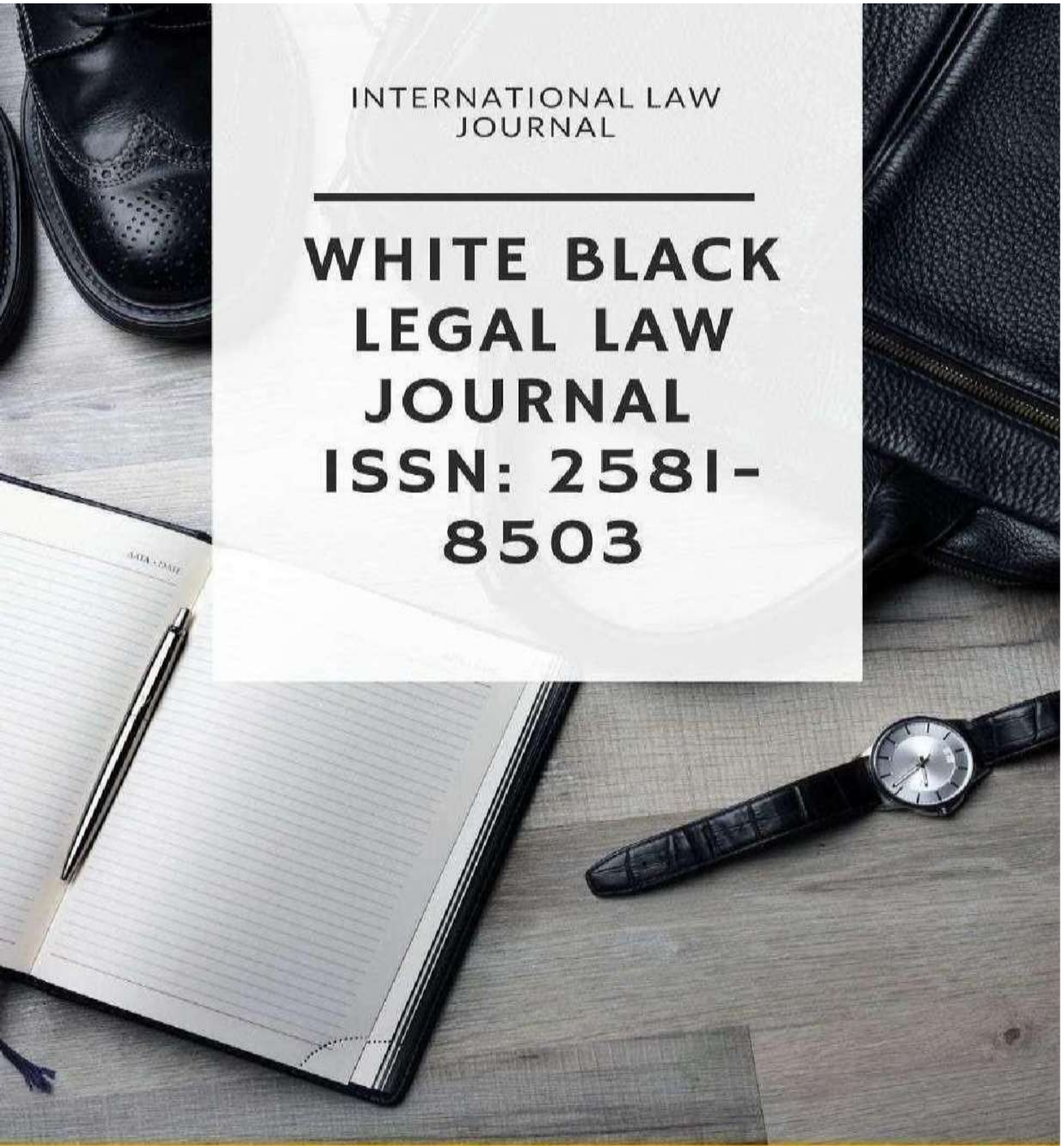

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DEEPFAKE CRIMES – REGULATORY GAPS AND CHALLENGES TO CONSENT & REPUTATION[1]

AUTHORED BY - SHREYA ORMALIA & NUPOOR SONKAR

Abstract

The proliferation of artificial intelligence capable of generating highly realistic synthetic images, audio, and video popularly termed “deepfakes” has produced unprecedented challenges to law, policy, and social order. While the underlying technology emerged within legitimate research domains such as machine learning, image synthesis, and digital entertainment, its misuse has escalated sharply. In India, deepfakes now constitute a significant mode of cyber harm, particularly in the form of non-consensual sexual imagery, political manipulation, financial fraud, reputational sabotage, impersonation, and the dissemination of falsified evidentiary material. These harms strike at the core of two essential legal interests: individual consent and individual reputation. Despite the severity and scale of the problem, Indian criminal and cyber law frameworks remain ill-equipped to regulate synthetic media. Statutes such as the Information Technology Act, 2000 and the Indian Penal Code (or the recently introduced Bharatiya Nyaya Sanhita) provide only partial, limited remedies that fail to capture the complexities of AI-generated content.

This research paper examines deepfakes within the broader context of constitutional rights, privacy jurisprudence, gender justice, and the evolving challenges of digital evidence. It highlights regulatory, technological, and evidentiary deficiencies in the existing legal system, analyses comparative international models, and proposes a comprehensive legal framework for India. The central argument of this paper is that deepfake crimes fundamentally disrupt the legal architecture of consent, autonomy, dignity, and reputation, and that without specialised regulatory intervention, the consequences for individual rights and public trust may be irreversible.

Keywords

Deepfakes; Artificial Intelligence; Consent; Reputation; Cybercrime; Privacy; Autonomy;

[1] Authored by Shreya Ormalia & Nupoor Sonkar

Digital Evidence; Indian Law; Non-consensual Sexual Imagery; Misinformation; Defamation; Synthetic Media; Regulatory Gaps.

Introduction

Artificial intelligence has historically been associated with incremental improvements in computation, prediction, and automation. Yet, over the last decade, the field has undergone a fundamental shift, moving from analytical models to generative systems capable of producing entirely new content. The advent of deep learning, and specifically generative adversarial networks (GANs), enabled machines not merely to recognise or classify data but to "create" to conjure images, audio, and videos of persons performing acts they never did, uttering words they never spoke, and appearing in contexts they never inhabited.

Such artificially generated media, known as deepfakes, blur the boundaries between truth and fabrication. Deepfakes do not simply mislead viewers; they undermine the epistemic foundations on which societies depend to trust audiovisual evidence. In a country like India, with its enormous population of digital users, rapid spread of smartphones, and relatively low levels of media literacy, the arrival of deepfakes has introduced a new dimension of cybercrime and social manipulation. Much like earlier internet harms revenge pornography, morphing, cyberstalking deepfakes have quickly evolved from novelty to threat.

The dangers are multi-fold. Individuals, especially women, face the non-consensual creation of sexually explicit deepfakes. Public figures encounter politically motivated fabricated speeches or footage designed to manipulate public opinion. Businesses face corporate sabotage through simulated announcements, fabricated financial statements, or impersonated audio commands. Courts may receive synthetic evidence, thereby compromising due process and factual adjudication. At a macro level, deepfakes jeopardise trust in institutions, news, and democratic governance.

Although the effects of deepfake misuse are felt widely, the law has lagged significantly behind. India lacks any statute specifically addressing deepfakes. Provisions under the Information Technology Act, 2000 and the Indian Penal Code require reinterpretation and judicial creativity to apply them to synthetic media. Even then, gaps remain: deepfakes do not neatly fit into traditional categories of forgery, impersonation, obscenity, voyeurism, or defamation. The law's silence creates an enabling environment for perpetrators while leaving victims without swift or adequate remedies.

This paper argues that deepfakes pose a complex, multi-layered threat that requires a new conceptual and regulatory approach. Rather than merely updating existing criminal provisions, India must adopt a coherent framework that addresses the technological, evidentiary, and rights-based challenges emerging from deepfake crimes. Consent, reputation, privacy, autonomy, and dignity cornerstones of constitutional jurisprudence—must be re-understood through the lens of synthetic media.

Problem Statement

Deepfake technology has outpaced the Indian legal system's capacity to regulate it. The problems arising from this gap are not merely theoretical but deeply practical. Victims of deepfake crimes, particularly women subjected to non-consensual sexual imagery, have little recourse. Even when laws governing obscenity, cyber harassment, or defamation are invoked, the burden of proof is high, investigations are slow, and enforcement mechanisms are weak.

The central problem is that existing legal categories are premised on the assumption that harmful content is either captured, created, or distributed by human actors. Deepfakes disrupt these assumptions by introducing synthetic authorship, algorithmic manipulation, and the possibility of perfect realism. These challenges create doctrinal ambiguities around intention, authorship, consent, and harm. The Indian Evidence Act, 1872, drafted for an analogue era, provides no guidance on identifying, authenticating, or contesting deepfake content.

Thus, the problem can be distilled into a single question: How can Indian law effectively regulate deepfake crimes and protect individuals from violations of consent and reputation when the existing legal framework lacks the conceptual vocabulary and statutory tools to address AI-generated synthetic media?

Objectives

The research seeks to achieve several aims. First, it intends to clearly identify the nature of deepfakes and explain how they are generated within the broader ecosystem of artificial intelligence. Second, it investigates the socio-legal harms associated with deepfakes, particularly the erosion of consent and reputational damage. Third, it assesses the adequacy of

Indian criminal, civil, and cyber law frameworks in responding to deepfake crimes. Fourth, the research aims to provide a comparative understanding by examining regulatory approaches adopted by other jurisdictions. Finally, the paper proposes a set of concrete reforms—statutory, administrative, and technological to help India construct a comprehensive legal regime to address deepfake crimes.

Hypothesis

The working hypothesis of this research is that the existing Indian legal framework is structurally inadequate to regulate deepfake crimes, particularly those involving violations of sexual consent and reputational harm. The hypothesis further posits that meaningful regulation of deepfakes requires a combination of specialised legislation, enhanced platform accountability, forensic capability-building, and a rights-based framework grounded in privacy, autonomy, dignity, and informational self-determination.

Research Questions

This study is guided by several central research questions:

1. What are deepfakes, and what technological mechanisms enable their creation and rapid dissemination?
2. What forms of harm particularly relating to sexual consent and reputational damage—arise from deepfake misuse in India?
3. How effective are existing Indian laws, such as the IT Act and the IPC/BNS, in addressing deepfake crimes?
4. What doctrinal, procedural, and evidentiary gaps hinder enforcement?
5. How have other jurisdictions regulated deepfakes, and what lessons can India draw from these approaches?
6. What reforms statutory, technological, and institutional are necessary to construct an effective regulatory framework for India?

Scope & Limitations

The scope of this research includes an examination of deepfake crimes within India’s legal, technological, and social context. It focuses primarily on harms arising from non-consensual sexual deepfakes and deepfakes that cause reputational injury, given that these two categories form the nucleus of most reported cases. The paper also considers political and financial deepfakes to the extent necessary to demonstrate broader regulatory challenges.

The study does not engage in empirical data collection but relies on doctrinal analysis, existing case studies, scholarly commentary, and comparative legislation. The limitations stem partly from the novelty of deepfake jurisprudence: Indian courts have yet to produce sustained judgments dealing with synthetic media. As a result, the study relies heavily on theoretical, constitutional, and comparative arguments.

Research Methodology

The methodology employed is primarily doctrinal, focusing on the analysis of statutes, judicial precedents, scholarly literature, and policy reports. The paper examines the applicability of existing cybercrime provisions, privacy jurisprudence, and criminal law doctrines to deepfake scenarios. It also employs a comparative legal methodology, drawing insights from the European Union, the United States, the United Kingdom, China, and Singapore, each of which has adopted distinct regulatory approaches.

Secondary sources include peer-reviewed articles, government whitepapers, industry standards on AI, and emerging scholarship on digital harm and online safety. The research adopts a rights-based analytical framework anchored in constitutional values of dignity, autonomy, and privacy.

Literature Review

Scholarly engagement with deepfake technology has expanded dramatically since 2017, when GAN-based video manipulation first became accessible to non-experts. Much of the earliest academic commentary originated in the United States, where concerns centred on the implications for democracy, journalism, and national security. Among the most influential works is the article by Robert Chesney and Danielle Citron, who famously described deepfakes as a threat capable of "eroding the foundation of trust upon which liberal democratic systems depend."[2] Their analysis introduced the notion of a "liar's dividend," where the mere existence of deepfake technology allows wrongdoers to dismiss genuine evidence as fabricated, thereby undermining accountability.

[2] Chesney Robert & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Calif L Rev 1753 (2019).

In India, scholarship initially emerged from gender-rights and cyber law researchers who recognised early that deepfakes would disproportionately harm women. Several studies emphasised that non-consensual sexual deepfakes constitute a new form of image-based sexual abuse that cannot be fully addressed by laws designed for conventional pornography or voyeurism. Policy organisations such as the Vidhi Centre for Legal Policy argued for explicit statutory recognition of synthetic media harms and recommended reforms such as watermarking and mandatory disclosure obligations for platforms.[3]

Literature addressing reputational and democratic harms has also grown. Scholars warn that deepfakes could be weaponised in political campaigns, judicial proceedings, and financial markets. The potential for fabricated evidence to enter courtrooms threatens due process and the reliability of the justice system. A number of international studies examine technical detection mechanisms, although consensus remains elusive due to the rapid evolution of generative models.

Overall, the literature reveals a consistent theme: deepfakes are a multidimensional problem spanning privacy, autonomy, free speech, democratic integrity, and evidentiary law. Yet, despite the proliferation of scholarship, there remains a substantial gap regarding India-specific analysis, particularly concerning doctrinal compatibility with Indian law, constitutional jurisprudence, and gender-based harm.

1. Deepfake Technology and the Transformation of Digital Identity

Deepfake technology has fundamentally altered the relationship between human identity and its digital representation. In traditional media, an individual's likeness was tied to their physical presence, but deepfakes sever this connection by enabling hyper-realistic fabrications that superimpose a person's face or voice onto another’s body. This dislocation produces a unique legal dilemma: the representation of a person in digital form no longer guarantees their involvement, knowledge, or consent. In India, where courts historically treated audiovisual content as strong corroborative evidence, the collapse of visual trust presents a severe challenge. A synthetic video can now circulate globally within minutes, shaping perceptions of a person’s behaviour or morality, even though the act never occurred. The victim's autonomy is compromised because their identity is repurposed without permission, and the reputational

[3] Lok Sabha Secretariat, *Impact of Social Media on Elections*, Standing Committee Report No. 190 (2021).

and emotional consequences often become permanent due to the internet's archival nature. As deepfake creation tools become increasingly accessible, identity becomes vulnerable not only to sophisticated criminals but to ordinary individuals with malicious intent, making regulatory intervention essential to protect agency and dignity.[4]

2. Consent, Sexual Autonomy, and the Crisis of Non-Consensual Deepfake Pornography

The gravest harm arising from deepfakes involves the fabrication of sexually explicit content depicting individuals primarily women without their knowledge or consent. Indian criminal law traditionally conceptualises consent in relation to physical acts. However, deepfakes introduce a novel form of sexual violation where the injury is informational: the victim's face or likeness is manipulated into sexual contexts they never participated in. The stigma generated by such content is amplified by patriarchal societal norms, where a woman's perceived sexual behaviour directly affects her social reputation, marriage prospects, familial standing, and even physical safety. Non-consensual deepfake pornography thus functions as a form of gendered violence that extends beyond obscenity. Yet Indian law fails to treat it as such. Sections 67, 67A, and 66E of the IT Act address obscene publication, not identity-based sexual fabrication, leaving victims without a clear statutory remedy. The absence of a specific offence for deepfake-enabled sexual abuse forces victims to rely on patchwork provisions that inadequately reflect the nature of the violation. This exposes a major regulatory gap: current law does not recognise that sexual autonomy can be violated digitally even without bodily contact.[5]

3. Reputational Harm, Defamation, and the Right to Digital Dignity

Deepfakes produce a category of reputational harm that defamation law, in its current form, cannot adequately address. Defamation traditionally requires publication of false content that harms reputation. But deepfakes operate not merely through falsity but through identity appropriation, where the victim's likeness becomes the medium of the falsehood. A manipulated video depicting misconduct sexual, political, financial, or otherwise can instantly destroy a professional career or personal credibility. Even subsequent deletion or clarification

[4] Mirchandani Maya, *Digital Personas and Synthetic Identities: The New Frontier of Online Harm*, ORF Issue Brief No. 415 (2021).

[5] Ponnavolu J. Sravan Kumar, *Technology-Facilitated Sexual Violence and the Law*, 63 JILI 219 (2021).

cannot undo the initial shock, gossip, and social stigma. Indian courts have acknowledged that reputation is intrinsic to the right to life under Article 21, yet remedies such as injunctions and damages are ineffective against the viral nature of deepfakes. The "right to be forgotten," although recognised in limited judicial contexts, remains unclear in statutory law and practically unenforceable online. Furthermore, India lacks a standalone tort for digital identity violation, leaving victims to struggle within a fragmented legal regime. The inadequacy of existing legal tools demonstrates that deepfakes create reputational injuries fundamentally different from traditional defamation, requiring a new rights-based framework focused on digital dignity rather than mere falsity.[6]

4. Intermediary Responsibility, Algorithmic Amplification, and Regulatory Gaps

Social media platforms are central to the proliferation of deepfakes because algorithmic systems amplify sensational and visually striking content regardless of authenticity. Once a deepfake is uploaded, platform algorithms may spread it to millions before any complaint is filed. The existing Indian regulatory framework, shaped by Section 79 of the IT Act and the 2021 Intermediary Guidelines, imposes due diligence obligations on intermediaries but largely fails to address synthetic media. Platforms are not required to proactively identify or filter deepfakes, nor to implement authenticity verification, watermarking, or detection tools. When victims discover the content, takedown processes are slow, fragmented, and often ineffective as mirror uploads and private messages continue dissemination. The safe-harbour protection created by *Shreya Singhal* restricts intermediary liability to situations where they have "actual knowledge," but deepfake harms occur in the first few hours, long before any formal notice can be issued. Without deepfake-specific duties, platforms escape accountability while victims bear irreversible harm. The regulatory gap here is systemic: Indian law addresses content moderation but not content fabrication, leaving the architecture of deepfake spread largely unregulated.[7]

[6] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[7] Shreya Singhal v. Union of India, (2015) 5 SCC 1.

5. Deepfakes and the Liar’s Dividend: Threats to Evidence, Justice, and Democratic Stability

A critical yet under-acknowledged danger of deepfakes is the “liar’s dividend” the incentive for wrongdoers to deny genuine evidence by claiming it is fabricated. As deepfake quality improves, courts may face increased challenges in authenticating videos used in criminal trials, political investigations, and corruption cases. In a country where digital forensics already suffers from delays, limited technical capacity, and backlogs, the risk is severe: criminals may escape liability by asserting that legitimately recorded evidence is a deepfake. This erodes trust not only in digital proof but in judicial outcomes themselves. Beyond the courtroom, deepfakes pose existential threats to democratic processes. Fabricated speeches, communal incitement videos, or manipulated political messages can influence elections, trigger public disorder, or defame political leaders in ways that cannot be rectified retrospectively. The Representation of the People Act and IPC provisions on incitement do not contemplate the challenges posed by AI-generated misinformation. Deepfakes thus create a dual crisis undermining both evidentiary reliability in courts and informational integrity in democratic society and India lacks a dedicated regulatory framework to manage either.[8]

CONCLUSION

The phenomenon of deepfake technology represents one of the most disruptive digital threats of the 21st century, not because of its novelty alone but because of its ability to erode fundamental human rights that legal systems have historically treated as stable identity, consent, autonomy, privacy, and reputation. In the Indian context, the stakes are even higher. Deepfakes intersect with pre-existing social vulnerabilities, gender hierarchies, slow judicial processes, weak digital literacy, and inadequate regulatory frameworks, thereby amplifying the harm far beyond the technological sphere. The research demonstrates that deepfakes do not merely challenge legal definitions; they challenge the very epistemological foundations on which legal decision-making rests. If audiovisual evidence can no longer be presumed authentic, then the structure of proof, credibility, and adjudication must evolve accordingly.

Sexually explicit deepfakes in particular expose the profound gap between traditional understandings of consent and the realities of digital violation. Even in the absence of physical

[8] Chesney Robert & Citron Danielle, *Deep Fakes and the New Disinformation Economy*, 107 Calif L Rev 1753 (2019).

contact or real sexual acts, victims endure humiliation, extortion, stigma, and psychological trauma. The law, however, continues to treat such harms through the outdated lenses of obscenity, voyeurism, or generic cyber offences, failing to recognise deepfake-based sexual violence as a sui generis form of identity-based abuse. Without statutory reform, victims remain trapped between fragmented remedies that neither prevent dissemination nor provide immediate relief. The lack of a dedicated legal provision for synthetic sexual harm demonstrates a structural blind spot in Indian cyber law.

Reputational injury caused by deepfakes also exceeds traditional defamation doctrine because the harm emerges not from a mere false statement but from the theft and distortion of identity itself. The current legal tools including injunctions, damages, and takedown mechanisms are ineffective against the viral, instantaneous, and borderless nature of deepfake dissemination. Similarly, India’s intermediary liability framework is ill-equipped to address synthetic media. Platforms operate at technological speeds the law cannot match, and safe-harbour protections allow them to disclaim responsibility for content that their own algorithms amplify. Without proactive detection duties, watermarking requirements, authenticity verification obligations, and transparent reporting standards, intermediaries remain passive conduits of harm.

The deeper systemic threat lies in the “liar’s dividend,” whereby genuine evidence can be dismissed as fake. This phenomenon undermines evidentiary reliability in criminal trials and destabilises democratic institutions by facilitating misinformation, political manipulation, and communal provocation. As deepfakes become more sophisticated, law enforcement agencies, forensic laboratories, judges, and even journalists will confront unprecedented challenges in distinguishing truth from fabrication. If India does not urgently invest in forensic capacity, authenticity determination protocols, and judicial training, the justice system may face crises of credibility.

Ultimately, the research makes clear that India’s regulatory landscape must move beyond piecemeal reforms. A comprehensive, deepfake-specific legislative framework is necessary one that recognises identity manipulation as a distinct offence; protects sexual autonomy in digital spaces; imposes proactive obligations on intermediaries; mandates watermarking and authenticity standards; strengthens evidentiary guidelines; and provides swift remedies to victims. The state must collaborate with technologists, civil society, and digital platforms to construct a rights-protective, privacy-respecting, democratically sound response to synthetic media. Deepfakes challenge not only the law, but the social trust upon which law is built. A failure to address this challenge will allow technology to outpace justice, leaving individuals, institutions, and democracy itself vulnerable to distortion.

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