in binary form".<sup>9</sup>

#### **2.4.2 Background of Digital Evidence**

The birth of Digital Evidence has been a response to a demand for service from the law enforcement community. To meet the need the Federal Crime Laboratory directors in Washington DC formed a group known as Scientific Working Group Digital Evidence (SWGDE) in order to find latent Evidence on a Computer. The concept of digital evidence was proposed to federal laboratory directors on March 2, 1998. And for the first time in 2002, the Scientific Working Group on Digital Evidence (SWGDE) published the first book about digital forensics called "Best practices for Computer Forensics".<sup>10</sup>

#### **2.4.3 Objectives of Digital Evidence**

The primary goals of digital evidence are to assist in the recovery and preservation of computer and contemporary technology-related evidence to be used in court. It assists in determining the crime's motive, identifying the perpetrator, and designing procedures for suspected crimes without contaminating or modifying digital evidence. One of the most important goals is to be able to recover erased files from digital media, extract them, and validate long-lost items.<sup>11</sup>

---

<sup>8</sup> What Is Digital Evidence and Why Is It Important in 2021? [2021], CISOMAG <<https://cisomag.eccouncil.org/what-is-digital-evidence-and-why-its-important-in-2021/#:~:text=Today%2C%20digital%20evidence%20has%20multiple,important%20link%20in%20solving%20crimes.>> [Accessed 12th March, 2022]

<sup>9</sup> Whitcomb (n-7)

<sup>10</sup> Whitcomb (n-7)

<sup>11</sup> Lawrence Williams, Digital Forensics, 'What is Digital Forensics? History, Process, Types, Challenges', 5<sup>th</sup> March, 2022, <<https://www.guru99.com/digital-forensics.html#:~:text=In%202000%2C%20the%20First%20FBI,identified%20issues%20facing%20digital%20investigations>> [Accessed 12th March, 2022]

## 2.5 Potential and Importance of Digital Evidence in Bangladesh

The development of science has made life a whole lot easier where information can be communicated, generated and stored electronically, and the development, and progress of personal computers have also led to the development of crimes. An observation has been made in the Lorraine VS Markel case<sup>12</sup>, where the Chief United States Magistrate Judge Grimm of the United States District Court of Maryland motioned that “because it can be expected that electronic evidence will constitute much, if not most, of the evidence used in future motions practice or at trial, counsel should know how to get it right on the first try.”<sup>13</sup> Hence, it can be said that, without taking the aegis of electronic/ digital evidence, there cannot be a proper adjudication of most of the cases occurring in recent times.

Despite being a parent statute, the Evidence Act 1872 does not accept digital documents as evidence. Because of this, the provisions' scope and applicability are limited and cannot be applied effectively to ensure justice. The country now needs to officially incorporate digital evidence into its legal and judicial system. Bangladesh has seen the potentiality in cases like the Biswajit Murder case, Rajon Murder Case, Nusrat Murder, Abrar Murder case, and Rifat Murder Case.<sup>14</sup>

## 2.6 Conclusion

To meet needs, one must expand and adapt to a rapidly changing world and technological advancements. The Evidence Act of 1872 transformed the entire system of notions regarding the admissibility of evidence in courts of law. However, the rules of evidence were based on the conventional legal system. The world has changed a lot since then. However, it is regrettable that parts of Bangladesh have yet to adopt electronic/digital evidence regulations. However, if incorporated, our legislators and judiciary will be able to take even more effective measures to ensure justice and will be able to use this as a tool to accomplish so.

---

<sup>12</sup> 241 F.R.D. 534

<sup>13</sup> Ibid

<sup>14</sup> Khandker Saadat Tanbir, Admissibility of Digital Evidence in Bangladesh, 30 October 2021, BdJLS<[https://bdjls.org/admissibility-of-digital-evidence-in-bangladesh/?fbclid=IwAR0b92xGv8rRhOMvHj5pAZmUY8pUyLKjAftyJs0MpMr1J4\\_cSQEBzRGXLV8#:~:text=Including%20digital%20evidence%20through%20amendment%3A&text=%E2%80%9CAI%20documents%20including%20electronic%20records,evidences%20admissible%20before%20the%20Court](https://bdjls.org/admissibility-of-digital-evidence-in-bangladesh/?fbclid=IwAR0b92xGv8rRhOMvHj5pAZmUY8pUyLKjAftyJs0MpMr1J4_cSQEBzRGXLV8#:~:text=Including%20digital%20evidence%20through%20amendment%3A&text=%E2%80%9CAI%20documents%20including%20electronic%20records,evidences%20admissible%20before%20the%20Court)> [Accessed 12<sup>th</sup> March, 2022]

## Chapter 3

### Digital Evidence in Bangladesh: Significance and Need for Reform

#### 3.1 Introduction

To compete in today's world of science and technology, it must be more widely applicable. Bangladesh has envisioned a Digital Bangladesh that fully utilizes technology and assures that it is used throughout the country. Ensuring appropriate and proper use of technology requires strengthening our country's governing body and institutions. It is now more vital than ever to promote the use of digital evidence as a beneficial tool in the court system. Digital evidence is currently permitted under circumstances, including anti-terrorism tribunals, the cyber-crimes tribunal, speedy trial tribunals, and representatives of the law, justice, and parliamentary affairs.<sup>15</sup> Although the Information and Communication Technology Act, 2006 and the Digital Security Act, 2018 have been amended significantly, there are no clear or exact insertions of digital evidence in Bangladesh. Certain case laws in Bangladesh's legal system have revealed digital/electronic evidence, and judicial interpretations have been crucial in such situations. As a result, the focus of this chapter will be on judicial decisions assessing the leading case laws in Bangladesh, as well as the position and status of digital evidence as to the best evidence in Bangladesh.

#### 3.2 Judicial Decision on the Admissibility of Digital Evidence in Bangladesh

Digital evidence is used in civil, criminal, and cybercrime cases. Although there is no specific law in Bangladesh governing the use of digital evidence, it has been observed in some of the most notable cases. As previously stated, the incorporation of digital evidence is required and can be achieved by amending and interpreting current legislation.

The definition of “any matter expressed or described upon any substance by means of letters, figures or marks” of Documentary Evidence is cited in section 3 of the Evidence Act 1872<sup>16</sup>, section 3(16) of The General Clauses Act, 1897<sup>17</sup> and section 29 of Penal Code, 1860<sup>18</sup> can be interpreted to include digital evidence since the word “matter” is a term of the widest

---

<sup>15</sup> *CJ for updating law to allow digital evidence*, [Jan 14,2020], NEWAGE Bangladesh < <https://www.newagebd.net/article/96546/cj-for-updating-law-to-allow-digital-evidence>> [Accessed 13th March, 2022]

<sup>16</sup> The Evidence Act, 1872 (I of 1872)

<sup>17</sup> General Clauses Act 1897 (X OF 1897)

<sup>18</sup> The Penal Code, 1860 (XLV of 1860)



amplitude.<sup>19</sup> It further notions that Judicial interpretation articulates digital evidence as an amplification of matter expressed or described upon the digital substance by means of letters, figures, or marks and inclusive of material and secondary evidence and that it verbalizes the other forms of digitalization having a similar legal entity.<sup>20</sup> Now if the question arises of the authentication of digital evidence then there is the scope of expert opinion clearly mentioned in the Evidence Act, section 45 where if needed the court can call for expert opinion. Furthermore, Section 165 and 161 of the Code of Criminal procedure also empowers the investigating officers to attach anything and examine and cross-examine the maker of the documentary evidence.<sup>21</sup>

In one of the leading *Biswajit murder cases*, it was seen that the video footage of the incident was handed over to the investigating officer and its recording was also authenticated. So, it can be said that digital evidence is admissible in the context of Bangladesh and that there lies no bar to that.<sup>22</sup> In the Case of *Mrs. Khaleda Akhtar Vs. The State*<sup>23</sup> the prosecution wanted to introduce a video cassette as evidence in the petitioner's case. The trial judge granted the prosecution's request. Later, the aggrieved petitioner filed a criminal revision against the judgment alleging that the videocassette is not a document as stated in section 3 of The Evidence Act. Per Mr. Justice A.T.M. Afzal, the High Court Division provided a constructive analysis of the term 'matter' contained in Section 3 of the Evidence Act, 1872. He opined that the term "matter" occurring in the definition of section 3 is of the widest amplitude. He further added that if for the purpose of recording specific matter on magnetic tapes for the purpose of showing it on television by application of technology, a video cassette or tape is made, then we hardly see any reason why the same shouldn't come within the definition of document.<sup>24</sup> It was also pointed out in court that since sound recorded on a cassette may be used in court, there is little reason why a recording of sound and visuals can't be used in court as well. Thus, the court found no ground to not to hold videocassettes within the definition and meaning of the

---

<sup>19</sup> Rajib Kumar Deb, *Admissibility of digital evidence*, [27<sup>th</sup> August, 2019], The Daily Star < <https://www.thedailystar.net/law-our-rights/news/admissibility-digital-evidence-1790917> > [Accessed 13th March, 2022]

<sup>20</sup> Ibid

<sup>21</sup> Rajib Kumar Deb N-19

<sup>22</sup> Rajib Kumar Deb N-19

<sup>23</sup> 37 DLR (HCD) (1985) 275

<sup>24</sup> Mohammad Shahjahan, *Admissibility of Digital Evidence: Bangladesh Perspective*, (15 January, 2022), Lawyers Club Bangladesh < <http://lawyersclubbangladesh.com/en/2022/01/15/admissibility-of-digital-evidence-bangladesh-perspective/> > [Accessed 14th March, 2022]

document of the Evidence Act.<sup>25</sup> In the case of *The State Vs. Qamrul Islam & Others*<sup>26</sup> reported in, Mr. Justice Md. Jahangir Hossain held that they also find it inclined to hold a video record footage within the meaning of document under the Evidence Act and is accordingly admissible in the court if otherwise relevant in course of a trial of the proceeding.<sup>27</sup>

### 3.3 Guidelines regarding the Application of Digital Evidence in Bangladesh

There are rules and guidelines for the admissibility of digital evidence in the courts of Bangladesh. As digital evidence is not specifically stated in our primary regulatory statute, the Evidence Act, and is currently not adequately acknowledged, it can cause uncertainty and ambiguity in the minds of magistrates and judges trying cases. Not only that, but investigators struggle to collect and present digital evidence due to a lack of training and rules. Although there is no express provision regarding the admissibility of digital evidence in the context of Bangladesh, the Apex court of Bangladesh had to adjudicate the admissibility of digital evidence under the evidence act 1872 and for that, the court has also set some conditions regarding the same.<sup>28</sup> The following are a must to identify the makers and authentication of the disk/digital evidence to be used as evidence in the court.

Digital evidence may be acceptable in the court if the accused does not deny any of the recorded words or confessions. In cases when the accused denies statements or confessions, the maker of the digital evidence must appear in court to show the same legally. The detectives must also collect digital evidence from seizure lists.<sup>29</sup> For doubts as to the identification of the makers and authenticity of the disks to be allayed, these measures are a must, to say the least. In the case of *Major Bazlul Huda & Others Vs. The State*<sup>30</sup>, the Hon'ble Appellate Division per Mr. Justice Md. Tafazzul Islam remarked on the admissibility of digital/electronic evidence. To be admissible, a party must produce the original compact disk or video cassette, together with the maker or author's certificate, the date, and the place of recording.<sup>31</sup>

---

<sup>25</sup> Ibid

<sup>26</sup> 2017(2) LNJ (HCD) 303

<sup>27</sup> Mohammad Shahjahan (n-24)

<sup>28</sup> Mohammad Shahjahan (n-24)

<sup>29</sup> Mohammad Shahjahan (n-24)

<sup>30</sup> 18 BLT (AD) (2010) 7

<sup>31</sup> Mohammad Shahjahan (n-24)

### 3.4 Reform in incorporating Digital Evidence in Bangladesh Legal System

The Cabinet has approved the draft Evidence Act 1872, which reveals that digital evidence will be permitted in court once the draft is implemented. The court may direct a forensic investigation of digital evidence if it is found to be objectionable. Also, any evidence of falsification will be found if forensics is done. Also, if there are any chances of twisting evidence then we have section 211 of the Penal Code and there is section 57 of the Digital Act.<sup>32</sup>

In a four-day workshop on The Use of Digital Evidence in Bangladesh organized by the US embassy and the UK high commissioner, Chief Justice Syed Mahmud Hossain proposed that evidence recorded by audio-visual instruments and electronic devices be admitted as evidence subject to the court's satisfaction. The Chief Justice noted that the use of digital evidence will help both judges and investigators overcome obstacles in civil and criminal proceedings.<sup>33</sup> British high commissioner Robert Chatterton Dickson also expressed his support for the enhanced use of digital evidence in Bangladesh. He noted that if correctly implemented, it might significantly improve the judiciary's efficiency and integrity.<sup>34</sup>

According to the Information and Communication Technology Act of 2006, if a case is tried by a Cyber Tribunal, the tribunal must use electronic records and evidence as proof, except in cases involving the Penal Code or other special laws in our country, with the exception of cases involving and tried by the Druto Bichar Tribunal Ain, 2002. That type of revision to the Evidence Act of 1872 is desperately needed, but no such leadership has emerged.<sup>35</sup>

### 3.5 Importance of Digital Evidence and its status as Best Evidence rule

The value of digital evidence cannot be overstated. Unlike paper records, digital/electronic devices can generate data faster.<sup>36</sup> Not only that, but people of all ages, groups, and fields now

---

<sup>32</sup> *Digital evidence now to be admissible in court*, The Business Standard, 14 March, 2022 < <https://www.tbsnews.net/bangladesh/law-order/digital-evidences-will-be-accepted-now-cabinet-okays-draft-384750> > [Accessed 16th March, 2022]

<sup>33</sup> *CJ for updating law to allow digital evidence*, [Jan 14,2020], NEWAGE Bangladesh < <https://www.newagebd.net/article/96546/cj-for-updating-law-to-allow-digital-evidence> > [Accessed 16th March, 2022]

<sup>34</sup> *ibid*

<sup>35</sup> Md. Jahurul Islam, *Amendment of the Law of Evidence in Bangladesh*, [2018] Vol.02, FENI UNIVERSITY JOURNAL, No. 02, 215

<sup>36</sup> Christine Sgarlata Chung and David J. Byer, *The Electronic Paper Trail: Evidentiary Obstacles to Discovery and Admission of Electronic Evidence* [22<sup>nd</sup> September, 1998], B.U. J. SCI. & TECH

generate computerized information faster than paper records. Indeed, computers are now so widespread that most court cases include the finding of computer-stored data.<sup>37</sup> Digital Evidence tends to be more voluminous, harder to destroy, more easily updated and replicated; perhaps more expressive and readily available.<sup>38</sup> Moreover, unlike paper documents, electronic records are kept and can be restored even after deletion. Paper records can be readily thrown out or shredded, however digital or electronic documents can be restored.<sup>39</sup> Unlike paper records, electronic evidence is extremely durable.

A digital document incorporates metadata, a paper copy of the digital document may not satisfy the best evidence requirement. Metadata is embedded information in digital documents that is not apparent when printed. Metadata is usually invisible while reading a digital document on a computer screen via a software program. The information created by a word processing document describes the document, its author, the date it was created, and any changes made. Email metadata tells you who blind-copied it and when it was read, but a physical printout doesn't. Metadata can be vital in some instances. In others, its paper counterpart will suffice.<sup>40</sup> The court also observed that without preserving the electronic record, “essential transmittal information relevant to a fuller understanding of the context and importance of electronic communication will simply vanish.”<sup>41</sup> In other circumstances, it has allowed the court to obtain evidence that it would not have otherwise. Digital evidence has been used in court for audio enhancement, photo enhancement, forensic video analysis, and latent fingerprint enhancement.<sup>42</sup>

### **3.6 Effects of Considering Digital Evidence as Primary and Direct**

The capacity of the prosecution to submit electronic evidence as direct and primary evidence in court is crucial in light of current global terrorism. More than traditional kinds of proof, electronic records prove the accused's guilt. The benefits of electronic evidence may be difficult to embrace. The courts must judge the credibility of the evidence. Ajmal Kasab's attack was

---

<sup>37</sup> Bills v. Kennecott Corp 108 F.R.D. 459, 462 (D. Utah 1985)

<sup>38</sup> Vivek Dubey, “Admissibility of Electronic Evidence: An Indian Perspective”4, FRACIJ (2017), 58

<sup>39</sup> Chung and Byer n-36

<sup>40</sup> Manes, Gavin W.; Downing, Elizabeth; Watson, Lance; and Thrutchley, Christopher, "New Federal Rules and Digital Evidence" (2007). Annual ADFSL Conference on Digital Forensics, Security and Law.3  
<<https://core.ac.uk/download/pdf/217157581.pdf>>

<sup>41</sup> Chung and Byer n-36

<sup>42</sup> Jonathan W. Hak, *The Admissibility of Digital Evidence in Criminal Prosecutions*, Crime Scene Investigator Network, [January 2003] < <https://www.crime-scene-investigator.net/admissibilitydigitalevidencecriminalprosecutions.html> > [Accessed 20th March, 2022]

planned in person or via software. The prosecution used internet transaction transcripts to prove the accused's guilt.<sup>43</sup>

The Indian Evidence Act has effectively blurred the line between main and secondary forms of evidence by including all digital evidence. While the distinction should still apply to other documents, a computer exception has been made. This is necessary since digital evidence is not easily producible in tactile form. While it is feasible to produce a word document in court without the use of printouts or CDs, it is not only difficult but impossible.<sup>44</sup> Criminals may be able to easily manipulate court records using electronic evidence. But technology has answers. Computer forensics can now cross-check when and how an electronic record was updated. Computers are today's most popular devices. A computer processor powers other equipment. Sections 65A and 65B<sup>45</sup> cover a lot of ground. The law allows any device having a computer chip to be used as evidence. Practical and ethical considerations must be taken before expanding the scope of these Sections. According to Article 20(3) of the Constitution, narco-analysis test findings are inadmissible. It is suggested that every new computer technology used to produce evidence be subjected to constitutional and legal scrutiny.<sup>46</sup>

### **3.6 Conclusion**

Although, digital devices have proven to be more beneficial to the court by allowing it to gather more valuable information. Nowadays, digital devices are used practically everywhere. It facilitates local and worldwide communication. As a result, electronic communication, e-commerce, and data storage are becoming increasingly important. A modification in the law controlling information technology and electronic evidence in civil and criminal trials is required. While digital technology adds to the original evidence, it saves time and energy when preparing and presenting it digitally. As a result, it is past time for our parliament to evaluate the growth of computers, the societal impact of information technology, and the ability to preserve information in digital form, and incorporate these considerations into Bangladesh's legal system.

---

<sup>43</sup> Shweta and Tauseef Ahmad, *Relevancy and Admissibility of Digital Evidence: A Comparative Study*, 2018, IJLMH | Volume 2, Issue 1, 15

<sup>44</sup> *ibid*

<sup>45</sup> Sections 65A and 65B of The Indian Evidence Act 1872, (Act 1 of 1872)

<sup>46</sup> Shweta & Ahmed (n-43)

## Chapter-4

### Scope and Application of Digital Evidence in other countries

#### 4.1 Introduction

People can today rely on technology not only to interact with each other but also to work because technology is responsible for worldwide growth and development. This technological advancement allows for the storage of more information. Because of its usefulness, many countries have already adopted or incorporated digital evidence into their national laws. From the United States to the United Kingdom to India and Pakistan, all have adopted digital evidence provisions that allow digital evidence to be admitted in court. Over the previous decade, numerous countries' jurisdictions have effectively led to digital evidence. As a result, the worldwide and national criteria for the application of digital evidence will be thoroughly examined in this chapter, as well as whether digital evidence is the best evidence.

#### 4.2 International Standard of Digital Evidence

No international treaty exists on electronic evidence. However, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce gives legislative advice at the UN level for countries to build their national laws.<sup>47</sup> To establish the admissibility of digital evidence, Antwi-Boasiako and Venter (2017) created the Harmonized Model for Digital Evidence Admissibility Assessment (HM-DEAA). Digital evidence assessment, consideration, and determination are all proposed in the HM-DEAA. To ensure that digital evidence is admissible in national courts, this framework underlines the legal and technical prerequisites.<sup>48</sup>

However, a draft convention on electronic evidence was recently prepared by a private initiative. The authentication of electronic evidence and the application of the best evidence rule are among the topics covered in this draft Convention.<sup>49</sup> The draft Convention is quite informative and provides an excellent foundation for understanding the rules of evidence as

---

<sup>47</sup> Alex B. Makulilo, *The admissibility and authentication of digital evidence in Zanzibar under the new Evidence Act*, 2018, *Digital Evidence and Electronic Signature Law Review*, [Accessed 24<sup>th</sup> April, 2022]

<sup>48</sup> *Digital evidence admissibility*, UNODC, 2019 <<https://www.unodc.org/e4j/en/cybercrime/module-6/key-issues/digital-evidence-admissibility.html#:~:text=Digital%20evidence%20is%20admissible%20if,Justice%2C%202004a%3B%20European%20Network%20of>> [Accessed 5<sup>th</sup> April, 2022]

<sup>49</sup> Stephen Mason, *Draft Convention on Electronic Evidence*, 2016, *Digital Evidence and Electronic Signature Law Review*, 13, S1

they apply to digital evidence. Article 2(2)<sup>50</sup>The proposed Convention specifies that it does not affect any current national regulation relating to the admittance of evidence, except for the standards relating to authenticity and best evidence.<sup>51</sup> Article 5 (1) <sup>52</sup>of the draft convention shall be read out alongside the mentioned article of the convention.

The International Criminal Court faces issues as digital evidence becomes more common. The ICC lists four categories of evidential concerns that are unique to digital evidence: (1) authenticity; (2) hearsay; (3) chain of custody, and (4) preservation of evidence. Rule 69(4) of the ICC Rules of Procedure and Evidence directs the judges to admit evidence taking into account the probative value it carries with it for a fair trial and evaluation. Moreover, under Rule 63(2) the judges after evaluating all of the evidence in a case decide the probative value and "proper weight" of admitted evidence.<sup>53</sup> International criminal courts mix elements of common law and civil law traditions. The ICC has developed digital evidence standards. Even before the Confirmation Hearing, digital evidence and material must follow an "e-Court Protocol". The requirements under this e-court protocol are ensuring authenticity, accuracy, secrecy, and preservation of the record of proceedings. The Protocol demands metadata such as the chain of custody in chronological order, the source's identity, and the original author and recipient's organizations.<sup>54</sup>

The ICC does not require a judge to rule on the evidence's authenticity. If the parties agree that the evidence is authentic or prima facie reliable, the judge may accept it. It was further ruled in *Prosecutor v. Jean-Pierre Bemba Gombo*, "A recording that has not been authenticated in court can nevertheless be accepted, as the Chamber considers multiple factors when establishing an item's authenticity and probative value."<sup>55</sup> Ad hoc tribunals, on the other hand, support external verification of digital evidence.

---

<sup>50</sup> Article 2(2) does not modify any existing national rule that applies to the admissibility of evidence, except in relation to the rules relating to authenticity and best evidence.

<sup>51</sup> Makulilo (n-47)

<sup>52</sup> Article 5(1) In any legal proceeding, where any printout, document or other physical manifestation of the result or output or appearance of any electronic process, record or any other representation of that process or record has been manifestly or consistently acted on, relied upon, or used as the record of the information represented by or stored on the printout, the printout or other physical manifestation shall be considered the best evidence and admitted as evidence subject to satisfactory proof of its integrity.

<sup>53</sup> Aida Ashour & Caleb Bowers, *AN OVERVIEW OF THE USE OF DIGITAL EVIDENCE IN INTERNATIONAL CRIMINAL COURTS*, 2013

<sup>54</sup> Ibid

<sup>55</sup> Ashour & Bowers n-53

The ICC's approach to digital evidence hearsay is anonymous hearsay. Despite the defense's concerns about the emails' veracity and authenticity, the Court accepted them as anonymous hearsay. The ICC has ruled that anonymous hearsay can be admissible, but only to “corroborate other evidence.”<sup>56</sup> When it comes to the chain of custody, international courts appear to prefer the prosecution to offer testimony from a live witness, usually the author, before admitting or assigning weight to digital evidence.<sup>57</sup>

From the above discussion, there is no international convention establishing digital evidence standards. The draft convention and ICC practice, on the other hand, embody the idea that elements of digital evidence must be validated before they can be accepted and a verdict given purely on their foundation. Furthermore, because digital evidence can be easily manipulated, the ICC does not consider it direct evidence and has created mandatory rules for it before accepting it in court. The ICC's rules are not incompatible with those adopted by national legislation in respective jurisdictions, but they have been strengthened in the context of digital evidence.

### **4.3 Use and Application of Digital Evidence in Other Countries**

Due to the tremendous development in e-governance in the public and private sectors, various types of digital evidence are increasingly being used in both civil and criminal proceedings in national laws.

In **United Kingdom**, the admissibility of electronic evidence in civil cases was established through The Civil Evidence Act 1995<sup>58</sup>. Section 3<sup>59</sup> of the Act allows computer records to be used as evidence in UK courts and Section 8<sup>60</sup> The Act also allows for proof of statements in documents by presenting the document or a copy to the court. The Police and Criminal Evidence Act 1984 defines electronic evidence as ‘all information contained in a computer’ and makes it admissible in court.<sup>61</sup> The Police and Criminal Evidence Act 1984 has laid down regulations for the admissibility of digital evidence in the UK. The party seeking to present an electronic document as evidence must prove that the computer regularly received this type of information, that the computer was functioning properly, and that the computer is

---

<sup>56</sup> Ashour & Bowers n-53

<sup>57</sup> Ashour & Bowers n-53

<sup>58</sup> The Civil Evidence Act 1995

<sup>59</sup> The Civil Evidence Act 1995, Section 3

<sup>60</sup> The Civil Evidence Act 1995, Section 8

<sup>61</sup> Police and Criminal Evidence Act, 1984



delivering the exact information requested. The document becomes simply inadmissible if any of the standards mentioned are not satisfied.<sup>62</sup>

Section 6 of the Civil Evidence Act<sup>63</sup> states that in determining the weight of a document, the court must consider the contemporaneity of the recording, the circumstances depicted in the recording, and the motive of the individual who made the false statement. Section 8 of the Civil Evidence Act<sup>64</sup> also requires notification to the court and the opposing party before using electronic evidence. Moreover, Section 69 of the Police and Criminal Evidence Act<sup>65</sup> provides that Computer-generated evidence is admissible in court or specifically in criminal proceedings if the assertion it contains is not false. And that the computer was working properly at the time the material was saved/recorded, with no malfunctions.

The position of law was further clarified in a leading case, where the court held that a computer record can be allowed as evidence if it can be demonstrated that it was working correctly and was not abused.<sup>66</sup> IN *R. V. SPIBY*<sup>67</sup> An automated telephone cell logging computer installed in a hotel was admissible by the Court of Appeal as real evidence as there was no other contrary evidence that existed at that time. Besides, the machine taken as real evidence in the court fulfilled the required condition of properly working at the time the record was being saved.<sup>68</sup> The Court stated in *CAMDEN LONDON BOROUGH COUNCIL v. HOBSON* that if the statement came from a computer, it was actual evidence. However, a statement made by a human mind and subsequently processed by a computer would be inadmissible as hearsay. Acceptance of a computer-generated document requires proof of its reliability. The Lords discovered the error had no impact on the computer's processing of the data. Section 69 of the Police and Criminal Evidence Act of 1984 shall be interpreted to exclude otherwise accurate evidence.<sup>69</sup>

---

<sup>62</sup> Shweta and Tauseef Ahmad, *Relevancy and Admissibility of Digital Evidence: A Comparative Study*, (2018), Volume 2, (Issue 1), IJLMH, 16

<sup>63</sup> Civil Evidence Act, 1968

<sup>64</sup> Civil Evidence Act, 1968, Section 8

<sup>65</sup> Police and Criminal Evidence Act, 1984

<sup>66</sup> R v. Shephard (1988) 86 Cr App R 47

<sup>67</sup> [1991] Crim. L.R. 199 (C.A.Cr.D.)

<sup>68</sup> Shweta & Ahmad (n-62) 17

<sup>69</sup> Shweta & Ahmad (n-62) 17

In USA, the Federal Rules of Evidence<sup>70</sup> specify the requirements for authenticating documentary evidence which applies to both documentary and computer-generated evidence. Rule 34 of the mentioned rule originally only covered “documents” and “things,” but later added “data compilations” to the list. Since then, courts have construed “documents” to include electronically recorded information, which might take different forms than on paper. The new Rule 34(a) defines “documents” as encompassing “electronically stored information,” and *the word appears in the Rule's new title, confirming that electronic data discovery is on an equal level with paper document discovery.*<sup>71</sup> In USA, several state laws specify that copies of data collected from a computer are among the best evidence. The federal rules also specify the verification of the validity of the evidence that meets the sufficient evidence to support the discovery of matters in support of the claims.<sup>72</sup>

According to The Federal Rules of Evidence<sup>73</sup>, authentication is "satisfied by evidence adequate to support a determination that a matter in dispute is what its proponent says." If a document is generated by a process or system, it must be accurate. In the USA there are certain case laws that have been more liberal with the admission of computer-generated evidence, moving the issue to the probative weight of such documented evidence. A court had to decide whether to allow text communications between the plaintiff and the defendant. *The court ruled that printed-out emails of text messages were acceptable evidence under the Best Evidence Rule.* The emails were the only record of the text messages because they were forwarded immediately from the phone. The defendant also endorsed the messages' legitimacy. Every one of these characteristics showed that the emails were the greatest potential proof of the texts.<sup>74</sup> However, courts will likely exclude evidence based on the Best Evidence Rule when a party submits an unreliable reproduction of electronically stored information. The court determined that the cut-and-paste conversations could not be accepted due to the unreliability of the cutting and copying process.<sup>75</sup> Whereas in the *UNITED STATES VS CATABRANIS* court accepted business records even though they contained errors that influenced the documents'

---

<sup>70</sup> Federal Rules of Evidence, 2015

<sup>71</sup> Manes n-40

<sup>72</sup> Ahmad Fekry Moussa, *Electronic evidence and its authenticity in forensic evidence*, [2021], EJFS, AN-20 < <https://ejfs.springeropen.com/articles/10.1186/s41935-021-00234-6> >

<sup>73</sup> Federal Rule of Evidence 901

<sup>74</sup> Evidence in Civil and Criminal Cases: The Best Evidence (Original Documents) Rule, LawShelf, < <https://lawshelf.com/shortvideoscontentview/best-evidence-original-documents-rule> > [Accessed 4th April, 2022]

<sup>75</sup> *ibid*

weight rather than their admissibility.<sup>76</sup> It was further ruled in *LORRAINE Vs MARKEL AMERICAN INSURANCE COMPANY*<sup>77</sup>, that relevancy and authentication of electronically stored information as evidence must be determined. It must be checked for originality, duplication, secondary evidence, and probative value.<sup>78</sup>

Both UK and USA have put significant attention to the applicability and admissibility of digital/electronic evidence in their respective jurisdictions. The national laws and legislation of both countries may differ in specific stands but if compared certain parallels are noticed. In both nations, lawmakers have concentrated on the authentication of digital evidence before accepting it in court. Even though the USA has recognized digital evidence as the best evidence, the same is not present in UK law. But both have standards and restrictions for digital evidence before accepting it in court.

**In India**, the courts have developed case law on the use of electronic evidence, necessitating changes to Indian legislation. The Indian Evidence Act 1872, the Indian Penal Code 1860, the Information Technology Act of 2000, and the Banker's Book Evidence Act 1891 have all been amended to provide the legal framework for electronic transactions.<sup>79</sup> The wording "all documents produced for the scrutiny of the Court" was substituted by "all documents including electronic records generated for the examination of the Court" and were amended in Section 3 of The Indian Evidence Act 1872.<sup>80</sup> In the *ANVAR CASE*<sup>81</sup>, it was seen that the words "Document or content of documents" have not been substituted by "Electronic documents or content of electronic documents" in Sections 61 to 65 of the Indian Evidence Act, 1872<sup>82</sup>. This so happened due to the growing complexity of digital evidence. It was laid down in this case that the legislature's aim is clear, that if the legislature omits a term, it is purposeful. It is generally established that the Legislature does not waste words.<sup>83</sup>

**In Pakistan** to combat the rise of cybercrime and answer concerns regarding the admissibility of digital evidence in such cases, Pakistan's legislature created the Electronic Transactions Ordinance 2002 (ETO). The ordinance fundamentally altered the law of evidence in civil and criminal cases. Essentially, the ordinance made electronic or digital evidence

---

<sup>76</sup> Shweta and Ahmad (n-62) 18

<sup>77</sup> 241 FRD 534

<sup>78</sup> Shweta and Ahmad (n-62) 11

<sup>79</sup> Shweta and Ahmad (n-62) 2

<sup>80</sup> Shweta and Ahmad (n-62) 3

<sup>81</sup> (2014) 10 SCC 473

<sup>82</sup> Section 61 to 65 of the Indian Evidence Act, 1872

<sup>83</sup> Shweta and Ahmad (n-62) 7

essential. That the material kept or transferred digitally is not hearsay evidence was likewise affirmed. *The ordinance stressed that digital evidence meets the Best evidence requirement.* To the extent that digital evidence meets the requirements of Article 18 QSO 1984, the ETO 2002 reaffirms its value.<sup>84</sup> ETO 2002 only considers primary evidence that is original and unaltered accepting natural additions or decay, computer-generated evidence like transaction receipts appears to pass the originality requirement. However, computer-stored evidence must be treated with caution as it can be manipulated or added to. In other words, it is corroborated.<sup>85</sup>

Similarly, **the Philippines** not only incorporated digital evidence in its legal system but also gave it equal importance as best evidence. Section 1 of the rule 4 ruled that under the Best Evidence Rule, an electronic document is considered equal to an original document if it is a printout or output readable by sight or other means and demonstrated to correctly reflect the data.<sup>86</sup>

The Indian Evidence Act allows for both liberty and limitations in the use of digital evidence. Although it has authorized the admissibility of digital evidence in its jurisdiction, it remains adamant about not considering digital evidence to be the best evidence. The Indian Evidence Act appears to be rigid in counting electronic evidence as one type of document or document contents. This suggests that in India, digital evidence is not on an equal basis with documentary evidence. Pakistan and the Philippines, on the other hand, appeared to be more lenient when it came to accepting digital evidence as best evidence under the best evidence criteria.

#### **4.4 Conclusion**

Electronic evidence has become a critical component of communication, processing, and recording in both the public and private sectors as a result of E-governance. However, several prerequisites and conditions must be met before it may be admitted in court to prove a case. Digital evidence is sometimes used as primary evidence, other times as secondary evidence, and other times as corroborative evidence. It is sometimes given probative value, and other times the verdict is completely based on digital evidence. Depending on its weight and

---

<sup>84</sup> Dr. Usman Hameed, Zarfishan Qaiser & Khushbakht Qaiser, *Admissibility of Digital Evidence: A perspective of Pakistani Justice System*, [2021], PSSR, Vol. 5, No. 4 [518-530] < <https://pssr.org.pk/issues/v5/4/admissibility-of-digital-evidence-a-perspective-of-pakistani-justice-system.pdf> >

<sup>85</sup> Hameed & Qaiser (n-84), 519

<sup>86</sup> Rules on Electronic Evidence, REPUBLIC OF THE PHILIPPINES SENATE ELECTORAL TRIBUNAL, < <https://www.set.gov.ph/resources/rules-on-electronic-evidence/> > [Accessed 5<sup>th</sup> May, 2022]

importance, digital evidence plays a prominent role. Regardless of whether it is the best evidence or not, digital evidence has played a crucial part in aiding courts in ensuring justice.

## Chapter 5

### Conclusion

The Best Evidence rule has been challenged by Digital Evidence. Traditional rules and foundations have been questioned by the characters in Digital Evidence. It has its own characteristics and standards, as well as the potential to detect crimes more effectively. The researcher has previously discussed the application, extent, and importance of digital evidence in Bangladesh and other nations, as well as the idea of considering digital evidence as a Best Evidence or considered under best evidence rule in Bangladesh.

#### 5.1 Findings

1. The Best Evidence Rule ensures that courtroom evidence is correct. If the party offering evidence can't prove its correctness and validity, the court will reject it.
2. All Digital/Electronic data is a 'Copy'. A copy is the original data stored in the computer in digital evidence. Because digital data is created, saved, and only seldom printed. As best evidence refers to the original document, the extraction of a copy from an electronic device qualifies as original.
3. Digital evidence is regarded as primary rather than just corroborative evidence. When no other evidence is available, digital evidence is accepted as primary evidence in court and has been used to render verdicts.
4. Although, results are not 100% accurate, Digital Evidence has proven to be efficient in identifying crimes in the modern world.
5. The Evidence Act of 1872, is outmoded. Digital Evidence has been modified and utilized in other nations with similar geology. Not only that, but digital evidence was regarded as Best Evidence to a large extent.
6. Digital Evidence has to satisfy certain conditions and requirements before getting admissible in court.
7. Digital evidence is only given probative value when it is presented alongside other evidence.
8. In the UK and USA, digital evidence requirements are variable. Digital evidence was allowed in US courts despite flaws. Computer data copies were even recognized as the best evidence.
9. India's digital evidence requirements are strict, whereas Pakistan's relatively flexible.

10. Digital evidence is more durable than paper. Digital equipment can be easily fixed, but shredded or destroyed documentary evidence cannot be restored.

## **5.2 Recommendations and Suggestions**

Documentary evidence was regarded as the greatest evidence in an era when digital evidence was not extensively used. The best evidence rule was vital when papers and images could only be duplicated by hand. Most evidence can now be digitized in high-resolution forms, and some courts started to view digital copies as equivalent to originals. It's a promising start that digital evidence is being allowed in Bangladesh courtrooms to produce a verdict. On the other hand, it is unfortunate that digital evidence is still not legally incorporated or covered by separate legislation.

From the foregoing explanation, it appears that digital evidence holds the potentiality of becoming the best evidence, or be included or considered under the best evidence rule in Bangladesh. The issue isn't with the digital evidence itself, but the lack of expertise in gathering and producing it. Because digital forensic professionals must have comprehensive knowledge of computer science and information security procedures and tools. So, continuous training programs of those involved in investigating and extracting computer related crimes evidence is a must to strengthen and develop the area of admissibility of digital evidence in Bangladesh. Moreover, Bangladesh must also establish digital evidence-specific regulations. Which will include instruments for extracting digital evidence, specifying rules and conditions, and providing a legal system for processing electronic evidence in stages of investigating crimes, prosecuting, and extracting information.

Furthermore, the adjustment and evolution might begin with a change to Section 3 of the Evidence Act of 1872, which would include digital evidence in the definition of documents. The change can widen the notion and understanding of documents, making room for digital evidence to be considered not only as evidence, but also the best evidence for guiding and assisting in proving a case.

Finally, it involves both experts and courts. Experts apply skills and equipment to confirm or deny evidence. While the court considers it. Training digital forensic professionals and providing digital forensic equipment/machines can ensure the reliability of digital evidence in Bangladesh.

## Bibliography

### Legislations

1. The Evidence Act 1872 (I of 1872)
2. General Clauses Act 1897 (X OF 1897)
3. The Penal Code 1860 (XLV of 1860)
4. Civil Evidence Act 1995
5. Indian Evidence Act, 1872
6. Federal Rules of Evidence, 2015
7. Civil Evidence Act, 1968
8. Police and Criminal Evidence Act 1984

### Case Laws

9. Omychund v Barker [1744] 125 ER 1310; [1744] Willes 538
10. Garton v. Hunter [1969] 1 All ER 451 [1969] 2 QB 37
11. Lorraine VS Markel case 241 F.R.D. 534 (D. Md. 2007)
12. Mrs. Khaleda Akhtar Vs. The State 37 DLR (HCD) (1985) 275
13. The State Vs. Qamrul Islam & Others 2017(2) LNJ (HCD) 303
14. Major Bazlul Huda & Others Vs. The State 18 BLT (AD) (2010) 7
15. R v. Shephard (1988) 86 Cr App R 47
16. IN R. V. SPIBY [1991] Crim. L.R. 199 (C.A.Cr.D.)
17. CAMDEN LONDON BOROUGH COUNCIL v. HOBSON
18. UNITED STATES VS CATABRANIS
19. ANVAR CASE (2014) 10 SCC 473

### Journal/Articles

20. Ahmad Fekry Moussa, *Electronic evidence and its authenticity in forensic evidence*, [2021], EJFS, AN-20 < <https://ejfs.springeropen.com/articles/10.1186/s41935-021-00234-6> >
21. Jonathan W. Hak, *The Admissibility of Digital Evidence in Criminal Prosecutions*, Crime Scene Investigator Network, [January 2003] < <https://www.crime-scene-investigator.net/admissibilitydigitalevidencecriminalprosecutions.html> >
22. Ani Munirah Mohamad, *ADMISSIBILITY AND AUTHENTICITY OF ELECTRONIC EVIDENCE IN THE COURTS OF MALAYSIA AND UNITED KINGDOM*, International Journal of Law, Government and Communication, [June, 2019], Volume: 4 Issues: 15, page- 121-129 < <https://www.studocu.com/my/document/multimedia-university/cyberlaw/cyber-ijlgc-2019-15-06-13/10806382> > [Accessed- 8<sup>th</sup> April, 2022]
23. Kamran Adil, *Legal Recognition of Electronic Evidence and Electronic Trial*, PakistanLaw, < <https://pakistanlaw.pk/articles/863/legal-recognition-of-electronic-evidence-and-electronic-trial> >



24. Stephen Mason, Draft Convention on Electronic Evidence, 2016, Digital Evidence and Electronic Signature Law Review, 13, S1
25. Shweta and Tauseef Ahmad, *Relevancy and Admissibility of Digital Evidence: A Comparative Study*, 2018, IJLMH | Volume 2, Issue 1
26. Christine Sgarlata Chung and David J. Byer, *The Electronic Paper Trail: Evidentiary Obstacles to Discovery and Admission of Electronic Evidence*, [1998], B.U. J. SCI. & TECH
27. Carrie Morgan Whitcomb, 'An Historical Perspective of Digital Evidence: A Forensic Scientist's View' [Spring, 2002] Volume 1, Issue 1, International Journal of Digital Evidence,4  
<https://www.utica.edu/academic/institutes/ecii/publications/articles/9C4E695B-0B78-1059-3432402909E27BB4.pdf>
28. Dr. Usman Hameed, Zarfishan Qaiser & Khushbakht Qaiser, *Admissibility of Digital Evidence: A perspective of Pakistani Justice System*, [2021], PSSR, Vol. 5, No. 4 [518-530] < <https://pssr.org.pk/issues/v5/4/admissibility-of-digital-evidence-a-perspective-of-pakistani-justice-system.pdf> >
29. Khandker Saadat Tanbir, Admissibility of Digital Evidence in Bangladesh, 30 October 2021, BdJLS <[https://bdjls.org/admissibility-of-digital-evidence-in-bangladesh/?fbclid=IwAR0b92xGv8rRhOMvHj5pAZmUY8pUyLKjAftyJs0Mpmr1J4\\_cSQEBzRGXLV8#:~:text=Including%20digital%20evidence%20through%20amen dment%3A&text=%E2%80%9CAI%20documents%20including%20electronic%20r ecords,evidences%20admissible%20before%20the%20Court](https://bdjls.org/admissibility-of-digital-evidence-in-bangladesh/?fbclid=IwAR0b92xGv8rRhOMvHj5pAZmUY8pUyLKjAftyJs0Mpmr1J4_cSQEBzRGXLV8#:~:text=Including%20digital%20evidence%20through%20amen dment%3A&text=%E2%80%9CAI%20documents%20including%20electronic%20r ecords,evidences%20admissible%20before%20the%20Court)> [Accessed 10<sup>th</sup> March, 2022]
30. Mohammad Shahjahan, *Admissibility of Digital Evidence: Bangladesh Perspective*, 15 January, 2022, Lawyers Club Bangladesh < <http://lawyersclubbangladesh.com/en/2022/01/15/admissibility-of-digital-evidence-bangladesh-perspective/> >
31. Md. Jahurul Islam, *Amendment of the Law of Evidence in Bangladesh*, [2018] Vol.02, FENI UNIVERSITY JOURNAL, No. 02, 215
32. Vivek Dubey, "Admissibility of Electronic Evidence: An Indian Perspective"<sup>4</sup>, FRACIJ (2017)
33. Christine Sgarlata Chung and David J. Byer, *The Electronic Paper Trail: Evidentiary Obstacles to Discovery and Admission of Electronic Evidence* [22<sup>nd</sup> September, 1998], < <http://euro.ecom.cmu.edu/program/law/08-732/Evidence/ChungByer.pdf> >
34. Md. Jahurul Islam, *Amendment of the Law of Evidence in Bangladesh* < [http://www.publications.feniuniversity.edu.bd/files/frontend/ebook/document/Ebook\\_file\\_190520104622.pdf](http://www.publications.feniuniversity.edu.bd/files/frontend/ebook/document/Ebook_file_190520104622.pdf) >
35. Alex B. Makulilo, *The admissibility and authentication of digital evidence in Zanzibar under the new Evidence Act*, 2018, Digital Evidence and Electronic Signature Law Review, [Accessed 24<sup>th</sup> April, 2022]
36. Aida Ashour & Caleb Bowers, *AN OVERVIEW OF THE USE OF DIGITAL EVIDENCE IN INTERNATIONAL CRIMINAL COURTS*, 2013, < <https://humanrights.berkeley.edu/sites/default/files/publications/an-overview-of-the-use-of-digital-evidence-in-international-criminal-courts-salzburg-working-paper.pdf> >

37. Manes, Gavin W.; Downing, Elizabeth; Watson, Lance; and Thrutchley, Christopher, "New Federal Rules and Digital Evidence" (2007). Annual ADFSL Conference on Digital Forensics, Security and Law.3 <<https://core.ac.uk/download/pdf/217157581.pdf>>
38. Fletcher W. Mann, *Best Evidence Rule--When Applied*, [1929], V 35, WUV The Research Repository, Issue 3, Article 9, P 1

## Newspaper

39. *CJ for updating law to allow digital evidence*, [Jan 14,2020], NEWAGE Bangladesh <<https://www.newagebd.net/article/96546/cj-for-updating-law-to-allow-digital-evidence>>
40. Rajib Kumar Deb, *Admissibility of digital evidence*, [27<sup>th</sup> August, 2019], The Daily Star <<https://www.thedailystar.net/law-our-rights/news/admissibility-digital-evidence-1790917>>
41. *Digital evidence now to be admissible in court*, The Business Standard, 14 March, 2022 <<https://www.tbsnews.net/bangladesh/law-order/digital-evidences-will-be-accepted-now-cabinet-okays-draft-384750>>

## Websites

42. Sumit Kumar Suman, *The Concept and Historical Background of the Evidence Law*, Academike, (April 4, 2015), <<https://www.lawctopus.com/academike/concept-historical-background-evidence/>> Accessed 10<sup>th</sup> March, 2022]
43. *Digital evidence admissibility*, UNODC, 2019 <<https://www.unodc.org/e4j/en/cybercrime/module-6/key-issues/digital-evidence-admissibility.html#:~:text=Digital%20evidence%20is%20admissible%20if,Justice%2C%202004a%3B%20European%20Network%20of>> [Accessed 5<sup>th</sup> May, 2022]
44. Lawrence Williams, Digital Forensics, 'What is Digital Forensics? History, Process, Types, Challenges', 5<sup>th</sup> March, 2022, <<https://www.guru99.com/digital-forensics.html#:~:text=In%202000%2C%20the%20First%20FBI,identified%20issues%20facing%20digital%20investigations>>
45. Rules on Electronic Evidence, REPUBLIC OF THE PHILIPPINES SENATE ELECTORAL TRIBUNAL, <<https://www.set.gov.ph/resources/rules-on-electronic-evidence/>> [Accessed 5<sup>th</sup> May, 2022]
46. What Is Digital Evidence and Why Is It Important in 2021? [2021], CISOMAG <<https://cisomag.eccouncil.org/what-is-digital-evidence-and-why-its-important-in-2021/#:~:text=Today%2C%20digital%20evidence%20has%20multiple,important%20link%20in%20solving%20crimes.>>