

24 - 26 July 2026

Copenhagen , Denmark

Legitimate Policing in the Digital Age: Balancing Crime Control and Due Process in Criminal Investigations in India

Animesh Pareek , Dr. Prakash Sharma

Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology Kharagpur, India

Abstract

Digital forensics has become central to criminal investigation, not because investigators prefer it, but because criminals increasingly operate in digital environments, and the evidence they leave behind is often more precise and more recoverable than anything physical. Yet the Indian legal framework has not kept pace. Investigators routinely examine entire devices during searches, pulling in personal data that bears no relation to the alleged offence, and the constitutional protections against self-incrimination and privacy under Articles 20(3) and 21 sit uneasily alongside this practice. The Supreme Court has addressed the admissibility of fingerprints, DNA, and psycho-scientific methods like Narco Analysis and BEAP under specific conditions, but the question of digital forensic evidence remains unsettled where the stakes are higher, given the sheer volume of personal data a phone or laptop contains. This paper argues that digital investigative practices can be constitutionally grounded, but only if they operate within a framework that takes due process seriously. Drawing on Herbert Packer's crime control and due process model, the analysis identifies where Indian law currently falls short and where it might draw from the regulatory approaches taken in the United States, the United Kingdom, and Germany — jurisdictions that have managed, with varying degrees of success, to keep investigative power functional without treating constitutional rights as an inconvenience. The methodology is doctrinal: constitutional provisions, legislation, judicial precedent, and policy guidelines are examined critically, not simply catalogued.

Keywords: Constitutional Safeguards; Digital Forensic Evidence; Electronic Surveillance; Right to Privacy; Substantive Due Process