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IMPACT OF DIGITAL TECHNOLOGIES ON CRIMINAL PROCEDURE IN RUSSIA AND INDIA: COMPARATIVE LEGAL ASPECT

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ABSTRACT

The current rapid development of technological progress is an important source of new opportunities to improve various spheres of human life and activity and have a significant influence on criminal justice systems as well. However, the implementation of new technologies in criminal proceedings may encounter different procedural features depending on the country and its legislation. Therefore, it is important to conduct comparative analysis and research on the experience of other countries to make informed and effective use of new technologies in criminal justice. The aim of this study was to conduct a comparative legal analysis of the criminal procedure legislation in Russia and India to identify trends in the development of criminal justice in the context of digitalization in these countries. During the study a set of general scientific methods and traditional research methods (comparative and legal, system analysis) were used. A special place is occupied by the logical method and the method of comparative legal analysis. The article characterizes the current state of the sphere of criminal procedure in Russia and India. The analysis identified the features associated with the implementation and application of new technologies in the criminal proceedings of these BRICS countries. The authors conclude that the introduction of modern technologies in the sphere of criminal justice should provide citizens access to justice, promote effective investigation and fair sentencing. This study may form the basis for further research on the criminal procedure legislation of the BRICS countries.

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1. INTRODUCTION

The current state of digital technology is helping to optimize various areas of human activity, including the criminal justice process. In today's society, one of the main functions of the administration of justice is entrusted to digital technologies, which correspond to the changes occurring during digitalization and almost instantly become solutions to the challenges that the modern world throws at it.

There is some research on the issue of digitalization in criminal proceedings, but some specific aspects, which must be regulated by law, are understudied.

There is now a great deal of evidence that digitalization has led to the realization of the right of citizens to participate in person and respect their procedural rights as participants in court proceedings through the use of modern technology via videoconferencing during the COVID-19 pandemic [1] [14]. Other digital technologies, such as artificial intelligence [6], electronic courts [13] or 3D technologies [3] are also gradually finding their way into the law enforcement and the courts of BRICS member countries like Russia and India.

For the realization of citizens' right of access to justice to the fullest extent, the sphere of criminal justice must respond quickly to the changes brought by digitalization in the modern world and, in particular, in the law. In this regard, the issues related to the application of digital technologies are becoming more and more discussed by scientists. This interest is due to the fact that their applying should significantly increase the quality of evidence, as well as the effectiveness of the investigation of crimes and lead to a fair verdict in the end.

Such optimization of criminal proceedings should meet the requirements of ensuring the constitutional right of citizens to access to justice, criminal procedural evidence, and therefore is subject to appropriate legal regulation. Of primary importance are the peculiarities of admissibility of electronic evidence obtained through the use of such digital technical means. And it is still not clear how criminal procedural legislation should regulate the application of modern technologies in detail and that is why the legal framework for them is not yet fully formed [5]. However, the current attempts of lawmakers in Russia [2] and India [4] to regulate this area are of great interest to researchers by the reason of their specific characteristics.

The purpose of the article is to compare criminal procedure legislation in order to indicate features of the development of criminal justice in the context of digitalization. It is important to analyze the legislative norms by which the achievements of science, technology and digital forensics can be considered admissible and used in law enforcement activities and courts.

The results we present here can result in the identification of both strengths that can be actively pursued and shortcomings that are subject to immediate legislative resolution.

2. METHODS

The current study examined criminal procedure legislation in Russia and India relatively to the use of modern technology in criminal proceedings in these BRICS countries.

Both general scientific methods of research (logical analysis and synthesis, induction and deduction, abstraction) and traditional methods (comparative legal analysis, system analysis) were used. The method is based on answering the following research questions: What are the specific features of criminal procedure law in Russia and India in the context of digitalization?

To achieve this, we constructed a comprehensive review of the available data on the implementation and application of modern technologies in the criminal process in Russia and India. The literature review thus became a research tool (methodology) aimed at combining information from law enforcement and criminal court practices, which can lead to research findings at many levels of legislation, opening new tendencies and identifying gaps where additional research (and evaluations) is needed.

At the beginning of data collection, we have found criminal procedure Codes, laws and regulations. Then we have found scientific articles and surveys in this area. The focus of this review was literature and legislation published in both English and Russian. Published studies were identified using electronic databases such as ScienceDirect, SpringerLink, SSRN, Google Scholar, eLIBRARY and Cyberleninka. Finally, the obtained data were analyzed using the method of comparative legal analysis. Selected relevant data were analyzed one by one by reading to determine the effectiveness of digitalization in the field of criminal procedure.

3. RESULTS

In order to distinguish between the legislation of India and Russia, we have examined separately the peculiarities associated with the latest science and technology in criminal justice in each of these BRICS countries. This approach allowed us to carefully analyze both country's legal provisions on issues

such as the legal framework, evidence, electronic evidence, electronic signatures and the use of specialized knowledge in criminal proceedings.

3.1 India

Researchers note that over the past 10 years, the Indian judiciary has seen significant progress in digitalization at both the district and state courts. Singhal A.V.K. (2021) mentions that as of January 2017, there were about 1,248 laws in India. Indian criminal legislation includes Indian Penal Code, 1860, Indian Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872. In addition to these three basic laws, the Indian Parliament has also passed thousands of special laws regulating specific issues, such as the Information Technology Act, 2000.

One of the most important and necessary concepts for the conduct of criminal proceedings is evidence. Thus Section 3 of the Indian Evidence Act includes as evidence:

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence» (The Indian Evidence Act, 1872).

In India, special attention is given to the discussion issue of the use of electronic evidence in courts.

Section 65B of the Evidence Act regulates the admissibility of electronic evidence. Thus, «...any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer ... shall be deemed to be also a document, if the conditions mentioned in this section are satisfied...» (The Indian Evidence Act, 1872).

The electronic evidence must be in accordance with the following conditions:

1. It should be produced by a computer which has been used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

2. The information derived in the electronic record, was regularly fed into the computer in the ordinary course of activities

3. The computer was operating properly

4. The duplicate copy must be a reproduction of the original electronic record» [12].

This is also stated that «... each one computer output shall be considered as being produced by the pc itself, whether it had been produced directly or indirectly, whether with human intervention or without» [8].

Researchers explore the problem of uncertainty about the certification requirements for the admission of electronic evidence. «Recently, in 2020, Supreme Court clarified that no certificate will be required to produce electronic evidence such as disks, pen drives etc. if the original device can be produced in the court. Further, it ruled that authenticity of the electronic evidence can be proved in the witness box with production of the originator of the electronic evidence. However, certificate will be required if evidence is stored in a network or on server which cannot be produced in the court» [12].

The issue of electronic signatures is worth considering separately. In India, according to Section 2 of the Information Technology Act:

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3»;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(ta) "electronic signature" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature» (The Information Technology Act, 2000).

In India, the application of electronic signatures as evidence is legislated by Sections 67A and 73A of the Fifth Chapter of the Evidence Act. In addition, the Information Technology Act given legal validity, and solved the problem of security by «construct of digital signatures that verifies the identity of an individual on internet» [11].

The role of special knowledge in the investigation of crimes committed with the use of computer means and systems based on digital technology is exceptionally valuable.

The Evidence Act and the Code of Criminal Procedure of India do not provide for the application of science, technology and forensics. Indian researchers noted that «because of the lack of such an

arrangement, an investigating officer faces many problems to gather evidence that implies a modern mechanism to show that the accused is guilty» (Deeksha, 2020).

In the part "Opinions of third persons when relevant" in the Second Chapter of the Evidence Act the definition of an expert is given. It also regulates his professional duties in different spheres. Thus, an expert is a person with special knowledge in the field of «foreign law or of science, or art, or as to identity of handwriting or finger impressions» (The Indian Evidence Act, 1872). The court considers the opinions of experts on a particular issue to be legally relevant facts.

Sections 45A and 47A of the Second Chapter of the Evidence Act specifically provide for an opinion of examiner of electronic evidence and digital signature, when relevant. The court requires an expert opinion in cases where it is necessary to give an opinion on a question «relating to any information transmitted or stored in any computer resource or any other electronic or digital form», or «electronic signature of any person» (The Indian Evidence Act, 1872). In the mentioned cases, the opinion is given by the expert, or, respectively, by the certifying authority which has issued the electronic signature certificate.

3.2 Russia

In Russia, the system of criminal law and the system of criminal procedural law are taken separately. The framework of criminal procedural law is formed by the Code of Criminal Procedure of the Russian Federation, 2001. The sources of Russian criminal procedural law also include federal laws of the Russian Federation, such as the Law on State Forensic Activity in the Russian Federation, 2001, and the Law on The Police, 2011, as well as legislative and regulatory acts of ministries and departments of the Russian Federation.

An integral and most important part of criminal proceedings is evidence. According to Article 74 of Code of Criminal Procedure of the Russian Federation, evidence in a criminal case is «all the information, on the ground of which the court, the prosecutor, the investigator and the inquirer, in accordance with the procedure defined by the present Code, establish the existence or the absence of the circumstances, subject to proving in the course of the proceedings on the criminal case, as well as of the other circumstances of importance for the criminal case» (The Criminal Procedure Code of the Russian Federation, 2001). This includes the conclusion and the testimony of the expert and the specialist.

Article 75 of the Code of Criminal Procedure of the Russian Federation states that evidence obtained in violation of the requirements of Code of Criminal Procedure is inadmissible, and therefore has no legal force and cannot be used as the basis for charges or used as evidence.

In Russia, one of the most controversial issues is the establishment of electronic evidence as a particular type of evidence. The Code of Criminal Procedure of the Russian Federation does not use the term "electronic evidence," but rather «electronic media», which causes the emphasis to shift to the data storage device.

Electronic document processing is also given special attention. Article 2 of the federal law on Information, Information Technologies and Information Protection defines an electronic document as «documented information presented in electronic form, that is, in a form which is fit for human perception with the use of computers, as well as for transmittance via information telecommunication networks or for processing in information systems (The Federal Law on Information, Information Technologies and Information Protection, 2006).

The Code of Criminal Procedure of the Russian Federation also regulates the details of the seizure of electronic media and copying information from them during the investigation, defines the application of electronic documents and forms of procedural documents in criminal proceedings.

In Russia, electronic document processing involving electronic signature is regulated by federal laws. Hence Article 2 of the federal law On Electronic Digital Signature defines electronic signature as «information in electronic form, which is attached to the other information in electronic form (signed information) or any other manner associated with a information and which is used to determine the person signer information (The Federal Law On Electronic Digital Signature, 2011).

Furthermore, the procedure of using electronic signatures in criminal proceedings is regulated by Chapter 56 of the Code of Criminal Procedure of the Russian Federation. Thus, Article 474.1 of the Code of Criminal Procedure of the Russian Federation provides for the submission of certain procedural documents: applications, complaints, court decisions via electronic systems with the use of an electronic digital signature.

It is necessary to pay attention to the specifics of applying special knowledge in Russia. So, the Code of Criminal Procedure of the Russian Federation differentiates the application of special knowledge by a specialist and an expert. In accordance with Articles 57 and 58 of Code of Criminal Procedure of the Russian Federation an expert is invited "... for carrying out the court examination and for issuing the

conclusion”, and a specialist is invited to participate “... the procedural actions in the order, established by the present Code, for rendering assistance in the exposure, confirmation and seizure of objects and the documents, and in the application of technical devices in the study of the criminal case materials, for formulating questions to be put to the expert and also for an explanation to the parties and to the court of issues embraced by his professional competence” (The Criminal Procedure Code of the Russian Federation, 2001). In addition, the participation of a specialist is obligatory in cases where electronic media are to be seized.

The conclusion and the testimony of the expert and the specialist is regulated by Article 80 of the Code of Criminal Procedure of the Russian Federation.

1. Seen as the conclusion of the expert shall be the content of his investigation and his conclusions on the questions put to him by the person, conducting the proceedings on the criminal case, or by the parties, presented by him in writing.

2. Seen as the evidence of the expert shall be the information he has supplied at an interrogation, carried out after receiving his conclusion, for the clarification or the specification of the given conclusion in conformity with the demands of Articles 205 and 282 of the present Code.

3. The conclusion of a specialist - a written opinion in respect of the questions posed to specialists by the parties.

4. The evidence of a specialist - data imparted by him/her during an interrogation on circumstances which require special knowledge, as well as the clarification of his/her opinion in compliance with the requirements of Article 53, 168 and 271 of this Code» (The Criminal Procedure Code of the Russian Federation, 2001).

Table 1 represents a comparison of terms that appear in criminal procedural legislation.

Table 1. Essential terms

	India	Russia
The laws being analyzed are	<ul style="list-style-type: none"> The Code of Criminal Procedure of India, 1973, 	<ul style="list-style-type: none"> The Code of Criminal Procedure of the Russian Federation, 2001,

	<ul style="list-style-type: none"> • The Indian Evidence Act, 1872, • The Information Technology Act, 2000. 	<ul style="list-style-type: none"> • The Federal Law On Electronic Digital Signature, 2011, • The Federal Law on Information, Information Technologies and Information Protection, 2006.
«Evidence»	<ol style="list-style-type: none"> 1. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; 2. All documents including electronic records produced for the inspection of the Court. 	All the information, on the ground of which the court, the prosecutor, the investigator and the inquirer, in accordance with the procedure defined by the present Code, establish the existence or the absence of the circumstances, subject to proving in the course of the proceedings on the criminal case, as well as of the other circumstances of importance for the criminal case
«Electronic evidence»	Any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer ... shall be deemed to be also a document, if the conditions mentioned in this section are satisfied.	The term does not appear in the law.
Documented information	Electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.	Documented information presented in electronic form, that is, in a form which is fit for human perception with the use of computers, as well as for transmittance via information telecommunication networks or for processing in information systems
«Electronic signature»	1. Electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature	Information in electronic form, which is attached to the other information in electronic form (signed information) or any other manner associated with a information and which is used to determine the person signer information

	<p>2. Digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3</p>	
<p>Special knowledge can be applied by</p>	<p>Expert. Expert is a person specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions.</p>	<p>Expert and specialist. Seen as an expert shall be the person, possessing special knowledge and appointed, in accordance with the procedure established by the present Code, for carrying out the court examination and for issuing the conclusion. Seen as the specialist shall be the person possessing special knowledge and invited to take part in the procedural actions in the order, established by the present Code, for rendering assistance in the exposure, confirmation and seizure of objects and the documents, and in the application of technical devices in the study of the criminal case materials, for formulating questions to be put to the expert and also for an explanation to the parties and to the court of issues embraced by his professional competence</p>

Based on the above, we can conclude that the status of modern achievements of science and technology should be more thoroughly regulated both at the level of criminal procedure and at the level of individual normative and subordinate acts. Timely introduction in the activities of law enforcement agencies and courts, the latest technology is a guarantee of quality performance of their tasks for detection and investigation of crimes, as well as contributes to the delivery of a fair verdict in a criminal case.

4. DISCUSSION

The presented results of the comparative legal analysis have allowed us to make a logical conclusion that in the current conditions of digitalization the law must follow the technical progress. Consequently, the law is changing, slowly, but in response to advances in science and technology. These results may be explained by a number of different factors.

Firstly, Russian and Indian legislation establishes regulations relating to the use of evidence, especially the conditions for the admissibility of evidence. In India, they are regulated in Chapter Five of The Evidence Act. This law regulates the admissibility of electronic evidence separately. In Russia, evidence is regulated by Chapter 10 of the Code of Criminal Procedure of the Russian Federation. All evidence must be in accordance with the general principles of admissibility of its use. In both Russia and India an electronic signature may be used in criminal proceedings.

According to the Indian Evidence Act, an original document must be presented as evidence in court, not its reproduction. The researchers explain this by the fact that any reproduction of a document has a lower level of reliability than the original. This, for its part, provides an opportunity for fraud or forgery.

Secondly, since the amendments made in 2000, the approach to electronic evidence in India changed. Thus, information contained in an electronic record is considered an original document even if it is printed on paper, stored, recorded or copied on media created by a computer, if special conditions, such as the proper operating of the computer on which the record was created and its regular use, are provided. [8]

Indian researchers note that the electronic evidence can be used in court without a certificate, but it must be available for reproduction in its original form, maintaining the integrity of the format without modification [4].

In Russia, electronic evidence is not legally defined as a separate type of evidence. Researchers note that the definition of electronic evidence is broader and the information that it contains is more important than in the case of the definition of electronic media. D. V. Kim (2020) states that «according to one point of view, it is necessary to supplement the Code of Criminal Procedure of the Russian Federation with a new type of evidence "electronic" and to provide for the peculiarities of its collection, verification, etc. Other scientists are not in favor of radical changes in the Code of Criminal Procedure of the Russian Federation. In order to optimize the process of admission of evidential electronic information,

they propose to introduce it into criminal proceedings as traditional types of evidence, such as physical evidence or other documents, but taking into account the peculiarities of electronic evidence».

Thirdly, in Russia, a great attention is paid to the determination of digital traces as a separate, new type of evidence from a forensic, rather than criminal procedural point of view. As E. R. Rossinskaya (2019) comments that “if to classify the information created in the process of working with computer technology into a special group of material traces, we think it is most rational to define them as "digital", since the formation of these traces is due to the specific implementation of information technology and is associated with the presentation of information in digital form, and for their conversion into perceptible form digital technology is also used”.

Fourthly, by comparing the legal regulations, we can see that in the Code of Criminal Procedure of the Russian Federation the application of special knowledge in the criminal proceedings is possible by an expert and a specialist, while in the Indian Evidence Act it refers only to experts. The criminal procedure legislation of both countries describes the rights and obligations of persons with special knowledge, the possibility of their involvement in the process, including their examination.

The Indian Evidence Act separately regulates the issue of examination in the area of electronic evidence and electronic signatures, while the Code of Criminal Procedure of the Russian Federation contains general provisions.

In both India and Russia, opinions of persons with special knowledge are facts relevant to a criminal case and belong to the category of evidence.

Fifthly, the Code of Criminal Procedure of the Russian Federation clearly stipulates the possibility of application of special technical means not only by experts and specialists, but also by persons who conduct investigations. Also, The Federal Law on The Police forces any member of the police to use the achievements of science and technology, «information systems, communication networks and modern information and telecommunication infrastructure» (The Federal Law on The Police, 2011). We have not found a similar provision in the Indian criminal procedure legislation.

In addition, there is no definition of the terms "technical means" in the Code of Criminal Procedure of the Russian Federation and the Code of Criminal Procedure of India. In turn, Indian criminal legislation defines "digital signature", "electronic record", "electronic signature" and "electronic evidence". In Russia, federal laws define the meaning of the terms "electronic signature" and "electronic document". However, there is no definition of the term "electronic evidence" in Russia at the legislation level.

Researchers from India also highlight the fact that special measures have to be taken for the identification, collection, preservation and examination of electronic evidence because it can be easily modified, damaged or destroyed by inappropriate handling or examination [12].

During the comparative legal analysis, we explored certain aspects of the criminal procedure legislation of India and Russia, in particular the criminal procedure codes as the main legislative acts.

The present study has several limitations that should be considered. Firstly, this article does not pretend to be exhaustive, but can form the basis for further research in the field of criminal procedural legislation of the BRICS countries.

Secondly, it should be noted that the legal systems of the researched countries belong to different legal families. Indeed, the legal system of Russia belongs to the Roman-German legal family, and the legal system of India is mixed, which combines features of the English-American, Roman-Germanic, Hindu and Muslim legal families [7].

Thirdly, during the time the research was conducted and the article was published, there may have been new research on the issue of research, as well as significant amendments to the law.

These results provide further support for the hypothesis that identified of both strengths that can be actively pursued and shortcomings that are subject to immediate legislative resolution. The conducted research can help in the law-making activities of India and Russia aimed at the prompt improvement of the sphere of criminal procedure and further development of the theoretical framework.

5. CONCLUSIONS

We have conducted a comparative legal analysis of criminal procedural legislation in Russia and India. The implementation of electronic data dominates among the trends in the development of criminal proceedings in Russia and India, which opens up new prospects for further improvement of both the legal and theoretical background.

Electronic document processing is an important element of modern legal practice, including in criminal proceedings. It allows increasing the efficiency of law enforcement work and reducing the time required to process records. One of the most widespread types of electronic document flow in criminal proceedings is electronic signature. This tool allows to ensure reliability and integrity of documents, which is important for the observance of procedural rights of participants of criminal proceedings. Moreover, electronic document processing in criminal proceedings allows to accelerate documents exchange between

participants of the process and reduce the possibility of mistakes during their transmission. Also, electronic document flow allows to save electronic copies of the documents, which increases the security level of their storage.

However, despite all the positive aspects of electronic document processing in criminal proceedings, it is necessary to take into account a number of negative moments. In particular, electronic document flow can become a target of cyber-attacks, which is associated with the risks of breach of confidentiality. Nevertheless, in general, electronic document processing brings significant advantages in criminal proceedings, which deserves attention and support from law enforcement agencies and courts. For this reason, it is necessary to make additions to the criminal procedural legislation with the opportunity to close the gaps and improve the use of the results obtained. It is necessary that the implementation and application of new technologies should be allowed and do not entail violations of the rights of the individual who is involved in the criminal process. At the same time, special attention should be paid to the competent use of modern technology by investigators and specialists, which will help to improve the process of using technical means and minimize the number of errors that may lead to negative legal consequences.

Thus, the prospect of further development of criminal proceedings in the context of digitalization is to improve the quality and speed of detection and investigation of crimes. In the future, such increased efficiency can form the basis for an objective trial, in which the judge will be able to better understand the event and make a fair judgement.

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