



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

DEEPFAKES AND CRIMINAL LIABILITY: IS INDIAN LAW PREPARED?

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Declaration:

I hereby declare that the commentary titled "**Deepfakes and Criminal Liability: Is Indian Law Prepared?**" is my original work. It has been prepared solely for academic purposes and has not been published, accepted for publication, or submitted for consideration in any other journal, magazine, or platform. All sources referred to in the commentary have been duly acknowledged. I affirm that this work does not infringe the intellectual property rights of any person or entity.

I understand that if any part of this declaration is found to be false, the editorial board may reject or withdraw my submission.

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Deepfakes and Criminal Liability: Is Indian Law Prepared?

Deepfakes are artificial intelligence-generated or manipulated images, videos, audio, or texts that create a false perception that a person has performed or uttered something that he or she has not done or said in real life. Generated with the help of sophisticated technologies like deep learning, generative adversarial networks, and diffusion models, deepfakes have achieved a realistic level that makes it very hard to identify their authenticity by even an experienced professional. With the fast progress made in generative AI, technologies which were out of reach of ordinary people due to their technical complexity and high-cost infrastructure requirements are now available even on personal devices like phones and laptops.

Their increased availability has resulted in the abuse of the use of these technologies. Deep fakes are being used for committing financial fraud by means of voice cloning, non-consensual explicit materials, political manipulation, identity fraud, and imposture. Not only does such abuse lead to severe financial and reputational consequences, but it also brings up important legal issues. The present criminal law has been developed mainly to deal with traditional crimes like forgery, cheating, and defamation, and it is unclear whether it will be sufficient to cope with the artificial fabrications that have never existed before.

In this analysis, the legal issues associated with deepfakes in India have been considered. It analyses whether the laws like Bharatiya Nyaya Sanhita, 2023, Information Technology Act, 2000, and Digital Personal Data Protection Act, 2023, form an appropriate legal regime to deal with the emerging issue or not. Along with that, it considers the constitutional balancing act between the right to freedom of expression and the rights to privacy and dignity and whether India needs a more holistic legal framework for regulating AI-created synthetic media.

The risks that deepfakes pose are that they confuse reality with fiction by blurring the lines between the two, making it increasingly hard to determine whether something is real or doctored. These videos could be used in fraudulent schemes such as voice impersonation, identity theft, non-consensual pornographic content, cyber-bullying, and spreading fake news for political gains. Deepfakes have the potential to ruin one's image and invade their privacy, as well as manipulate the views of many people. They also present some challenges in the process of authenticating evidence in legal cases since they are very convincing.

There is no particular legislation in India that controls deepfakes. The legislation will rely on the provisions that control the impact of these videos. The provisions of the Bharatiya Nyaya Sanhita, 2023 (BNS) may be used when there is an act of cheating, cheating by personation, forgery, defamation, criminal

intimidation, and obscenity. Yet, in all of these cases, the legislation punishes the impact of the deepfake video and not the production or dissemination of the deepfake video.

In addition to that, one may use provisions of the Information Technology Act, 2000 to protect from deepfakes since they criminalize identity theft and impersonation as well as obscene or sexually explicit content. Yet, it should be noted that the Act was adopted at a time when there was no advanced generative AI.

The Digital Personal Data Protection Act, 2023 may also come into play when the image or voice or other personal data of a person has been used to create deepfakes without their consent. But then again, it is essentially a law related to data protection which addresses issues related to lawful data processing and civil penalties and not criminal liability. Thus, while there are some protections under the law, there is still a need for a comprehensive deepfake regulation in India.

Any law that seeks to regulate the use of deepfakes would have to take into account two rights that have been provided for in the Constitution of India. As per Article 19(1)(a), there is freedom of speech and expression and this right is essential when it comes to using the deepfake technology in a legitimate way for satire, films, educational purposes, etc. So, any restriction would have to be reasonable in nature and within the scope of Article 19(2). However, Article 21 guarantees the right to life and personal liberty and this includes the right to privacy, dignity, reputation, and self-identity. Any misuse of deepfakes without consent could well violate these rights.

The following are some of the challenges with respect to regulating deepfakes in India:

No clear definition: There is no clear definition for deepfakes under Indian law.

Difficulty in tracing the source: The usage of AI technology makes it easy for the user to create deepfakes anonymously.

Widespread on the internet: Deepfakes are spread across the web through pseudonymous or unverified online profiles.

Cross-jurisdictional enforcement problem: Most AI software and social media platforms are hosted outside India.

Virality on the internet: The rapid spread of deepfakes across the internet and deletion of these videos fails to mitigate the damage done by them.

No specific criminal law related to AI: Criminal laws exist only to penalize the damage caused by deepfakes.

From among all the possible courses of action, the most feasible method is not to pass a Deepfake Regulation Act but to update the current legal regime. Since deepfakes are used as a means for perpetrating crimes such as fraud, defamation, identity theft, and sexual abuse, it would be more effective to enhance the provisions of Bharatiya Nyaya Sanhita, 2023, Information Technology Act, 2000, and Intermediary Guidelines rather than formulating a fresh law.

The problem with the current laws is that although they punish the damage caused due to deepfakes, there is no specific prohibition on the creation and dissemination of malafide deepfakes. This is especially true in case of non-consensual sexual deepfakes where the damage is done as soon as the video is uploaded.

As such, it is recommended that the creation and knowingly distributing of deceptions, fraudulent, non-consensual deepfakes be made into an offense. However, exemptions will be provided for satire, journalistic, artistic use of the technology among others.

Recommendations on How to Improve the Legal Framework of India on Deepfakes:

- **Legal definition of deepfakes:** Define deepfakes in the law in order to differentiate between malicious deepfakes and satire, parodies, or artworks.
- **AI label requirement:** Make it mandatory that there be AI labels on the AI-generated contents and make sure that such labels are not tampered with.
- **Takedown time-bound process:** Develop a procedure of taking down malicious and non-consensual deepfake contents within a certain period.
- **Stricter penalties:** Make the penalty for the use of deepfakes in fraud, extortion, sexual exploitation, identification fraud, or electoral interference stiffer.
- **Victim compensation:** Compensate the victims of deepfake for the damage they suffer.

The deepfakes are now a serious threat since they undermine issues of privacy, reputation, public trust, and fairness in the democratic process. Even though Bharatiya Nyaya Sanhita, 2023, Information Technology Act, 2000, and Digital Personal Data Protection Act, 2023 offer legal protection to the citizens, their scope does not extend to the protection from advanced forms of AI-generated content, and hence, these are only indirectly helpful against deepfakes and leave many legal loopholes.

Therefore, the Indian legal system needs to reinforce its legal framework through enacting new regulations that will be specifically geared towards the regulation of malicious deepfakes. In this regard, it is important

that any legal reforms to the Indian laws regarding deepfakes should not only aim at protecting people against AI-enabled malpractices but should also consider ensuring that the freedom of speech, privacy, dignity, and innovation is not compromised.

