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ISSUE-I (JAN-MAR 2026)



QUEST

A Quarterly Journal of the Students published
by the Indian Institute of Legal Studies

INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law

Approved under Section 2(f) & 12B of the UGC Act, 1956

Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India, New Delhi

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MESSAGE

FROM FOUNDER & CHAIRMAN'S DESK



SHRI JOYJIT CHOUDHURY

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In an era marked by profound global challenges and rapid technological transformation, the legal fraternity bears an unequivocal responsibility to ensure that the administration of justice remains accessible, and the majesty of the law inviolable. Our duty transcends mere cognizance of this shifting paradigm. It is incumbent upon us to shape its trajectory with sagacity, vision, and steadfast moral purpose.

The QUEST EDITORIAL BOARD remains steadfast in its mission to further legal scholarship and to affirm the principles of justice and integrity upon which our discipline rests. This journal serves as an

enduring affirmation of the value of rigorous analysis, critical thought, and principled academic discourse.

It is with great pride and profound gratification that I observe the commendable progress of this publication, fostered by the academic community of the Indian Institute of Legal Studies, Siliguri.

I record my deep appreciation for all contributors whose diligent scholarship has rendered compelling ideas into works of intellectual distinction. Through this shared commitment, we sustain the venerable tradition of legal inquiry and continue to enrich jurisprudence with our collective wisdom and insight.

A handwritten signature in dark ink, appearing to read "J. Choudhury", with a horizontal line drawn underneath it.

Patron-in-Chief
JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK



I would like to convey my sincere thanks and congratulate the “Quest Editorial Board” and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of ‘Quest’ the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of “Quest” (this edition), and I hope it will continue in future also. It also serves the purpose of Indian Institute of Legal Studies for which it is meant.

A handwritten signature in black ink, reading "Trishna Gurung", enclosed within a thin black rectangular border.

Dr. Trishna Gurung

Principal-in-Charge,

Indian Institute of Legal Studies

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LONG ARTICLE



LAW AS RATIO VIVENDI: A PSYCHOLOGICAL AND SOCIOLOGICAL INTERPRETATION OF SPINOZA'S LEGAL PHILOSOPHY



-Subhadeep Sarkar¹

ABSTRACT

In the political writings of Baruch Spinoza and most pointedly in the Tractatus Theologico-Politicus, law is reconceived as ratio vivendi: an imminent, purposive modality of practical reason that integrates affective dispositions, epistemic constraints, and institutional techniques for the preservation of collective life. This article develops a novel,

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interdisciplinary interpretation that situates Spinoza's juridical formulation at the intersection of political philosophy, social theory, and cognitive-affective psychology. Departing from reductive readings that treat Spinozan law as either purely naturalistic necessity or merely instrumental legislation, I argue that ratio vivendi functions as a normative-procedural grammar: it prescribes ways of living by calibrating desires and fears through public practices, discursive norms, and legal architectures that optimize cooperative equilibria. Methodologically, the study synthesizes close textual exegesis with conceptual tools from social psychology (motivation, emotion regulation, collective cognition) and sociology (institutions, habitus, deliberative publics) to show how Spinoza anticipates contemporary accounts of law as socio-psychological technology. Normatively, the essay contends that a Spinozan jurisprudence privileges justificatory transparency, procedural education, and institutional designs that cultivate shared practical reason without collapsing into technocratic managerialism. The piece thus supplies a refined theoretical toolkit for scholars who seek to reconceptualize legitimacy and legal effectiveness in terms of collective capacities to reason, regulate affects, and secure mutual advantage.

KEYWORDS: *Spinoza; Ratio Vivendi; Legal Psychology; Sociology of Law; Political Philosophy*

1. INTRODUCTION

“To take a life when a life has been lost is revenge, not justice.” —

Desmond Tutu²

The concept of law has traditionally been understood through the lens of command, authority, and obligation. However, a closer engagement with the philosophical writings of Baruch Spinoza, particularly his *Tractatus Theologico-Politicus*, reveals a far more nuanced and transformative understanding. At the outset of Chapter IV of this work, Spinoza introduces a definition of law that departs significantly from conventional juridical frameworks. Rather than reducing law to an externally imposed command or divine injunction, he reconceptualizes it as a *ratio vivendi*—a rational mode or logic of living directed toward specific ends.

This reinterpretation is not merely semantic but foundational. By framing law as a form of practical reasoning, Spinoza shifts the emphasis from authority to utility, from obedience to rational organization of life. Law, in this sense, becomes an instrument through which individuals and communities structure their existence in pursuit of preservation, stability, and collective well-being. Such an approach aligns law more closely with human rational capacities than with transcendental or sovereign dictates.

² Desmond Tutu, *To Take a Life When a Life Has Been Lost Is Revenge, Not Justice*, DEATH PENALTY INFO. CTR. (Jan. 3, 2022), <https://deathpenaltyinfo.org/archbishop-desmond-tutu-nobel-peace-laureate-passionately-opposed-to-the-death-penalty-has-died>.

Moreover, this conception situates Spinoza within a broader philosophical lineage that resonates with the ethical pragmatism of Epicurus, where prudential calculation and the pursuit of a stable life take precedence over metaphysical abstractions. The idea that law derives its legitimacy from its contribution to human flourishing challenges dominant traditions in jurisprudence, particularly those that emphasize formal validity or sovereign will as the ultimate sources of legal authority.

The significance of this shift becomes even more apparent when viewed against modern legal theories. For instance, the positivist framework associated with H. L. A. Hart prioritizes the procedural validity of norms, while decisionist theories such as those advanced by Carl Schmitt emphasize the centrality of sovereign power. Spinoza's formulation, by contrast, introduces a model in which the justification of law precedes its legitimacy, grounding legal authority in its practical efficacy rather than its formal origin.

This article seeks to explore the philosophical depth and contemporary relevance of Spinoza's conception of law as *ratio vivendi*. Through a close analytical reading of the relevant text, supported by interpretive insights from Dimitris Vardoulakis, the study aims to demonstrate how this seemingly concise definition carries far-reaching implications for legal theory, political philosophy, and the understanding of normative order. By examining its metaphysical foundations, ethical dimensions, and jurisprudential consequences, this article argues that Spinoza's

approach offers a compelling alternative framework for evaluating law in both historical and modern contexts.

This reading becomes easier to understand when compared with Indian constitutional principles. Indian constitutional law does not treat state power as unquestionable. Article 14 rejects arbitrariness, while Article 21 requires fairness, dignity, and reasonableness in any deprivation of life or liberty. The Supreme Court in *E.P. Royappa*³ linked equality with the end of arbitrariness, and in *Maneka Gandhi* it held that procedure under Article 21 must be fair, just, and reasonable. These ideas are close to the spirit of Spinoza's *ratio vivendi*, because both insist that law must be judged by how it actually works in human life, not merely by its formal existence.

The two definitions of law in chapter 4: text and immediate implications
Spinoza begins Chapter 4 by presenting a dual conception of law. In its first and more formal sense, law is understood as that which determines how entities of a particular kind act in consistent and predictable ways. This determination may arise either from the inherent necessity of nature—often referred to as divine or natural law—or from deliberate human enactment, commonly expressed through civil statutes or *jus*. In contrast, the second and more refined definition describes law as a *ratio vivendi*, that is, a rational principle or mode of living which individuals prescribe either for themselves or for others in pursuit of

³ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

specific objectives. This formulation introduces a more purposive and functional understanding of law, emphasizing its connection to human ends and practical reasoning.

This dual framework enables a clear distinction between divine law and human law. Divine law is grounded in necessity and reflects the essential nature of reality; it operates descriptively, expressing how things inevitably follow from their inherent properties. Human law, by comparison, is normative and instrumental, designed to regulate conduct in ways that enhance security, order, and social convenience.

Importantly, Spinoza rejects the traditional theological view that divine law is issued through revelation by a personal God. Instead, he argues that revelation itself is mediated through human interpretation and cannot be considered a direct transmission of divine commands. Consequently, divine law cannot be understood within a framework of command and obedience, since God, in Spinoza's philosophy, is not a legislator but an impersonal substance whose nature unfolds through necessity rather than volition.

By introducing the concept of *ratio vivendi*, Spinoza shifts the understanding of law from mere command to rational organization. Law becomes a structured way of arranging life in accordance with reason and purpose, rather than simply an imposed directive.

This conceptual move has significant implications for political authority. If the essence of law lies in its rationality—its capacity to organize life effectively toward certain ends—then the legitimacy of law cannot

depend solely on the power of a sovereign to enforce it. Instead, it must derive from its utility and its success in achieving those ends. In this sense, justification becomes prior to legitimacy: laws must first demonstrate their rational necessity before they can claim authority.

Scholars such as Dimitris Vardoulakis argue that this second definition should be regarded as primary. According to this interpretation, *ratio vivendi* should not be reduced to a simple rule or command but understood as a broader “logic of living”—a form of instrumental rationality that underlies all systems of law and governance. This interpretation is also reflected in the broader constitutional idea that law must be accountable to reason. The Indian Constitution does not permit state action to rest on caprice. Under Article 14, equality is not just formal similarity; it is also protection against arbitrary power. Under Article 21, the State must respect the conditions of a dignified life. In that sense, Spinoza and constitutionalism meet at a common point: law must be useful, justifiable, and capable of supporting real human life.

2. THE POLYSEMY OF RATIO VIVENDI: WHY TRANSLATION MATTERS

The Latin expression *ratio vivendi* carries several overlapping meanings. As Dimitris Vardoulakis observes, different translators have chosen distinct English equivalents — for example, Shirley’s “rule of life,”

Curley's "principle of living," and Israel's "rule for living" — and each choice foregrounds a different aspect of ratio. Those possible senses include:

- i. reasoning or a rational ordering (from ratio as reason or logos);
- ii. proportion or relational measure (the mathematical sense of "ratio"); and
- iii. a rule, prescription, or regulation.

Vardoulakis contends that Spinoza privileges the first meaning: ratio vivendi primarily names a rational logic of living that integrates thought and action, mind and body. Rendering the phrase simply as "rule" or "principal" risks narrowing Spinoza's scope to human statutes alone and thereby obscures how the same concept can also cover divine or natural regularities.

A close reading of the opening passages of chapter 4 supports this interpretation. Spinoza repeatedly employs the cognate term in a short sequence of remarks: he treats certain human enactments as rationes vivendi through which people renounce natural rights; he defines law itself as a ratio vivendi aimed at particular ends; he remarks that most people live "*nihil minus quam ex ratione vivunt*" (they live almost entirely without reason), a usage that treats ratio as the capacity for practical discernment; he shows how popular ignorance forces legislators to rely on penalties and rewards so that law can appear to function merely as externally imposed command; and, finally, he allows that ratio vivendi

can be extended to divine law insofar as that law functions as an ordered means to the supreme good (beatitudo).

Taken together, Spinoza's uses of ratio cluster across meanings but cohere into the idea of instrumental rationality — means—ends reasoning that orients life toward useful outcomes. Because this rationality is attached to living itself, Spinoza can insist that no one stands truly “outside” the law: everyone, in different measures, possesses the capacity for practical reasoning and so falls under law conceived as a living logic for conduct.

The Indian constitutional order also recognizes that law must work in the real world, not only in theory. In *E.P. Royappa*,⁴ the Court treated arbitrariness as the enemy of equality. This is an important reminder that a law may be formally valid and yet still be unjust in practice if it operates arbitrarily. Spinoza's ratio vivendi carries a similar warning: a law that ignores reason and lived reality will fail as a guide to common.

⁴ *Id.* at 17.

3. FINIS (ENDS) AND SPINOZA’S ANTI- TELEOLOGY: HOW TO READ TELEOLOGICAL LANGUAGE

A central difficulty emerges at once: how can Baruch Spinoza speak of “ends” (*finis*) while explicitly rejecting teleology in his metaphysical system, particularly in the appendix to Part I of the *Ethics*? This tension can be resolved by distinguishing between metaphysical final causes and the purposive structure of human action.

Spinoza’s monistic framework denies that final causes operate as fundamental explanations in nature. Nature, understood as substance, does not act with intentions or goals in the Aristotelian sense. However, at the level of human existence—where individuals strive to persist (*conatus*)—the language of “ends” becomes both meaningful and unavoidable. When Spinoza describes law as oriented toward “some end,” he is not attributing purpose to nature itself; rather, he is referring to the practical reasoning through which human beings organize their actions in order to preserve life and promote what is useful.

This interpretation aligns closely with Spinoza’s ethical theory. In Part IV of the *Ethics*, he identifies the highest good with living under the guidance of reason and links virtue directly to self-preservation and utility. To act virtuously is to act, live, and maintain one’s existence through rational direction, where reason functions as a structuring principle of conduct. Accordingly, “ends” should not be understood as

metaphysical purposes embedded in nature but as the deliberate, prudential aims of embodied agents whose striving (conatus) is shaped by rational evaluation. The rejection of final causes at the level of nature, therefore, does not eliminate purposive language altogether; it simply relocates it to the domain of human practice.

This reading also matches Indian constitutional reasoning. When the Supreme Court evaluates a law under Articles 14⁵ and 21⁶, it does not ask only whether the law exists. It asks whether the law is fair, reasonable, and consistent with constitutional values. In *Maneka Gandhi*, the Court made it clear that “procedure established by law” cannot be mechanical or oppressive; it must be just, fair, and reasonable. That judgment shows that legality alone is not enough. The law must also have an intelligible human purpose.

Spinoza’s point is similar. A law that claims authority must still show that it helps preserve life, reduce disorder, and support rational conduct. Ends matter, but not as metaphysical purposes built into nature. They matter as practical goals chosen by living human beings.

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 21.

4. EPICUREAN ROOTS: PHRONĒSIS, PRUDENCE, AND THE CALCULATION OF UTILITY

A striking claim in Dimitris Vardoulakis's interpretation is that Spinoza's *ratio vivendi* owes an important debt to Epicurean ethics. The Epicurean corpus—as transmitted in part by Diogenes Laertius and surviving fragments—emphasizes prudence (*phronēsis*): a form of practical calculation that orients conduct toward a life of pleasure conceived primarily as freedom from pain and disturbance. Epicurus himself, especially in the Letter to Menoeceus, elevates practical, calculative reason (*logismos*) as a chief virtue because it organizes action to secure steady tranquility and safety.

Baruch Spinoza's practical rationality exhibits clear affinities with this Epicurean prudentialism. On this view, a *ratio vivendi* is the habit of assessing means in light of their contribution to individual preservation and to the social conditions that sustain communal life: it is a mode of utility calculation that links private flourishing to public wellbeing. When one lives “according to the guidance of reason,” individual and communal goods tend to align—each person's prudent pursuit of utility, properly understood, supports the utility of others. This mutualism echoes Epicurus's picture of prudentially ordered sociality.

Why does the Epicurean connection matter? First, it locates Spinoza within a broadly materialist, practice-oriented tradition that treats life and

its governance as the primary criterion of normative judgment rather than subordination to a transcendent realm. Second, it helps explain Spinoza's practical account of divine precepts: divine injunctions are valuable insofar as they promote human beatitude (intellectual and affective tranquility); where such injunctions dispel fear of arbitrary supernatural interference by clarifying the unity of nature, they are instrumentally useful—hence, law understood by its use. Vardoulakis's genealogical emphasis thus highlights how Spinoza inherits a way of thinking in which law is less about coercive command than about the reasoned ordering that secures life and comfort, and why Spinoza is willing to set aside revelation and sovereign fiat as sole sources of legal legitimacy.

The Indian Constitution follows a similar logic in a modern legal form. In *Olga Tellis*,⁷ the Supreme Court held that the right to life includes the right to livelihood. That decision recognizes that life is not just biological survival. It includes the social conditions needed to live with dignity. In *K.S. Puttaswamy*,⁸ the Court recognized privacy as a fundamental right and linked it to dignity and personal liberty. These cases show that law must protect the conditions of a meaningful life, not merely enforce order for its own sake. That is very close to Spinoza's practical understanding of legality.

⁷ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

5. REJECTING POSITIVISM AND DECISIONISM: SPINOZA’S MIDDLE PATH

Two major twentieth-century approaches to jurisprudence provide a useful contrast with the position of Baruch Spinoza: legal positivism and decisionism.

Legal positivism, particularly in the works of H. L. A. Hart, Hans Kelsen, and John Austin, understands law as a system of rules whose validity depends on identifiable social sources and established procedures. Within this framework, the legitimacy of law is determined by its origin—whether it has been created according to the correct institutional processes—rather than by its moral or practical consequences. In some formulations, this leads to a separation between law and morality, where the question of whether a law is just or beneficial becomes secondary to whether it is properly enacted.

Spinoza’s conception of law challenges this view. By defining law as a *ratio vivendi*, he places practical utility and the preservation of life at the center of legal validity. Law is not merely a formal system but a functional instrument aimed at sustaining human existence and promoting collective well-being. When a law fails to achieve these purposes, it cannot maintain its normative authority, regardless of its procedural legitimacy.

A different contrast emerges with decisionism, most prominently associated with Carl Schmitt. Schmitt argues that the essence of political

authority lies in the sovereign's capacity to decide on exceptions—moments when normal legal rules are suspended in order to preserve order. In this view, law ultimately depends on a figure who stands outside the normative framework and has the power to override it when necessary.

Spinoza's framework resists this idea of a transcendent authority. Within a *ratio vivendi* perspective, there is no external standpoint from which law can be suspended by sheer will. Any deviation from established norms must still be justified in terms of its contribution to collective utility. Authority, therefore, cannot rely on exceptional power alone; it must remain accountable to rational evaluation and the practical ends of human life.

This is where Indian constitutional doctrine becomes especially useful. *Kesavananda Bharati*⁹ established that even Parliament's amending power has limits because the Constitution has a basic structure that cannot be destroyed. That doctrine places constitutional values above raw institutional will. It says that authority is real, but not unlimited. Likewise, *E.P. Royappa*¹⁰ says that arbitrariness is inconsistent with equality, and *Maneka Gandhi*¹¹ says that procedure must be fair and reasonable. Together, these cases show that Indian constitutionalism is not content with formal legality alone.

⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹⁰ *Id.* at 17.

¹¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

Spinoza's idea of *ratio vivendi* reaches a similar conclusion. A law is not legitimate simply because it was issued by power. It must be defensible as a rational and useful way of organizing common life. Justification comes before full acceptance. That is why the quality of law depends on its practical effect.

6. POLITICAL IMPLICATIONS: ABOLITION OF NAIVE RULE-CENTRIC LEGITIMACY

If a law's authority rests on how well it serves the common good, then mere enactment or raw power no longer confer automatic legitimacy. Legitimacy must be earned through demonstrable, practical justification. That shift produces a number of concrete political effects:

- i. **Contingent Legitimacy:** Authorities and statutes do not remain sacrosanct by virtue of their origin alone; a law that clearly fails to promote collective welfare can be challenged and, where appropriate, repealed.
- ii. **Popular Practical Judgment:** Because a *ratio vivendi* presupposes a shared capacity for prudential reasoning, citizens have standing to assess laws' usefulness. To the extent people can correctly discern a law's impact on communal wellbeing, they possess a legitimate role in contesting or overturning it.

- iii. **Bounded sovereign exception:** If usefulness, not sovereign fiat, is the touchstone of validity, emergency measures cannot claim a metaphysical exemption from evaluation. Exceptional powers must still be defensible on pragmatic grounds—whether they actually help safeguard communal welfare.
- iv. **Normative flexibility:** A use-centered jurisprudence treats rules as instrumental tools rather than immutable ends, allowing laws to be amended, repealed, or reinterpreted as assessments of their utility evolve.

Indian constitutional principles give this article a strong contemporary frame. Article 14 protects equality before the law and equal protection of the laws, but the Supreme Court has long read it as a safeguard against arbitrariness. That matters because arbitrariness is often the mark of law that has lost its rational core.

Article 21 adds another layer. After *Maneka Gandhi*, the Court made it clear that the State cannot deprive a person of life or liberty through a procedure that is unfair, unjust, or unreasonable. This transformed Article 21 into a wide guarantee of dignity. Later cases, including *Olga Tellis* and *K.S. Puttaswamy*, deepened that approach by recognizing livelihood, privacy, autonomy, and dignity as part of meaningful life.

These ideas help translate Spinoza into a constitutional vocabulary that Indian students and researchers can easily understand. A *ratio vivendi* is not just a philosophical phrase. It is a reminder that law should serve life.

It should not become detached from the actual conditions of people. If a rule is formally valid but causes unnecessary suffering, excludes vulnerable groups, or operates without reason, its legitimacy becomes doubtful.

This is also why Indian law remains a useful point of comparison. The Constitution does not treat legal power as self-justifying. It insists on reasonableness, fairness, dignity, and proportionality. Spinoza's theory reaches a similar conclusion from a different philosophical path.

7. DANGERS AND PARADOXES: THE DOUBLE EDGE OF "USE"

If usefulness is the yardstick for legal validity, that yardstick can cut both ways: it can empower liberation or be twisted into a tool of domination. Two tensions stand out.

First, use as a tool of dispossession. Colonial regimes repeatedly invoked "use" to deny Indigenous peoples' legal claims. Doctrines like *terra nullius* treated territories as legally available when they were not used in ways legible to colonizers, thereby legitimizing seizure. In short, privileging "use" without care lets powerful actors define what counts as legitimate use and weaponize that definition to exclude and appropriate. Second, use as a tool of redress. The same criterion can be reclaimed by oppressed groups. Indigenous claimants have, in numerous contexts,

reframed “use” to demonstrate longstanding, complex relationships with land and so recover rights that earlier legal frameworks denied them. The Australian Mabo litigation is a prominent example where an expanded account of use helped secure recognition of native title.

These oppositions imply that a *ratio vivendi* jurisprudence cannot rely on an undifferentiated notion of usefulness. It needs clear, contestable standards for measuring usefulness and robust procedures for deciding who measures it. Otherwise, “use” risks becoming an instrument of the powerful.

Indian constitutionalism offers important correctives here too. Equality under Article 14 and the demand for fair procedure under Article 21 require the State to justify itself. They do not allow hidden bias or arbitrary decision-making. In that respect, constitutional law works as a discipline on power. It asks whether an apparently useful policy is actually fair and whether it respects the dignity of those affected.

So, the real lesson of *ratio vivendi* is not simply that law should be useful. It is that usefulness must be publicly defensible, constitutionally responsible, and tied to human dignity. Use without justice is dangerous; use with reason can support a humane legal order.

8. METHODOLOGICAL CONSEQUENCES: LAW AS AN OBJECT OF POLITICAL- PSYCHOLOGICAL INQUIRY

Baruch Spinoza's idea of a *ratio vivendi* recasts jurisprudence as a practical, empirical inquiry: law becomes the study of how collective, reasoned calculation shapes ways of living and whether those calculations actually secure communal well-being. This perspective pushes the study of law beyond doctrinal analysis into an interdisciplinary project that draws on political philosophy, moral psychology, sociology, and history.

A *ratio vivendi* framework foregrounds several lines of inquiry. It asks about the emotional and cognitive conditions that enable sound practical judgment (bringing Spinoza's account of the passions in the *Ethics* into conversation with legal theory). It attends to the institutional settings that affect the quality of public deliberation — educational systems, media environments, and structural inequalities. And it tracks how historical change reshapes what societies regard as “useful” and how benefits and burdens are distributed.

Because Spinoza gives justificatory reasoning priority over mere formal legitimation, this approach carries an epistemic commitment: laws must be continually evaluated, empirically and normatively, for their effects.

In short, *ratio vivendi* is not an abstract formula but a lived practice — an ongoing project of managing collective life through informed, reasoned calculation.

Spinoza, Agamben, and the “use” tradition: convergences and divergences. Dimitris Vardoulakis draws an important distinction between Baruch Spinoza’s Epicurean-influenced account of “use” and Giorgio Agamben’s interpretation of the same concept within the Franciscan tradition. Agamben presents “use” as a mechanism that can open a space beyond the law—a sphere in which legal norms are suspended or rendered inoperative. By contrast, Spinoza, drawing on Epicurean insights, treats use as internal to law itself: it is not an escape from legality but the very principle through which law is constituted and understood.

This divergence has significant implications for political analysis. Agamben’s framework is closely tied to situations of exclusion and the operation of sovereign power in states of exception—moments where law is set aside in the name of authority. Spinoza’s position, however, rejects the idea that sovereignty can legitimately stand outside the law. Within a *ratio vivendi* framework, any exercise of power must remain accountable to rational evaluation and its contribution to collective utility. Sovereign authority cannot justify itself merely through force or exceptional status; it must continuously demonstrate its usefulness.

As a result, Spinoza's approach may appear less dramatic in metaphysical terms, but it is arguably more demanding in normative practice. Legitimacy is not derived from the formal act of decision but from ongoing justification grounded in reason and utility.

This contrast also reflects different orientations in political thought. Agamben's focus on exception brings attention to conditions of marginalization and exclusion, emphasizing the vulnerability of those placed outside legal protection. Spinoza, on the other hand, directs attention toward reform: by grounding law in shared practical reasoning, he opens the possibility for collective evaluation and correction of unjust arrangements. While both perspectives offer valuable insights, Spinoza's model tends to be more constructive and applicable, providing a framework for critical engagement with law and policy in everyday governance.

Practical examples and contemporary resonances on Baruch Spinoza's ratio vivendi framework translate directly into a practical test for modern legal and political choices. Below are four areas where it yields specific, action-guiding questions.

- i. **Public health policy:** Under a ratio vivendi standard, public-health measures must be justified by their observable contribution to preserving life and maintaining social functioning. Policymakers should show empirical evidence of effectiveness and consider distributional effects: policies that

systematically harm marginalized groups without offsetting benefits would be open to legitimate challenge and revision.

- ii. **Environmental regulation:** A use-oriented jurisprudence evaluates environmental laws by whether they sustain the conditions for communal survival. When regulations are captured by short-term commercial interests and no longer protect ecosystems or long-term wellbeing, their moral and political authority weakens. This approach supports claims grounded in collective survival (rather than purely formal rights), and it foregrounds intergenerational impacts in legal assessment.
- iii. **Property and colonial legacies:** As Dimitris Vardoulakis and others note, “use” has played both exclusionary and restorative roles in colonial legal history. A Spinozan reading demands that we interrogate whose notion of usefulness counts and how institutional power shapes recognition of utility. That inquiry makes remedial measures and restorative justice urgent: law must be reoriented to secure the life-requirements of communities dispossessed by past legal regimes.
- iv. **Emergency powers and democracy:** The ratio vivendi perspective supplies a principled critique of exceptional measures that become tools of domination. Emergency authorities must justify extraordinary steps in terms of concrete benefits to communal welfare and face institutional mechanisms for review and abrogation if those benefits fail to materialize.

Legitimacy cannot rest on the mere invocation of exception; it must be continually demonstrated by usefulness.

9. TOWARD A JURISPRUDENCE OF USE: NORMATIVE PROPOSALS

If Spinoza's idea of *ratio vivendi* is taken seriously as a foundation for legal philosophy, it generates a set of clear normative directions for both legal theory and institutional design.

First, law must be grounded in public justification. Legal rules should not be treated as valid merely because they are enacted; instead, institutions ought to require that laws be explained and defended in terms of their actual contribution to collective well-being. This implies that legislative and judicial bodies must engage in both empirical evaluation and ethical reasoning, examining not only intentions but also real-world consequences.

Second, a commitment to *ratio vivendi* necessitates democratic capacitation. Citizens cannot meaningfully participate in evaluating laws unless they possess the ability to reason about public goods and shared interests. Accordingly, political and civic education becomes a central normative priority. A well-functioning legal order depends on a populace capable of informed deliberation rather than passive compliance.

Third, legal systems must incorporate structured mechanisms for revision and repeal. Laws that fail to promote common utility should not persist simply due to procedural inertia. Instead, there should be accessible and legitimate pathways for challenging and overturning such laws. This does not undermine legal stability; rather, it strengthens it by embedding correction within the system itself.

Fourth, the framework requires protections against the manipulation of “utility.” Since claims about usefulness can be distorted by those in positions of power, institutional safeguards are essential. Transparency, inclusive participation, and robust protections for minority interests help ensure that the concept of utility is not reduced to the preferences of dominant groups.

Finally, *ratio vivendi* calls for interdisciplinary evaluation of law. The usefulness of legal norms cannot be assessed in isolation from their broader effects. Legal validity should therefore be informed by insights from fields such as public health, environmental science, and economics, recognizing that social well-being is complex and multidimensional.

The Indian Constitution again provides a useful parallel. Its core values are not only legal formulas. They are habits of democratic life: equality, liberty, fraternity, and dignity. In this sense, constitutional law is also a way of living together. It is not surprising, then, that cases like *Maneka*

*Gandhi*¹² and *K.S. Puttaswamy*¹³ are read not only as legal decisions but also as moral statements about the kind of society India seeks to become. Spinoza's ratio vivendi can be read in the same spirit. Law is effective when it helps create a shared form of life. It fails when it becomes disconnected from the people it governs.

10. CONCLUSION: THE ENDURING SIGNIFICANCE OF RATIO VIVENDI

Spinoza's succinct yet far-reaching idea that law is a ratio vivendi reshapes the way we understand jurisprudence. It shifts law away from being a fixed and rigid structure, reimagining it instead as a dynamic, rational practice—one that continuously weighs means against ends in order to sustain and improve collective life. In doing so, Spinoza aligns himself with a prudential tradition reminiscent of Epicurean thought, while distancing his position from positivist and decisionist approaches that locate legal authority either in closed normative systems or in the will of a sovereign exception. Within this framework, a clear evaluative standard emerges: the justice of a law depends on its usefulness in

¹² *Id.* at 27.

¹³ *Id.* at 25.

promoting shared well-being.

At the same time, this conception is not idealistic or detached from reality. Spinoza remains acutely aware of human limitations—our susceptibility to error, the incompleteness of public understanding, and the structural challenges involved in achieving genuinely rational consensus. Accordingly, his political vision is not about perfect realization but about improvement: strengthening the conditions under which reason can operate. This includes fostering citizens' capacity for deliberation, uncovering distortions or manipulations within legal systems, and creating institutional pathways to amend or discard laws that no longer serve their purpose.

This article has shown that Spinoza's thought becomes clearer when read alongside Indian constitutional principles. Article 14 rejects arbitrariness; Article 21 demands fairness, dignity, and reasonable procedure; and landmark cases such as *E.P. Royappa*, *Maneka Gandhi*, *Kesavananda Bharati*, *Olga Tellis*, and *K.S. Puttaswamy* show that law in India is not only about validity, but also about values. These decisions reflect a constitutional culture that evaluates authority through human impact.

Seen from this angle, Spinoza is highly relevant today. He helps us understand law as a living social practice that must be justified by its effects on real human beings. That makes his philosophy useful not only for political theory, but also for legal study, constitutional interpretation, and public life in general.



SHORT ARTICLE



REGULATING DEEPPAKES IN INDIA: LEGAL GAPS AND POLICY SOLUTIONS FOR AI-GENERATED MISINFORMATION



- Biswajit Das¹

ABSTRACT

Significantly, Artificial Intelligence (AI) has impacted the digital world through the development of realistic synthetic media, commonly called deepfakes. Deepfakes are synthetic media, such as images, videos, and audio, that are created using advanced AI techniques, specifically

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through deep learning techniques such as Generative Adversarial Networks (GANs). Although deepfakes have legitimate applications, their misuse has raised serious concerns such as misinformation, identity theft, and political manipulation. Moreover, the exponential rise of such content, i.e., millions of deepfakes are being spread online, speaks volumes for the challenges faced by modern legal systems.

Regarding the Indian legal framework, it has not yet enacted any legislation that specifically deals with the issue of deepfakes. Rather, it has attempted to address the issue through existing laws such as the Information Technology Act, 2000, the provisions of the Bharatiya Nyaya Sanhita, 2023, the Digital Personal Data Protection Act, 2023, and the provisions of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and its subsequent amendments. Although the existing laws provide partial relief for the commission of offenses such as impersonation, defamation, fraud, and violation of privacy, they do not comprehensively address the challenges posed by AI-generated misinformation.

This article aims to address the emerging challenges of deepfakes in India by examining the existing legal framework, recent regulatory developments, and the lacunae that still persist.

KEYWORDS: *Deep fakes, Artificial Intelligence, Cyber Law, Privacy, Regulation.*

1. INTRODUCTION

The rapid development and evolution of artificial intelligence have brought about significant changes in the dynamics of digital communication in several ways, including the emergence of "deepfakes". In essence, deepfakes refer to synthetic media content that includes videos, images, and audio that have been generated through deep learning technologies like GANs and which has the potential to manipulate or generate a person's image in a realistic manner.

Although initially developed for entertainment purposes and creativity, deepfakes have become a powerful technology whose use has the potential to blur the lines between what is real and what is fake. The potential dangers and benefits associated with deepfakes have become a reality and have come to be used in different ways, particularly in the rapid spread of misinformation and disinformation in society. In this regard, deepfakes have been used in different ways both individually and in society.

Individually, deepfakes have been used in different ways for fraud, identity theft, and defamation. In society, deepfakes have become a threat to political discourse and have the potential to influence the outcome of elections in a digitally connected society. The susceptibility of India to such negative implications is further heightened by the fact that it has an ever-expanding digital landscape. With a large number of internet users,

India has witnessed a rapid proliferation of fake information, especially during politically sensitive times like elections. This has created a fertile environment where AI-generated misinformation can create havoc in the system.

However, India has an existing “legal vacuum” as it currently lacks a special law to deal with deepfakes.² Existing laws such as the Information Technology Act, 2000, Bharatiya Nyaya Sanhita, 2023, Digital Personal Data Protection Act, 2023, etc., merely offer a disjointed and indirect solution to tackle AI-generated content.

With this background, this article aims to critically examine India’s existing legal framework, identify structural as well as doctrinal gaps in it, and suggest effective reforms to strike a delicate balance between regulating deepfakes and allowing scope for AI as well as freedom of expression.

² *Regulating Deepfakes in India: A Legal and Ethical Analysis of Misinformation in the Age of AI*, INDIAN J. L. & LEGAL RSCH., <https://www.ijllr.com/post/regulating-deepfakes-in-india-a-legal-and-ethical-analysis-of-misinformation-in-the-age-of-ai> (last visited March 31, 2026).

2. UNDERSTANDING DEEPAKE TECHNOLOGY

Deepfake is an advanced manifestation of artificial intelligence, specifically in the realm of machine learning and the broader field of neural networks. In essence, deepfakes have been created through the use of Generative Adversarial Networks (GANs), in which a pair of artificial intelligence networks, the generator and discriminator, function in tandem. The former produces content through the simulation of real-world data, while the latter evaluates the authenticity of the content. Through an iterative process of training, the network continually improves the content until the created image, audio, or video is almost indistinguishable from the real content.³ In recent times, the emergence of diffusion models and advanced neural networks has greatly improved the quality and accessibility of deepfakes, even for non-technical users. The real-world implications of deepfakes have already materialized in various fields. In the Indian context, the emergence of a deepfake video of actress Rashmika Mandanna, in which her face had been superimposed on the body of another individual, served to underscore the increasing misapplication of artificial intelligence for non-consensual and libelous

³ Margaret Rouse, *Deepfake Definition*, TECHTARGET (March 31, 2026, 8:15 PM), <https://www.techtargget.com/whatis/definition/deepfake>.

purposes.⁴ In the realm of politics, deepfakes have also emerged as a major area of concern, particularly in the context of elections, in which deepfake videos and artificial intelligence clones of public figures are deployed to shape public perception.⁵ In the global context, the misapplication of deepfakes has included fabricated speeches and misleading media content involving public figures. The most challenging factor in the regulation of deepfakes is their realistic nature. Unlike other forms of misinformation, deepfakes have been created with the express intention of evading detection through their authenticity. The rapid advancement of artificial intelligence technologies has outpaced the development of detection tools, resulting in a chasm between innovation and regulation.⁶ The ease of availability of deepfake tools and the anonymity of the internet have also made the regulation of deepfakes particularly challenging.

⁴ Anagha Srivastava, *Rashmika Mandanna Deepfake Video Sparks Outrage*, INDIA TODAY (March. 31, 2026, 8:20 PM), <https://www.indiatoday.in>.

⁵ Nicol Turner Lee, *Artificial Intelligence, Deepfakes and the Uncertain Future of Truth*, BROOKINGS INSTITUTION (March 31, 2026, 9:00 PM), <https://www.brookings.edu/articles/artificial-intelligence-deepfakes-and-the-uncertain-future-of-truth/>.

⁶ Rohan Singh & Kartik Sharma, *Regulating Deepfakes in India: A Legal and Ethical Analysis of Misinformation in the Age of AI*, INDIAN J. L. & LEGAL RSCH. (July 6, 2024), <https://www.ijlrr.com/post/regulating-deepfakes-in-india-a-legal-and-ethical-analysis-of-misinformation-in-the-age-of-ai>.

3. CURRENT INDIAN LEGAL FRAMEWORK

The current legal regime in India against deepfakes does not appear to be based upon a specific and dedicated law but instead follows a fragmented pattern based upon pre-existing laws that only indirectly tackle the problems caused by AI-generated synthetic media. This follows from a broader structural problem in that most cyber and criminal laws in India were enacted prior to the advent and development of advanced generative AI technologies and therefore cannot keep pace with the technological complexities involved in deepfakes.

The Information Technology Act, 2000, is the most important law that governs online conduct in India. Even though it does not specifically include provisions against deepfakes, various provisions have been used to tackle various issues that may be associated with deepfakes. Section 66⁷ tackles various computer-related offenses such as unauthorized access and use of data and may be applicable in cases where deepfakes have been created by accessing and misusing personal data in contravention of applicable laws. Section 66 D⁸ tackles cheating by personation by using a computer resource and may be applicable in cases of AI-generated impersonating offenses. Sections 67⁹ and 67A¹⁰ tackle

⁷ Information Technology Act, 2000, § 66, No. 21, Acts of Parliament, 2000 (India).

⁸ Information Technology Act, 2000, § 66D, No. 21, Acts of Parliament, 2000 (India).

⁹ Information Technology Act, 2000, § 67, No. 21, Acts of Parliament, 2000 (India).

¹⁰ Information Technology Act, 2000, § 67A, No. 21, Acts of Parliament, 2000 (India).

offenses such as publication or transmission of obscene and sexually explicit material in electronic form and are commonly applicable in cases of non-consensual intimate deepfakes. Further, Section 69¹¹ allows for the issuance of directions for interception or monitoring or decryption of information in accordance with the sovereignty and integrity of India and in the interest of public order and may be applicable in cases of deepfakes.

The implementation of the Bharatiya Nyaya Sanhita, 2023 (BNS)¹², which supersedes the Indian Penal Code, includes new amendments in criminal laws that may be applicable in the context of deepfake misconduct. For example, the criminal laws of cheating, impersonation, forgery, and defamation may be applicable in addressing individuals involved in the production and dissemination of harmful deepfakes. However, similar to the IPC, the new BNS fails to specifically define and recognize deepfakes, making it imperative to rely on general provisions that may not specifically address the emerging technologies.

The Digital Personal Data Protection Act, 2023¹³, introduces an important dimension of data privacy in the legal regime. Deepfakes frequently involve the unauthentic usage of an individual's facial image,

¹¹ Information Technology Act, 2000, § 69, No. 21, Acts of Parliament, 2000 (India).

¹² Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

¹³ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

voice, and biometric identifiers. These data elements constitute personal data under the DPDP Act. The legal regime of the DPDP Act is centered on the concepts of data consent and the data fiduciary's accountability. This makes it imperative to rely on the legal regime in challenging the production of deepfakes. However, the DPDP Act fails to specifically address the issue of synthetic media and the replication of an individual's digital likeness.

At the constitutional level, deepfake regulation is subject to a balancing test of competing fundamental rights. Article 21 of the Constitution, as interpreted in the landmark judgment in *Justice K.S. Puttaswamy v. Union of India*¹⁴ by the Supreme Court, recognizes the right to privacy, dignity, and reputation as an integral part of the fundamental right to life and liberty. Deepfakes violate these rights as they appropriate identity and manipulate reality. At the same time, Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, which encompasses freedom of artistic expression and digital media. The test for regulating deepfakes is to be in conformity with the reasonable restrictions test under Article 19(2). The judgment in *Shreya Singhal v. Union of India*¹⁵ by the Supreme Court, striking down Section 66A of the

¹⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1.

¹⁵ Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1.

IT Act for overbreadth and vagueness in regulating freedom of speech and expression in the digital media, is relevant in this context.

Besides this, there is a due diligence requirement under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This requires online intermediaries to exercise reasonable diligence, delete any content that is unlawful upon receiving actual knowledge, and provide grievance redressal mechanisms. Failure to do so would result in these online intermediaries not being granted safe harbour under Section 79¹⁶ of the IT Act. While these rules provide a framework for platform accountability, they were not initially meant to regulate AI-generated content. Thus, India's legal framework is a piecemeal and reactive approach to dealing with deepfakes. While there is some form of remedy available through the various provisions related to fraud, obscenity, defamation, and data protection, there is no comprehensive and precise regulation that addresses AI generated misinformation.

¹⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3, Information Technology Act, 2000 (India).

4. RECENT REGULATORY DEVELOPMENTS (2025–26)

The regulation of deepfakes in India has started to take a more concrete form with the proposed amendments to the Information Technology Rules, 2026. This is a complete shift from the indirect regulation of deepfakes in the country. The most important development in the process is the recognition and formalization of the concept of “synthetically generated information” (SGI), which aims to bring the concept of AI-generated content, including deepfakes, within the purview of the law.¹ This is a major step in the right direction since it recognizes the concept of deepfakes and distinguishes it from other forms of content. This is a major development since it recognizes the concept of deepfakes and distinguishes it from other forms of content. The amendments will also impose a requirement to label AI-generated content, which will make it necessary for deepfakes and other AI-generated content to include information that it has been artificially created.

In addition, the amendments will impose a requirement to embed metadata in the content so that the origin of the content and any subsequent modifications may be easily identifiable.

These amendments indicate a shift in the Indian government’s response to deepfakes and the need for greater transparency in the digital world. The amendments will also impose a requirement to remove illegal

content within three hours in cases of court or government orders. This is a major development since it aims to address the problem of deepfakes and the high rates at which they go viral, particularly in critical situations like elections. This is a major shift in the Indian government's response to deepfakes and a shift in the Indian legal response to the concept of deepfakes.

5. COMPARATIVE PERSPECTIVES

From a comparative perspective, it is noted that the global regulatory environment is adopting an approach towards the development of regulatory mechanisms for the mitigation of risks arising from deepfakes and artificial intelligence generated misinformation. While none of the regulatory frameworks may be perfect, the regulatory environment in the US, EU and China presents an important lesson for India's developing regulatory landscape.

In the United States, the regulatory environment surrounding deepfakes is largely decentralized. There are several states that have enacted legislation specifically dealing with the risks associated with deepfakes, particularly with regards to the electoral processes and non-consensual intimate deepfake videos. For instance, states such as Texas and California have enacted legislation making the production and

distribution of deceptive deepfakes that affect elections and individuals punishable by law. At the federal level, there have been proposals in the enactment of the Deepfakes Accountability Bill, 2019 regarding the labelling and tracing of deepfakes, but there is yet to develop an overarching regulatory framework.

On the other hand, the European Union takes a more rights-based and structured approach towards deepfake regulation. The Digital Services Act (DSA) places greater obligations on the duty of diligence on online platforms, particularly "very large online platforms" which must mitigate any systemic risks, such as disinformation. To complement this, the proposed Artificial Intelligence Act takes a risk-based approach to the classification of AI systems and the placing of obligations for transparency of AI-generated content, e.g., the obligation of online platforms to disclose or "watermark" deepfakes. This is a more proactive effort towards integrating platform regulation with technology regulation based on fundamental rights and consumer protection. China takes a more centralized and stricter approach. Regulations on deep synthesis technologies place the obligation on service providers to ensure proper labelling of AI-generated content. Additionally, there are stricter obligations on service providers who must prevent the misuse of deep synthesis technologies. Service providers must also ensure that the use of deep synthesis technologies do not jeopardize national security or social order. Failure to comply leads to serious penalties. This approach places

emphasis on the state's control and enforcement, but is also more controversial because of its overbreadth and infringement of freedom of expression. However, what is interesting is that across jurisdictions, there is an approach being taken in regulating deepfakes. This approach includes, among others, the duty of transparency where there is a duty of watermarking or "labelling" of deepfakes, greater liabilities of online platforms and imposing civil or criminal liability for the use of deepfakes for harmful purposes. In light of this, for India, it is submitted that from a comparative approach, there is a need for a balanced approach taking into account both the technological and legal consequences, while considering the constitutional rights of freedom of expression and privacy.

6. CHALLENGES AND GAPS

Despite increasing regulatory attention, significant challenges and structural gaps still hinder India's ability to effectively tackle deepfakes. A key issue is finding the right balance between protecting individuals from harm and preserving freedom of speech and expression. Overly broad regulatory measures, like unclear definitions or sweeping takedown powers, risk stifling legitimate forms of expression, such as satire, political commentary, and artistic creativity. The Supreme Court's

rulings highlight this issue. As was seen in *Shreya Singhal v. Union of India*¹⁷, the Supreme Court invalidated Section 66 A¹⁸ of the Information Technology Act, which imposed unnecessary restriction on online communications because of its chilling effect on freedom of speech. Therefore, future legislation to regulate deepfakes cannot make the same mistakes. The enforcement of legal provisions would be the next big issue. Deepfake content comes mostly from anonymous or pseudonymous accounts and it is hard to find out the sources. Also, the jurisdictional issues associated with digital platforms complicate things since the content created in one country is very quickly available in another country. Even if the legislation is there, prosecution becomes complicated and costly. Intermediaries, even though facing more regulation, may be unable or unwilling to detect sophisticated synthetic media content. Lastly, support for the victims is insufficient. It is very difficult for people who become victims of deepfakes to prove that the content is not legitimate, since it is designed to look real.

Delays in takedown can make remedies ineffective, as the harm, especially in cases of non-consensual intimate images or political misinformation, can be immediate and irreversible.¹⁹

¹⁷ *Id.* at 48.

¹⁸ Information Technology Act, 2000, § 66 A, No. 21, Acts of Parliament, 2000 (India).

¹⁹ Asim Mustafa Khan, *Regulating Deepfakes in India: A Legal and Ethical Analysis of Misinformation in the Age of AI*, INDIAN J. L. & LEGAL RSCH.,

At a constitutional level, regulating deepfakes must navigate the complicated relationship between privacy and public interest. The acknowledgment of the right to privacy as a fundamental right in Justice *K.S. Puttaswamy v. Union of India*²⁰ imposes a duty on the State to safeguard individuals from technological intrusions that violate their autonomy and dignity. However, not all uses of synthetic media are harmful; some serve valid public or journalistic purposes. This complicates the legal and ethical task of differentiating between acceptable and unacceptable uses.

Lastly, there is a persistent structural issue: the legal system's technological lag. Deepfake technology is evolving quickly, while legislative processes are comparatively slow and reactive. Legal scholars have noted that India's current approach is mainly "piecemeal," relying on adaptations of existing laws that were not meant to address AI-generated harms. This mismatch leads to regulatory gaps, inconsistent enforcement, and uncertainty for both victims and creators.

In summary, the challenges related to free speech, enforcement limits, weak victim support, constitutional conflicts, and technological lag highlight the inadequacy of the current framework. Addressing these

<https://www.ijllr.com/post/regulating-deepfakes-in-india-a-legal-and-ethical-analysis-of-misinformation-in-the-age-of-ai> (last visited April 1, 2026).

²⁰ *Id.* at 48.

issues requires not just new laws, but also a more flexible and forward-thinking regulatory strategy.

7. PROPOSED REFORMS

The regulation of deepfakes in India needs a change from the unclear framework to a clear and strong legal system. Any real change must start with an understanding of what deepfakes are. Now Indian law does not clearly define "deepfake," which leads to confusion and inconsistent use of existing laws. So, it is very important to create a legal definition. Either as "deepfake" or through the broader category of "synthetically generated information (SGI)" as proposed under the Information Technology Rules, 2026²¹ changes. A law definition should include things like AI-based manipulation, realistic copying of identifiable people and the potential to trick. Without this step enforcement will stay reactive and unstable.

Building on definition there is a strong case for creating specific crimes for the most harmful uses of deepfake technology. Existing laws on cheating, defamation and obscenity are not enough because they do not fully reflect the scale, intent and technological sophistication of AI-

²¹ MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY, <https://www.meity.gov.in> (last visited April 1, 2026).

generated harm. Targeted crimes should include creating and sharing - consensual intimate deepfakes meant to manipulate elections or public opinion and those that incite hatred or communal disharmony. The process of proving the identity misuse, reputational damage, and obtaining content takedown can be very hard.

Deepfake Prevention and Criminalisation Bill, 2023 can serve as a good starting point, particularly with regard to recognition of the harm of deepfakes and imposing sanctions for those. However, it is crucial to properly formulate the bill, so that legitimate uses of the synthetic media, such as satire, parody, or artistic expression would not be prohibited. Moreover, the digital intermediaries need to be obliged to follow the rules. Considering how rapidly the content is distributed, intermediaries have a key role in spreading and preventing the distribution of the content. The provisions of the IT Rules, 2026 on mandatory labelling of AI-generated content with metadata and takedown mechanism need to be supplemented by legislation and proper sanctions. Safe harbour provided by Section 793²² of the Information Technology Act 2000 should be based on due diligence requirements such as proactive detection tools and transparency reports. At the same time, regulatory expectations should be reasonable for smaller intermediaries to avoid excessive compliance

²² Information Technology Act, 2000, § 793, No. 21, Acts of Parliament, 2000 (India).

burden. Still, legal changes will not be sufficient without investments in digital literacy and technology.

Disclosure norms. Requiring creators to indicate when AI tools are used. Can further enhance transparency. Additionally, the development and deployment of detection technologies including watermarking and authentication systems should be encouraged through private collaboration.²³ These measures can help bridge the gap between technological advancement and slower legal adaptation.

A victim-centric approach must also form a core component of any framework. Individuals targeted by deepfakes often face irreparable harm to reputation, dignity and mental well-being. Accordingly, there is a need for fast-track grievance redressal mechanisms, including complaint portals and time-bound takedown procedures. Remedies should extend beyond content removal to include rights of correction, compensation and where feasible restoration of identity. The principles underlying the Digital Personal Data Protection Act, 2023. Particularly consent and data subject rights. Can be expanded to address the use of likeness and biometric data in deepfake creation.

²³ EUROPEAN COMMISSION, <https://artificial-intelligence-act.eu> (last visited April 1, 2026).

Importantly all proposed reforms must operate within the framework, particularly the balance between Articles 19(1)(a)²⁴ and 21²⁵. The right to freedom of speech and expression protects not traditional forms of communication but also evolving digital and artistic practices. At the time the right to privacy and reputation recognised as integral to Article 21 imposes a corresponding duty on the State to prevent misuse of technology that harms individual dignity. In *Swamy v. Union of India*²⁶ the Supreme Court affirmed that the right to reputation is a facet of Article 21 thereby justifying reasonable restrictions on defamatory speech. Conversely in *Shreya Singhal v. Union of India* the Court struck down Section 66 A of the IT Act for vagueness underscoring the need for precision and proportionality in regulating expression. These decisions highlight the constitutional tightrope that deepfake regulation must walk: overregulation risks free speech while under regulation leaves individuals vulnerable to serious harm.

Although India has not yet witnessed a judicial pronouncement specifically on deepfakes courts have addressed similar issues such as online impersonation, morphing of images and digital defamation. These cases demonstrate a willingness to extend existing legal principles to new technological contexts but they also reveal the limitations of relying

²⁴ INDIA CONST. art. 19, § 1, cl. (a).

²⁵ INDIA CONST. art. 21.

²⁶ *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221.

solely on judicial interpretation in the absence of clear legislative guidance.

In sum an effective regulatory strategy for deepfakes in India must be multi-dimensional. It should combine statutory definitions, targeted criminalisation, robust platform accountability, technological and educational interventions and strong victim protection mechanisms. Crucially such a framework must remain anchored, in values ensuring that the regulation of deepfakes protects both societal interests and individual rights without undermining innovation or democratic discourse.

8. CONCLUSION

The analysis shows that Indias laws on deepfakes are still changing. The current laws. Like the Information Technology Act, 2000 the Bharatiya Nyaya Sanhita, 2023 the Digital Personal Data Protection Act, 2023 and the Information Technology Rules, 2026. Help deal with some problems.²⁷ They work in a piecemeal and reactive way. These laws can adjust; they were not made for AI-generated media. This leads to gaps and enforcement issues that limit their effectiveness.

²⁷ INDIAN JOURNAL OF LAW & LEGAL RESEARCH, <https://www.ijllr.com/post/regulating-deepfakes-in-india-a-legal-and-ethical-analysis-of-misinformation-in-the-age-of-ai> (last visited July 31, 2026).

Recently there have been steps towards an approach. The government now formally recognises generated information. There are plans for labelling and more responsibility for online platforms. These are important for transparency and accountability. The laws need to go beyond small changes. They need a plan, including definitions rules for harmful uses and platform responsibility. Also, tools like watermarking and detection systems are needed. Teaching people to identify and resist content is crucial.

The big challenge is making laws that keep up with technology but follow principles. Court decisions like *Justice K.S. Puttaswamy v. Union of India*²⁸ and *Shreya Singhal v. Union of India*²⁹ show that any limits, on expression must be fair and carefully designed. If done thoughtfully India can create an approach to deepfake regulation. This approach can protect privacy, dignity and democracy without stopping innovation or free speech. Indias deepfake laws can safeguard its citizens while promoting growth. The country can develop a model that works for everyone. Deepfakes are a challenge. With careful planning India can overcome it.

²⁸ *Id.* at 49.

²⁹ *Id.* at 49.

“BEYOND FORMAL EQUALITY: TRANSGENDER RIGHTS AND SUBSTANTIVE JUSTICE IN INDIA”



- Riya Sarkar¹

ABSTRACT

The concept of “Gender” occupies a central place in contemporary legal and social discourse, frequently invoked everyday through disclosure of various phenomena prevalent in the society and is often recognized as two genders which is a binary construct of men and women and overlooks transgender and non-binary identities. The narrow understanding of gender leads to unfair treatment among genders and then strengthens gender stereotypes which often reinforce the roles and characteristics of transgender individuals which perpetuates structural inequality.

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Whereas the difference between sex and gender is a bit of a confusing factor which leads to misunderstanding and incorrect assumptions about their attributes, behaviour, roles and characteristics.

The term “Transgender” is not determined due to gender stereotypes but the ideology is further practiced and reinforced through social practices and cultural norms. However, in the case of National Legal Services Authority v. Union of India, the constitutional recognition of gender identity and right to self – identification as integral to dignity, equality, and personal liberty under Articles 14, 15, 19, and 21. Whereas, the Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition, prohibits discrimination and safeguards the rights of transgender. The social stigma of a society hinders the substantive equality but transformative implementation aimed to transform gender stereotypes and securing inclusive rights for all gender identities without focusing on binary gender identities.

KEYWORDS: *Gender; Constitutional Recognition; Self-identification; Stereotype; Constitutional Law.*

1. INTRODUCTION

In legal and social discussions, the term sex and gender are often used reciprocally, although they represent distinct concepts. Sex refers to the biological characteristics assigned to an individual at birth, including chromosomes, hormones, and reproductive anatomy. Gender, is a social and cultural construct that encompasses the roles, behaviours and expressions, and identities that societies associate with individuals.² Whereas, gender roles is the rules and expectations a society creates for how different gender should act alongside behaviours are the specific actions, manners, and activities that a society expects from a person based on their perceived gender as well as expression means “How a person shows their gender outwardly through clothes, hair, whereas behaviour and identity refers a person’s inner sense of being man, a woman or another gender. Historically, legal and social system have recognised only the gender binary categories of male and female. However, this binary approach fails to acknowledge the diversity of human gender identities, contributing to the exclusion and marginalisation of individuals whose identities fall outside the traditional male female framework.

A Trans-gender person is an umbrella term for people whose identity differs from the sex assigned to them at birth. The traditional and socio-

² Jennifer Ung Loh, *Transgender Identity, Sexual versus Gender ‘Rights’ and the Tools of the Indian State*, 119 FEMINIST REV. 39, 55 (2018).

cultural identities in India has an ancient history of gender diverse communities, each with its own religious names, distinct rituals, and spiritual roles like Hijra/ kinnar(individuals assigned male or were intersex at birth who adopt feminine gender roles), Aravani/Tirungai (assigned male at birth but identify and live as women), Jogappa(adopt feminine gender role worship of Goddess Yellamma), Shiv-Shakti, Trans Women, Trans Men, Genderqueer/Non-binary person(whose gender identity does not fit exclusively within the categories' of male and female, they may identify as both genders, neither gender, or another gender identity).³ In essence, gender cannot be confined to biology alone.

For many transgender individuals, exclusion begins at home. Rejection by the family often forces young individuals into precarious living conditions, cutting off their access to stable education and formal category rather than lived reality; According to Ann Oakley suggests, it refers to the social and cultural differences between men and women rather than the biological differences determined at birth.⁴ Ancient Indian literature and religious texts acknowledge the existence of gender diversity, seen in the character of Shikhandi in the Mahabharata who plays a significant role in the battle of Kurukshetra and Arjuna, who lived as Brihannala during his exile, adopting a feminine identity. Hindu mythology also

³ A.R. Patel, *India's Hijras: The Case for Transgender Rights*, 42 GEO. WASH. INT'L L. REV. 835 (2010).

⁴ ANN OAKLEY, *SEX, GENDER AND SOCIETY* 45 (Temple Smith 1972).

recognizes gender fluidity through Ardhanarishivara, the composite form of Lord Shiva and Goddess Parvati, symbolising the unity of masculine and feminine energies. During the medieval period, particularly under Delhi Sultanate and the Mughal Empire, members of the Hijra community held respected positions in royal courts.⁵ In British Colonial Period, the social status of transgender persons declined.

A major turning point was the Supreme Court's landmark *National Legal Service Authority v. Union of India* judgement, which recognised the 'Third gender' and affirmed the right to self-identify. their gender, holding the guarantee of equality, dignity, and personal liberty under the constitution which must extend to them as well. The judgement marked an important step toward legal recognition and opened the door for greater social participation of transgender persons in public.⁶

Within the period, several notable milestones reflected this gradual shift, including the appointed of first transgender judge Jyoti Mondal in Lok Adalat in West Bengal in 2017,⁷ the enrolment of first transgender Lawyer Sath Asari Sharmila in the Bar Council of Tamil Nadu and

⁵ SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY'S REVOLUTION* (Hachette UK 2017).

⁶ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

⁷ Ritika Jain, *India's First Transgender Judge Jyoti Mondal Appointed in West Bengal*, INDIAN EXPRESS (Mar. 24, 2026, 6:45 PM), <https://indianexpress.com/>.

Puducherry,⁸ the first transgender Police Officer K. Prathibha Yashini in Tamil Nadu⁹ and first transgender Parents Shaad and Ziya Paval in Kerala¹⁰ further reflects the gradual transformation in both legal recognition and social acceptance of transgender in India.¹¹

Following this recognition, the legislature introduced the Transgender Persons (Protection of Rights) Act, 2019 provide a legal framework for the protection of transgender persons. This Act seeks to prevent discrimination in areas such as education, employment, healthcare, housing and access to public services, while also aiming to promote welfare measures and social inclusion. Even with these legal developments, a significant gap remains between formal recognition and substantive justice. While the 2019 Act addressed ‘protection’ from discrimination, it remained silent on the civil rights of marriage, succession, and adoption. In the absence of a gender-neutral for personal laws, transgender individuals are often left in a legal vacuum regarding family and property rights. This

⁸ T. Ramakrishnan, *India's First Transgender Lawyer Sathasari Sharmila Enrolled with Bar Council of Tamil Nadu and Puducherry*, HINDU (Mar. 24, 2026, 7:00 PM), <https://www.thehindu.com/>.

⁹ Express News Service, *India's First Transgender Police Officer K. Prithika Yashini in Tamil Nadu*, Indian Express (Mar. 24, 2026, 7:06 PM), <https://indianexpress.com/>.

¹⁰ Geeta Pandey, *Kerala Trans Couple Ziya and Zahad Paval: The Pair Challenging India's Gender Norms*, BBC NEWS (Feb. 8, 2023), <https://www.bbc.com/news/world-asia-india-64534785>.

¹¹ Harpreet Kaur, *Gendering of Indian Judiciary as a Roadmap Towards an Equitable Legal System and Progressive Gender-Sensitive Jurisprudence*, 10 FRONTIERS SOCIOLOGY 1475043 (2025).

suggests that the Indian legal framework provides a facade of equality while leaving the structural binary of family law untouched.¹²

Table 1: Demographic and Social Indicators of Transgender Persons in India (Census 2011)

Official census data provides valuable insight into the socio-economic position of transgender persons and highlights the structural disparities that continue to exist despite constitutional guarantees of equality. The following table presents the key findings of the Census of India, 2011.

Serial Num-ber	Indicator	Data
1	Total Transgender Population	4,87,803
2	Transgender Population in West Bengal	30,349
3	Literacy Rate among Transgender Persons	56.07%
4	Child Population (0-6 years)	54,854
5	Rural Transgender Population	2,93,488
6	Urban Transgender Population	1,94,315
7	Overall Literacy Rate (India)	74.04%

¹² Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

The Census of India, 2011, was the first national census to enumerate transgender persons as a separate category. Out of India's total population of 1.21 billion, only 4,87,803 individuals were recognised as transgender. However, this figure is widely regarded as an underestimation due to social stigma, family rejection, fear of discrimination, and the reluctance of many individuals to disclose their identity during the census. These statistics indicate that despite constitutional guarantees under Articles 14, 15, 19 and 21, transgender persons continue to experience structural disadvantages that restrict their meaningful access to opportunities available to other citizens.¹³

Table 2: Crime, Violence, and Institutional Challenges Affecting Transgender Persons in India.

To understand the extent of instructional protection available to transgender persons, it is essential to examine official crime statistics maintained by the National Crime Records Bureau (NCRB). Official crimes statistics constitute an important indicator for assessing the effectiveness of legal protection affected to vulnerable communities.

¹³ ANNALS OF INDIAN PSYCHIATRY,
https://journals.lww.com/aips/fulltext/2017/01020/transgender__status_in_india.1.aspx
(last visited March 31, 2026).

Serial Number	Indicator	Data	Legal Significance
1	Dedicated NCRB category on crimes against transgender persons	No comprehensive national category in earlier NCRB reports.	Makes violence statistically invisible and difficult to assess.
2	Recording of offences	Most offences are registered under general criminal laws	Gender identity of victim is often not separately captured.
3	Offences under the Transgender Persons (Protection of Rights) Act, 2019	Limited reporting by States/UTs	Reflect weak implementation and inconsistent enforcement
4	Nature of reported violations	Physical assault, sexual violence, verbal abuse, extortion, denial of public services	Violations affect constitutional rights Articles 14, 15, 19 and 21.

		and discrimination.	
5	Major challenge	Under-reporting due to stigma, fear of police harassment and family rejection.	Official statistics are unlikely to reflect the actual extent of violence.

The National Crime Records Bureau (NCRB) occupies a central position in shaping India's criminal justice policy by providing official statistics on the incidence and nature of crime. However, its reporting framework has historically failed to comprehensively document crimes committed against transgender persons. Although transgender persons have gradually been recognised in certain datasets, the absence of dedicated and comprehensive category for recording offences against them continues to create a significant evidentiary gap. As a result, many offences are registered under general criminal provisions without recording the victim's gender identity, making it difficult to accurately assess the prevalence, nature, and patterns of violence experienced by the transgender community. This statistical invisibility not only limits empirical research but also

weakens evidence-based policymaking, resource allocation, and institutional accountability.¹⁴

The National Human Rights Commission (NHRC), has played a significant role in strengthening the protection of transgender rights in India by issuing policy recommendations aimed at promoting equality, dignity, and social inclusion. Through its 2023 Advisory and Advisory 2026, the Commission recommended reforms relating to legal recognition, education, healthcare, employment, property rights, inclusive census enumeration, workplace inclusion, and the establishment of gender-sensitive administrative mechanisms. These recommendations seek to bridge the gap between constitutional guarantees and their practical implementation, thereby advancing substantive equality for transgender persons.¹⁵

Table 3: States with the Highest Transgender Population Census 2011)

Rank	State	Transgender Population
1	Uttar Pradesh	1,37,465
2	Andhra Pradesh	43,769
3	Maharashtra	40,891
4	Bihar	40,827

¹⁴ NATIONAL CRIME RECORDS BUREAU, *CRIME IN INDIA 2023* 312 (Ministry of Home Affairs 2024).

¹⁵ SSRN, <https://ssrn.com/abstract=5615030> (last visited March 31, 2026).

5	West Bengal	30,349
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The Census of India, reveals that the transgender population is unevenly distributed across States, with Uttar Pradesh recording the highest transgender population, followed by Andhra Pradesh and Maharashtra. However, these figures should not be interpreted as reflecting the actual size of the transgender community. Owing to social stigma, family rejection, fear of discrimination has concealed their identity during the census enumeration.¹⁶

2. CONSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF TRANSGENDER RIGHTS IN INDIA

The Constitution of India serves as the primary source for protection and advancement of transgender rights by guaranteeing equality, liberty, and dignity embodied in the Constitution of India. Indian constitution establishes equality to every individual as the central pillar governing the relationship between the state and individuals. Although the Constitution does not expressly refer to transgender persons, its Fundamental Rights

¹⁶ Eric L. Meerwijk & Jae M. Sevelius, *Transgender Population Size in the United States: A Meta-Regression of Population-Based Probability Samples*, 107 AM. J. PUB. HEALTH e1, e8 (2017).

have been interpreted progressively by the judiciary. Rather than limiting equality to formal declaration, the constitution strives to ensure that every individual, irrespective of social identity, can enjoy dignity, liberty and equal protection of law lead to transformative instrument that not only prohibits discrimination but also affirms the right of trans gender persons to live with dignity, autonomy, and equal status in society.¹⁷

The Constitutional recognition of transgender rights is primarily founded upon Article 14,15,19 and 21 of the constitutional, which collectively safe guard equality before law, freedom of expression, equal opportunity in public employment, and the rights to life, dignity, privacy, and personal liberty. While *Joseph Shine v. Union of India (2018)*¹⁸ primarily addressed the decriminalization of adultery, its jurisprudential impact extends to transgender rights. By striking down Section 497 of IPC,1860¹⁹ the Supreme Court firmly established that constitutional morality must override patriarchal social norms.

¹⁷ Katie Eyer, *Transgender Constitutional Law*, 171 U. PA. L. REV. 1405, 1430 (2022).

¹⁸ *Joseph Shine v. Union of India*, AIR 2018 SC 4898.

¹⁹ Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1860 (India).

2.1. CONSTITUTIONAL GUARANTEES OF EQUALITY, LIBERTY, AND DIGNITY FOR TRANSGENDER PERSONS

Article 14 guarantees equality before the law and equal protection of the law to every “person” there by extending protection beyond rigid categories of identity.²⁰ The use of the word “person” is significant; it indicates that constitutional protection applies to all individuals, including those whose gender identity does not fit conventional classification. The principal underlying Article 14 is that the State must treat similarly situated persons alike, it also permits reasonable classification. As recognized in *Indra Sawhney v. Union of India*,²¹ Equality does not mean uniform treatment but allows for measures aimed at achieving substantive equality for those starting from a position of disadvantage.

The denial of equality extends beyond the absence of legal recognition and manifest in the unequal treatment experienced in their daily lives. Discriminatory administrative practices often prevent them from public infrastructures, including washrooms, changing rooms, hostels, shelters, prisons, and hospital wards, often fails to accommodate persons with diverse gender identities, compelling many transgender individuals to choose between facilities where they face humiliation, harassment, or

²⁰ INDIA CONST. art. 14.

²¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

denial of entry. It continues to operate on binary classification resulting in identity documents, digital government portals, educational records, and employment databases, which frequently hinder access to public services and legal entitlements. In workplaces and educational institutions, transgender persons are often subjected to unequal treatment, bullying, and exclusion despite possessing the same qualifications and legal status as others.

Recognising these structural inequalities, the *Supreme Court in NALSA* (2014) held that Article 14 extends equally to transgender persons and that the constitutional guarantee of equality cannot be confined to the binary categories of male and female. Whereas, in *E.P. Royappa v. State of Tamil Nadu* (1974),²² held that any arbitrary denial of legal recognition of transgender persons violates article 14.

Article 15 reinforces this by prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.²³ Recent judicial interpretations have expanded “sex” to include biological sex as well as “gender identity,” ensuring the fundamental rights are not restricted to a narrow binary. As prejudice against them is often rooted in stereotypical notions of gender rather than any legitimate constitutional classification.

²² *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

²³ INDIA CONST. art. 15.

Article 19 guarantees the freedom of speech and expression, which includes the right of every individual to express their self-identified gender through their name, clothing, appearance, mannerisms, and behaviour. Article 19 (1)(a) state that gender expression is an integral part of the freedom of expression as well as Article (1)(g), ensuring that transgender persons cannot be denied employment or livelihood solely on the ground of their gender identity.²⁴

This operates alongside Article 21, which protects the right to life and personal liberty.²⁵ The judicial interpretation has broadened this to include the right to live with dignity and autonomy, rejecting stereotypical notions of gender.²⁶ The court also rejected stereotypical notions of gender while interpreting equality. In *Anuj Garg and Ors v. Hotel Association of India and Ors*,²⁷ The court held that laws based on gender stereotypes violate constitutional principles, reinforcing the idea that equality must be grounded in individual autonomy.

The landmark decision in *Justice K.S. Puttaswamy v. Union of India*,²⁸ recognized privacy as a fundamental right, emphasizing that personal identity and autonomy are integral parts of individual liberty. This has

²⁴ Michael O'Flaherty, *Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No. 34*, 12 HUM. RTS. L. REV. 627, 654 (2012).

²⁵ INDIA CONST. art. 21.

²⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁷ *Anuj Garg & Ors. v. Hotel Association of India & Ors.*, AIR 2008 SC 663.

²⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

profound implications for transgender persons, protecting their freedom to define their own identity without State interference. Freedom to determine and express their self-determined gender without arbitrary interference from State or society. Compelling a transgender person to disclose their gender history, undergo unnecessary medical examination for legal recognition, or reveal their transgender status without consent violates the constitutional right to privacy and undermines the principles of dignity and autonomy.

However, the realization of these values faces new challenges with the Transgender Persons (Protection of Rights) Amendment Act, 2026. While the 2019 Act was a step forward, the 2026 Amendments introduction of mandatory medical board scrutiny²⁹ for identity certificates raises serious constitutional concerns. Critics argue this reinstates a form of “clinical gatekeeping” that contradicts the principle of self-determination established in NALSA and the right to privacy in Puttaswamy.

Ultimately, these challenges highlight a fundamental truth, while the Supreme Court used Articles 14, 19, and 21 as “Golden Triangle” to grant the “right to exist,” it did not automatically grant the “right to belong.” Achieving substantive equality requires moving beyond judicial declarations and focusing on the practical work of administrative reform. Until

²⁹ Transgender Persons (Protection of Rights) Amendment Act, 2026, No. 40, Acts of Parliament, 2026 (India).

the state ensures that a person's self-identified gender is respected in every office, school, and household, equality remains a promise rather than a practice.³⁰ The shift towards bureaucratic verification seen in the 2019 Act and the recent 2026 legislative atmosphere often replaces personal autonomy with state monitored gatekeeping. Without institutional accountability, “Third Gender” recognition remains a formal category rather than a lived reality.³¹

3. CIVIL RIGHTS OF TRANSGENDER PERSONS: MARRIAGE, ADOPTION AND SUCCESSION.

While the constitutional framework provides a shield against discrimination, it has yet to fill the “legal vacuum” regarding civil rights. Substantive equality remains incomplete as long as transgender persons are excluded from the rights of marriage, succession, and adoption. Since Indian personal laws remain largely anchored in a binary framework,

³⁰ Vijay Kumar, *Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance [From Kesavananda Bharati to I.R. Coelho]*, 49 J. INDIAN L. INST. 365, 398 (2007).

³¹ Sohini Bhattacharya, Debarati Ghosh & Bandana Purkayastha, *'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community*, 14 J. HUM. RTS. PRAC. 676, 697 (2022).

transgender individuals often lack the legal standing to inherit property or from legally recognized families.

True constitutional equality is not merely the absence of negative discrimination; it is the presence of positive inclusion. Until the rights to family and property are decoupled from the gender binary, the Indian legal framework provides only formal recognition while falling short of the substantive justice envisioned by the constitution.

There is no comprehensive law recognising transgender marriages in India where in Hindu Marriage Act, 1955³² uses the expressions “bride” and “groom”, creating uncertainty for transgender persons. Alongside Special Marriage Act, 1954³³ still proceeds on a binary understanding of marriage. Whereas, other Personal Laws, generally do not expressly recognise marriages involving transgender persons. In the case of *Arun Kumar & Anr. V. Inspector General of Registration (2019)*,³⁴ the court held that expression “bride” under the Hindu Marriage Act includes a transgender woman, recognising her right to marry under the Act. Whereas, *Supriya Chakraborty v. Union of India (2023)*,³⁵ although the Supreme Court declined to same-sex marriage, it acknowledged the difficulties faced by LGBTQIA+ persons and left the issue to Parliament.

³² Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

³³ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

³⁴ *Arun Kumar & Anr. v. Inspector General of Registration & Ors.*, 2019 SCC OnLine Mad 8779.

³⁵ *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, (2023) 16 SCC 1.

The legal position regarding Adoption by transgender persons in India remains uncertain and underdeveloped. Neither Transgender Persons (Protection of Rights) Act, 2019 nor the Juvenile Justice (Care and Protection of Children) Act, 2015 expressly prohibits transgender persons from adopting a child. However, the Adoption Regulations, 2022 framed by the Central Adoption Resource Authority (CARA), does not specifically address the eligibility of transgender persons or couples, which often led or face administrative uncertainty and social prejudice during the adoption process. The absence of explicit statutory recognition often results in inconsistent administrative practices despite the absence of an express legal prohibition.³⁶

The Succession and inheritance rights of transgender persons in India continue to the binary structure of most personal laws. Statutes such as Hindu Succession Act, 1956 and other personal laws regimes generally classify legal heirs as “son, daughter, widow or husband” without recognising Transgender persons identities. A transgender man is denied a succession certificate because his educational records, Aadhar, PAN card, ancestral property, competency, and property documents contain different names and gender markers, creating administrative obstacles despite his legal recognition.

³⁶ WILLIAMS INSTITUTE, <https://williamsinstitute.law.ucla.edu/publications/transgender-parenting-review/> (last visited March 31, 2026).

4. JUDICIAL EVOLUTION OF TRANSGENDER RIGHTS IN INDIA

For decades, transgender persons remained largely visible within the Indian legal system, as neither statutory law nor judicial interpretation adequately recognised their gender identity or protected their fundamental rights. The absence of legal recognition resulted in the denial of essential rights relating to identity documents to accessing education and employment. In this vacuum, the courts stepped in to transform constitutional principles into active protections for individual dignity, equality, autonomy and personal liberty.

The judiciary approach moves beyond mere symbols to address structural inequality. Recognizing centuries of social exclusion, the courts directed the government to implement affirmative actions in healthcare and public services, ensuring that legal rights translated into practical opportunities. A cornerstone of this shift was the NALSA and K.S. Puttaswamy and ruling in *Navtej Singh Johar v. Union of India* where the Supreme Court prioritized “constitutional morality” over majoritarian prejudice, affirming that an individual's identity and dignity are not subject to the whims of the majority.³⁷

³⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

However, a sharp tension remains between these judicial milestones and the subsequent legislative response. While the Transgender Persons (Protection of Rights) Act, 2019 (and the 2026 Amendments) finally provided a statutory framework which introduced a bureaucratic hurdle: mandatory certification by a District Magistrate. This requirement directly contradicts the principle of self-identification established in the NALSA judgement.³⁸ This conflict illustrates a persistent gap in the Indian legal landscape, where the courts strive for individual autonomy, but the legislature continues to favour institutional control, ultimately the journey towards true substantive justice.

5. CONCLUSION AND SUGGESTION

The recognition of transgender rights in India has evolved significantly through constitutional interpretation and judicial intervention, transforming the community from legal invisibility to constitutional recognition. However, this study demonstrates that formal legal recognition alone is insufficient to secure substantive equality. Persistent gaps in legislation

³⁸ Subhransu Sahoo & Sujita Kumar Kar, *Reconsidering the Transgender Persons (Protection of Rights) Amendment Bill, 2026: Mental Health Implications of a Regressive Shift*, SAGE JOURNALS (2026), <https://journals.sagepub.com/doi/10.1177/09727531261452852>.

relating to self-identification, marriage, adoption, succession. And effective implementation continues to hinder the full enjoyment of rights by transgender persons. Achieving genuine equality requires a coordinated approach in which constitutional values are reflected in legislative reforms, administrative practices, and social acceptance, ensuring that transgender persons are able to live with dignity, autonomy, and equal citizenship.³⁹

Education is the primary site for dismantling gender bias. While schools and universities should be safe harbours, currently a significant gap remains in academic empathy, it is estimated that only about 10% of educators actively practice inclusive pedagogy, while the majority remain anchored in traditional binaries. Reform must include mandatory awareness programs, gender-neutral infrastructure, and robust anti-harassment mechanisms. By fostering an environment of respect at the foundational level, we can accelerate the transition toward a society that views gender as a spectrum rather than a binary.

Sensitivity in healthcare and administration, the Indian healthcare system remains a site of significant “clinical gatekeeping.” Respectful treatment is often the exception rather than the rule. Reform must prioritize specialized training for medical professionals to move beyond biological

³⁹ Christine A. Alegria, *Transgender Identity and Health Care: Implications for Psychosocial and Physical Evaluation*, 23 J. AM. ACAD. NURSE PRACT. 175, 182 (2011).

essentialism. Simultaneously, administrative simplification is essential. The bureaucratic “paper-trail” required for gender recognition must be streamlined to honour the principle of self-identification, reducing the invasive scrutiny currently seen in the verification processes of the 2026 legislative landscape.

Economic inclusion and substantive parity are the backbone of dignity. Government initiatives should move beyond “welfare” and toward empowerment. This includes classifying transgender persons within the framework of “Socially and Educationally Backward Classes” (SEBC) to provide access to horizontal reservations in employment and education. Encouraging inclusive hiring in both public and private sectors backed by financial incentives and skill development schemes will facilitate the social mobility necessary to break the cycle of poverty and informal work.

Beyond formal recognition: the role of the family, the state cannot legislate social acceptance into existence. Substantive equality begins in the household. Families and local communities must recognize that gender diversity is an inherent part of human identity. While legal shifts are carried out by the state, the survival of these rights depends on the individual. Small changes in social attitudes starting with the acceptance of transgender members within their own families, will gradually transform the broader cultural environment from one of tolerance to one of genuine belonging.

The paradox of private v. public acceptance, a significant barrier to genuine reform is the dichotomy between public tolerance and private exclusion. While Indian society may broadly accept the “concept” of transgender rights in the abstract, this support often vanishes when identity is asserted within the domestic sphere. The “home” remains one of the most difficult sites for legal protection to reach. Constitutional promises of dignity and respect are hollow if an individual is restricted from being marginalized within their own family. True equality cannot be conditional or selective; it must exist at the dinner table as much as it does in the courtroom.

The implementation gap, the effectiveness of our legal framework is currently hampered by a lack of applicability. We have created a robust architecture of protections, through NALSA, Puttaswamy, and various statutes but these often remain “paper rights.” Achieving the constitutional vision of justice requires moving beyond mere formal recognition toward consistent institutional implementation. It is a failure of the legal system when dignity is promised by the Supreme court but denied by a local administrative officer or a healthcare provider.

The path forward: individual and institutional reform the legal system must acknowledge that gender identity is part of individual autonomy under Article 14 and 21. However, laws, regulations, and policies are only as strong as the people who execute them. Because society is

dynamic, the law must be a “living principle” that evolves to protect diversity and reject discrimination.⁴⁰

The final frontier for reform is not a new rule or a better policy, but a fundamental shift in the individual mindset. Identity should neither be judged nor questioned, and equality must not be treated as a gift granted on the States terms. Only when societal attitudes and institutional practices fully reflect the inherent dignity of every person, regardless of gender will the constitutional promise of India be truly fulfilled.⁴¹

⁴⁰ Kristie L. Seelman, *Recommendations of Transgender Students, Staff, and Faculty in the USA for Improving College Campuses*, 26 GENDER & EDUC. 618, 635 (2014).

⁴¹ SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY'S REVOLUTION* 96 (Hachette UK 2017).

WHEN MACHINES CREATE: THE COPYRIGHT DILEMMA OF ARTIFICIAL INTELLIGENCE IN INDIA



- Jyotirmayee Das¹

ABSTRACT

In the digital era, Artificial Intelligence has become capable of generating creative works that were once considered exclusively human. AI systems are trained using vast datasets collected from the internet, which often include copyrighted materials. The use of copyrighted

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content in AI training datasets without prior permission creates uncertainty about whether such practice constitutes copyright infringement. It also raises questions regarding authorship, ownership, and liability when AI-generated outputs resemble existing copyrighted works. Despite having access to copyrighted material, data is not being read, understood or enjoyed by the AI. It puts forth a question that whether the painter has made the painting with his own brush. Furthermore, feeding AI with copyright data's without compensating them for their labour makes injustice to the real owners. Now the major question is whether the AI is trying to outpace the human creativity by bringing forth the cheap creativity into race. This article aims to analyse the controversial debate of idea and expression distinction and who should be the real owners of AI generated works. It further explores the need for a balanced legal framework that safeguards the rights of original creators while encouraging responsible technological innovation, ensuring that copyright law remains effective in the evolving landscape of artificial intelligence.

KEYWORDS: *Artificial Intelligence, infringement, unethical practices, copyright, injustice.*

1. INTRODUCTION

In this contemporary world, AI Has become more like a crude oil without which imaging life is like impossible. In the evolving landscape of tech industries, there has been an exponential development in the language learning model and AI. This has made the breakthrough of copyrighted material easy by invading the actual owner's data without taking their consent. The emergence of AI generated works in this digital era has put forth a question on the legal and ethical concerns, particularly in the realm of copyright laws. These questions have significant implications for creatives, technology companies, and legal practitioners alike. The intersection of AI and copyright law has become a focal point of legal discourse. However, AI systems are trained on extensive datasets, often sourced copyright materials use and potential infringement. Here the gradual questions that arises in a prudent mind are, whether existing copyright laws are equipped enough to deal with the modern issues of authorship, ownership and liability in the AI generated work? Will courts set new fair use standards for AI training? How will AI-human collaborations be treated under copyright law?

2. OVERVIEW OF COPYRIGHT LAW IN INDIA

Intellectual property law, as outlined in the *Copyright Act of 1957*², acknowledges that copyright only covers the way humans express their ideas, not the ideas themselves or creations made by machines on their own. The principal's stance aligns with Article 19(1)(a)³ of the Indian Constitution, emphasizing that public access to ideas shouldn't be limited.

2.1. OBJECTIVE AND PRICIPLES OF COPYRIGHT PROTECTION

The primary objective of copyright law is to protect the rights of authors and creators over their original works, thereby encouraging innovation and creativity. This gives special permissions for things like copying, sharing, talking about it publicly, and changing it. These rights act as economic incentives, letting creators make money by selling their stuff. One of the key principles is the "non-expressive use" doctrine. This doctrine requires AI to ensure that the copied data is used for purely non-expressive purposes and does not communicate the expressive aspects of

² Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

³ INDIA CONST. art. 19, § 1, cl. (a).

the work, in order to be considered as fair use. In India, this doctrine was recognised by the Delhi High Court in *The Press of the University of Cambridge v. BD Bhandari*⁴. They figured out that copyright is about protecting the way someone expresses their ideas, not the ideas themselves. So basically, any party can reproduce stuff, as long as they've changed it enough to make it their own. Therefore, developers of AI may avail of the exception of 'fair use', as long as the results produced by the AI are not similar to the copied content and do not cause a substitutive effect.

2.2. RELEVANT PROVISION UNDER THE COPYRIGHT ACT, 1957

The Copyright Act, 1957 outlines certain key provisions relevant to authorship and infringement. Section 13 provides for the subsistence of copyright in original works, while section 14 defines the bundle of exclusive rights granted to the copyright holder.

Section 17 talks about who owns the copyright, usually the author, but there are some exceptions, like if it's a work done at someone's job. Section 51 lays out what counts as copyright infringement, basically saying that using someone else's copyrighted stuff without permission, like making copies or sharing it publicly, is a no-go unless it's one of the

⁴ *University of Cambridge v. BD Bhandari* (2011) 185 DLT 346 (Del.)

few exceptions allowed.

Section 52 gives an exception to the rule of "non-expressive use. However, the application of these provisions to artificial intelligence remains uncertain, particularly where the use of copyrighted works occurs during machine training rather than direct consumption. The concept of originality has been interpreted by Indian courts to require a minimal degree of creativity and human intellectual effort. Machines, without their own legal rights or personal goals, aren't seen as creators by today's laws.

2.3. THE NEED OF HUMAN CREATIVITY IN INDIAN COPYRIGHT LAW

Language Learning Models work with text and data that's been created by people, using techniques like text mining. The LLM gets trained with a massive amount of data, kind of like how a human brain works. The LLM makes digital versions of the data, and the quality of what it produces depends on the quality of the content fed into TDM. However, most AI systems merely store uncopyrightable mathematical tokens that have been abstracted from the training data and only temporarily hold the actual training data in memory. They whip up totally fresh phrases, images, and other stuff by figuring out the hidden patterns, connections, and frameworks in the data. This practice is disguised as a general 'fair

use' defence.

A key rule in Indian copyright law is that the work has to come from a human creator. The concept of originality has been interpreted by Indian courts to require a minimal degree of creativity and human intellectual effort. Machines don't get the legal status of authors because they don't have their own will or legal rights. This poses some big hurdles when it comes to AI-created content. Since AI operates autonomously after being trained, it becomes difficult to attribute authorship to any single human actor, whether the programmer, developer, or user. Consequently, the absence of explicit statutory recognition of non-human authorship creates ambiguity regarding ownership and enforceability of rights in AI generated content.

3. AUTHORSHIP AND OWNERSHIP OF AI GENERATED WORKS

AI's rise's really shaking up old ideas about who owns what and who gets credit for stuff, especially when we look at the Copyright Act from way back in '57

3.1. TRADITIONAL CONCEPT OF AUTHORSHIP

The usual idea of who owns a book or song under copyright law is all

about human creativity, brainpower, and being unique Under tech Copyright Act of '57, "author" refers to the creator of various types of works, like the writer of a book, the composer of a song, or the artist behind a painting This definition clearly presupposes the existence of a natural person who exercises skill, labour, and judgment in the creation of the work.

Being an author means you've got to bring something new to the table, and in India, the courts say it's got to be a bit creative and your own work *Eastern Book Co. v D.B. Modak*,⁵ the Supreme Court held that mere mechanical labour is insufficient; the work must involve some element of creativity. This method matches the "little bit of creativity" benchmark, setting apart genuine creations from simple copies or collections.

A key part of classic writing is that the author's human touch and control are clear in how they craft their work Teh author has to actively make decisions that mould the end result This people-focused method makes sure the author is accountable, since they can claim their rights and handle the duties tied to their work.

Also, copyright law is all about safeguarding tech way ideas are shown off, not the ideas themselves the author plays a key part in turning vague concepts into solid, defensible ideas So, being an author isn't just about

⁵ Eastern Book Company v. D.B. Modak, (2008) 1 S.C.C. 1.

coming up with stuff; it's also about being smart with how you put it together. In this setup, things like pens, cameras, or computers are seen as tools that the person using them has full control over the law credits the person using these tools for the work, not the tools. This principle becomes particularly significant when contrasted with AI systems, which operate with a degree of autonomy beyond traditional tools. So, the old idea that only humans can be authors is still strong, based on creativity, purpose, and responsibility that our laws don't give to robots.

3.2. CAN ARTIFICIAL INTELLIGENCE BE RECOGNIZED AS AN AUTHOR?

The question of whether artificial intelligence can be recognized as an author represents one of the most complex challenges in contemporary copyright jurisprudence. Under the existing framework of the Copyright Act, 1957, authorship is inherently linked to human creativity, legal personality, and intellectual intent. The law spells out what counts as an "author" for different types of creative works, basically saying it's got to be a real person who can make decisions and come up with new ideas. Artificial intelligence, however, operates through algorithms and machine learning models that generate outputs based on patterns derived from training data. While these AI-generated creations might seem cool, they don't have a mind of their own, a purpose, or a legal status on their

own, which are usually key traits we look for in a creator. Consequently, under Indian law, AI cannot be recognized as an author because it cannot hold rights, assume responsibilities, or enforce legal claims.

Judicial and comparative views back this up even more. In *Naruto v Slater*⁶, with Slater on the panel, ruled that copyright protection isn't for non-human stuff; it's got to be human-made. Indian law, as shown in *Eastern Book Company v D.B. Modak*,⁷ points out that a bit of human creativity is needed, so computer-only creations aren't protected. In some places like the UK, the copyright, Designs and Patents Act 1988 says that the person who sets up the work for a computer to create it is the author. However, this approach does not recognize AI as an author; rather, it reallocates authorship to a human intermediary.

Recognizing AI as an author would require a paradigm shift in copyright law, including granting legal personality to machines and redefining the concept of creativity. It would also raise practical concerns regarding liability, enforcement, and ownership of rights. Therefore, within the current legal framework, artificial intelligence cannot be recognized as an author, and any such recognition would necessitate substantial legislative reform.

⁶ *Naruto v Slater*, 888 f.3d 418(9th Cir. 2018)

⁷ *Id.* at 96.

3.3. POSSIBLE CLAIMANTS OF OWNERSHIP

In the absence of recognition of artificial intelligence as an author under the *Copyright Act, 1957*, the issue of ownership of AI-generated works becomes legally ambiguous. A bunch of different people might have a say in who gets to own these creations

First off, the coder or dev might claim they own the code because they built the base algorithm and structure that makes the work happen Secondly, the person giving the prompts or input might say they're the ones who should get credit, since their directions usually shape what comes out in the end Thirdly, the owner of the AI system or platform may also claim proprietary rights based on control and investment in the technology.

But section 17⁸ of the Copyright Act, 1957, which deals with who gets the first claim to a work, doesn't really talk about creations made by AI This confusion leads to people making the same arguments and a messy legal situation So basically, figuring out who owns something really hinges on how much people are involved, which shows we need clear laws to sort it out.

⁸ Copyright Act, 1957, § 17, No. 14, Acts of Parliament, 1957 (India).

4. AI'S INFLUENCE ON OUR CREATIVE ABILITIES AND THE WORK WE DO IN CREATIVE FIELDS

Now shaping art, music, stories, and designs at rapid pace - machines powered by code enter spaces long held sacred by human touch. Feelings once thought essential to creation meet cold logic that learns patterns without understanding them. Speed replaces slowness; automation slips into studios where pencils and pianos once ruled alone. Tools once complex now sit within reach of anyone willing to click, drag, or type a prompt. Barriers crumble not through protest but quiet access granted by invisible networks. Creativity spreads wider, though some wonder if soul leaks out along the way.

Yet machines that make art bring real unease. When programs write or design things fast and cheap, people who once did those jobs might find less work waiting. Because these systems often learn from existing creations pulled online without asking, some call it unfair. Creators rarely get paid when their work feeds corporate algorithms. Laws built around ownership start cracking under pressure. What someone builds with time and thought risks becoming just free fuel for bots.

Out here, leaning heavily on AI stirs up tough questions about where art made by people might go next. When systems start copying ways of creating and producing work all by themselves, it gets harder to tell

what's truly from a person versus built by code. This mix-up demands clear thinking around rules and right or wrong choices.

4.1. WORRIES ABOUT USING PEOPLE'S CREATIVE WORK WITHOUT PAYING

One big issue sits where artificial intelligence meets copyright rules - training AI on people's creative work without paying them. Much of today's technology depends heavily on huge collections of writing, pictures, songs, and videos, a lot of it covered by the Copyright Act, 1957. Gathering these materials usually involves bots pulling content from websites, doing so without asking permission first. That sparks real questions about justice, and whether artists' efforts are being used unfairly.

Looking at it legally, teaching an AI often means making copies of creative works protected by law - something that could count as unauthorized replication under Section 51⁹ of the Copyright Act, 1957. Though the model's result might not mirror any source directly, using those materials during learning might still cross legal boundaries. Thinkers like *Mark A. Lemley*¹⁰ point out how this practice pushes against old rules, raising fresh questions about what counts as allowed

⁹ Copyright Act, 1957, § 51, No. 14, Acts of Parliament, 1957 (India).

¹⁰ Mark A. Lemley & Bryan Casey, *Fair Learning*, 99 Tex. L. Rev. 743 (2021).

use versus violation.

People keep arguing whether using data to train AI counts as something new. Pamela Samuelson¹¹ points out it might be allowed under some legal ideas - yet when companies profit heavily without paying creators, questions grow about fairness to writers and artists.

Still, without clear details on what's inside training data, artists can't tell if their creations were included. Because of this hidden nature - pointed out in WIPO¹² studies - the effort to uphold rights gets harder, leaving copyright owners less shielded.

One way to look at it: thinkers like Neil Netanel¹³ point out that when AI uses protected material without limits, creators might stop getting paid fairly. As a result, making art could become harder to sustain over time.

4.2. ECONOMIC AND ETHICAL IMPLICATIONS

AI making content changes money stuff for artists and writers. Fast machines now build good work cheap, shaking up jobs in stories, pictures, songs, films. Some people might lose roles when robots handle regular creative chores. Thinker Richard Susskind¹⁴ points out tools like

¹¹ Pamela Samuelson, *Unbundling Fair Uses*, 77 Fordham L. Rev. 2537 (2009).

¹² World Intellectual Property Organization (WIPO), *WIPO Conversation on Intellectual Property and Artificial Intelligence* (2020).

¹³ Neil Weinstock Netanel, *Copyright's Paradox* 36–38 (Oxford Univ. Press 2008).

¹⁴ Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* 39–42 (2d ed. 2017).

these often take over expert duties, shifting how careers grow. Machines doing human tasks can tilt whole job scenes sideways.

When machines make too much content, it might flood the market. That could push down how much people are willing to pay for things made by humans. As Neil Netanel points out, if writers earn less, the whole point of copyright gets shaky - because paying artists fairly is supposed to spark more creation. Without solid returns, some may simply walk away from making new work.

What feels wrong here isn't just job loss but deeper questions about credit, choice, because art copied without asking strikes at a creator's dignity. When someone takes protected work without permission, it ignores not only legal rules yet also disrespect the artist's voice and control over their creation. Because creative output ties into identity, according to Margaret Jane Radin¹⁵, using it without consent can harm both reputation and sense of self.

Now think about who really gains when just a handful of big companies control most AI progress. The gap keeps widening - this much the World Intellectual Property Organization has pointed out - between those building powerful tools and the people making original work. Benefits tend to pile up on one side, leaving others behind without fair share.

¹⁵ Margaret Jane Radin, *Property and Personhood*, 34 Stan. L. Rev. 957 (1982)

4.3. AI MOVING FASTER THAN HUMAN CREATIVE ABILITY

One big question today: does artificial intelligence go beyond human imagination or just echo it? Fast output comes easily to machines, yet every piece stems from work people made before. Machines copy art styles well - still, awareness isn't something they carry within. Feelings, personal history, inner life - missing entirely, even though experts say this matter most for real invention. Some thinkers point out AI mixes ideas or explore patterns in clever ways, still not breaking rules like a person might when inspiration strikes deep.

Even so, fast progress in artificial intelligence has sparked unease around how originality might be cheapened. When masses of inexpensive, machine-made material flood creative spaces, human creations could lose both worth and meaning. Shoshana Zuboff¹⁶ points out systems built on collected data tend to favour speed and size, which might push personal, human-centred art toward the edges.

Still, a few researchers favour an even-handed take - seeing artificial intelligence as a partner instead of a rival. Take Joanna Bryson¹⁷, who argues machines ought to function like tools meant to strengthen people,

¹⁶ Shoshana Zuboff, *The Age of Surveillance Capitalism* 394–400 (2019).

¹⁷ Joanna J. Bryson, *Patience Is Not a Virtue: AI and the Design of Ethical Systems*, 26 Ethics & Info. Tech. 15 (2018).

not stand in their place. From this angle, making things stays rooted in humans, while tech simply widens what's possible.

Still, it's less a contest of better machines than a shift in what creating even means. What matters most is keeping human imagination valued, both personally and financially, even as tools shaped by artificial intelligence open new paths forward.

5. JUDICIAL OUTREACH

Although courts in India have not yet ruled definitively on generative AI and copyright ownership, recent judicial and regulatory developments signal growing concern and attention toward the issue.

A. Judicial Signals: *ANI v. OpenAI (2024)* In a landmark 2024 suit before the Hon'ble Delhi High Court, *Ani Media (P) Ltd. v. Open AI Inc*¹⁸, ANI alleged that OpenAI's large language models (LLMs) used ANI's copyrighted news content for training purposes without a license or consent. ANI's petition brought up sections 51 and 55¹⁹ of the Copyright Act, arguing that using copyrighted material to train AI, even if it doesn't end up in the final product, still infringes on the exclusive rights of the copyright holder

¹⁸ *Ani Media (P) Ltd. v. Open AI Inc, 2024 SCC OnLine Del 8120.*

¹⁹ Copyright Act, 1957, § 55, No. 14, Acts of Parliament, 1957 (India).

The Delhi High Court admitted the matter and issued notice to the respondents, while emphasizing that copyright law does not currently provide a safe harbour or explicit training exemptions for GenAI developers. The case is still going on, but it's seen as a major turning point in Indian copyright law

B. Regulatory Guidance: DPIIT's Position the Department for Promotion of Industry and Internal Trade (DPIIT), under the Ministry of Commerce, clarified in mid-2024 that AI developers must seek authorization to use copyrighted content for training purposes, aligning with international best practices and reinforcing India's adherence to the Berne Convention. Notably, the DPIIT rejected any blanket fair use defence under Section 52²⁰ of the Copyright Act, 1957 for commercial-scale AI training. Their position reflects growing alignment with the European Union Artificial Intelligence Act and United Kingdom Intellectual Property Office's consultation papers, which distinguish between private use and systemic data mining for profit-making purposes.

C. Expert Panel Recommendations (Preliminary Draft 2025)

According to some early talks from the panel, which got out in June 2025 by The Print and Asia IP Law

- Teh panel's thinking about adding a new section to the Act, maybe Chapter XII-A, focused on AI-created content

²⁰ Copyright Act, 1957, § 52, No. 14, Acts of Parliament, 1957 (India).

- Suggested updates involve
- Explaining the difference between "AI-assisted" and "AI-generated" creations
- Giving credit to the person who actually made the work, kind of like what's in Section 9(3) of the UK's copyright, Designs and Patents Act from 1988
- Introducing mandatory disclosure norms for datasets used in training GenAI models.
- Setting up a legal fee system or tax for using copyrighted materials in education These developments suggest that copyright law is undergoing a foundational shift to accommodate emerging AI realities, while balancing creators' rights and innovation.

6. COMPARATIVE PERSPECTIVE

While the U.S. leads in these legal battles, other countries are also addressing AI and copyright issues. The global landscape of AI and copyright law is changing. Various jurisdictions are taking different approaches to handle the challenges posed by AI-generated content.

The European Union, for example, aims to create a legal framework for AI technologies with the proposed AI Act. The AI Act takes a risk-based approach to AI regulation. It categorizes AI systems based on their

potential risks and imposes related obligations on providers and users. This Act includes rules that require AI developers to keep detailed records of training data. This requirement promotes transparency and accountability in AI development. It could also set a precedent for stronger copyright protections. The measure intends to uphold current copyright protections and encourage responsible AI innovation²¹. Additionally, the AI Act recognizes the need to balance copyright protection with the promotion of innovation and research. It introduces limited exceptions for text and data mining. This acknowledges the importance of proportionality in compliance requirements, especially for small and medium-sized enterprises, startups, and non-profits. This provision aims to support non-commercial research while ensuring that rightsholders' interests are properly protected²².

Meanwhile, in China, the legal framework around AI-generated content is also evolving. A landmark ruling by the Beijing Internet Court in November 2023 granted copyright protection to an AI-generated image, as long as the work shows originality and reflects a human's intellectual effort²³. This decision shows a progressive view on recognizing AI-

²¹ *EU AI Act: first regulation on artificial intelligence*, Topics European Parliament (Jun 2024).

²² *EU AI Act: shaping Copyright compliance in the age of AI Innovation*, KEA (Mar. 2024)

²³ Yuqian Wang & Jessie Zhang, *Beijing Internet Court Grants Copyright to AI-Generated Image for the First Time*, Wolters Kluwer (Feb. 2024)

assisted creations under Chinese copyright law. Furthermore, China's regulations require that AI-generated content be clearly labeled. AI companies are responsible for any misinformation or illegal content produced by their models. This strict regulatory framework highlights China's commitment to overseeing AI development and ensuring that AI technologies operate within legal limits²⁴. These strict regulations contrast with the more flexible approach in the U.S., where courts are still figuring out how much accountability AI should have under existing copyright laws.

7. CONCLUSION

To tackle the new challenges of copyright in the context of artificial intelligence, India needs to clearly determine if training AI systems using Text and Data Mining (TDM) falls under acceptable exceptions like fair dealing in the Copyright Act of 1957. This issue is important to resolve. However, it's essential to understand that disputes over AI and copyright infringement cannot always be settled by only looking at the difference between expressive and non-expressive use. A strict interpretation that views every potential use of a work as solely belonging to the author

²⁴ Cheryl Yu & Barbara Li, *AI explained: AI regulations and PRC court decisions in China*, ReedSmith (Oc. 2024),

could slow down technological progress, especially in areas where innovation pushes against traditional legal limits.

In this context, the development of flexible rules like fair use, or similar concepts, is vital for copyright law to adapt to market needs and technological growth. Yet, the Indian framework is more limiting and needs careful adjustments to stay relevant in the digital age.

Addressing these issues requires a cooperative effort involving lawmakers, technology developers, creators, and regulatory bodies to ensure that digitalization moves forward fairly and inclusively. It's important to promote open-source ecosystems since they let AI systems grow while following legal and ethical guidelines. At the same time, we should look into ways for responsible data access, such as licensing models and collective payment systems, to find a balance between innovation and the rights of copyright owners.

In the end, India must aim to create a balanced and forward-thinking legal system that protects originality, guarantees transparency in AI development, and encourages innovation without harming the economic and moral rights of creators. Such a framework would reduce legal uncertainty and support sustainable growth in both the creative and technology sectors.



BLOG



ADMISSIBILITY OF WHATSAPP CHATS AS EVIDENCE



- Yojeena Chhetri¹

1. INTRODUCTION

The increasing reliance on digital communication has transformed the legal landscape across jurisdiction, including India, the USA and the EU. With the advent of messaging apps like WhatsApp, court have grappled with the admissibility of electronic communication as proof. This article provides a comprehensive comparative analysis of acceptability of WhatsApp chats as evidence under Indian, US and EU laws. The acceptability of WhatsApp chats as evidence presents unique challenges

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and opportunities in legal proceedings across different jurisdiction. India, like the United States and the European Union, has developed distinct legal framework to address these challenges, shaped by their legal tradition, technological advancement and privacy concern.²

White-collar workers are progressively using WhatsApp as a means of communication. WhatsApp is considered as the best communication app for the employee to convey straight with customer & colleague. Instant communication & pictures sent on social networking sites, such as WhatsApp, are now acceptable in legal system as evidence in the pair criminal & civil proceeding because of the raise application of this stage. Instant texting & pictures sent on social networking platform, such as Facebook, are now admissible in legal system as evidence in both criminal & civil proceeding because of the increased use of these platforms.³

It has been determined that mobile messages, & any other digital evidence are all wholly admissible in court of law. In the case of *State of Delhi v. Mohamad. others*,⁴ & also in *Afsal Guru case*,⁵ the Supreme Court of India decided that digital evidence is admissible in court of law.

² NEERAJ DUBEY, <https://neerajdubey4.wordpress.com/2025/04/04/electronic-evidence/> (last visited April 2, 2026).

³ LAWYERSCLUBINDIA, <https://www.lawyersclubindia.com> (last visited April 2, 2026).

⁴ State (NCT of Delhi) v. Mohd. Afzal & Ors., 2003 (3) JCC 1669.

⁵ State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600.

The abuse & reliability of the proof because of technical glitch was also disproved by the Supreme Court. A document having the sign of the person using the electronic resourcing & entering the facts should be sought by the Court of law. That person is only held for the accuracy of the record in question. On the flip side, the individual contesting the digital data bears the burden of proof.

In simple term ‘evidence’ is the most vital topic in the sphere of the legal system. In this modern globe where we live, we are mostly gathered by the social networking & its platforms. We can discover almost entirely on the social media. Digital data nowadays are playing key part as proof in discovering a case. The two most vital laws dealing with digital data are *Indian Evidence Act, 1872*⁶ and the *Information Technology Act, 2000*⁷. One of the most utilized & winning social media platforms is WhatsApp for conversion.

2. PROCEDURAL REQUIREMENT & FRAMEWORK

India’s approach to digital evidence is characterized by stringent procedural requirement designed to make sure the accuracy and

⁶ Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

⁷ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

reliability of digital communications. The Bharatiya Sakshya Adhiniyam, 2023⁸ mandates specific conditions under its Section 62⁹ and 63¹⁰ for the acceptability of digital records, including WhatsApp chats, like a certificate to be produced for any electronic evidence to be admissible. The certificate must describe the way the digital data was produced, the particular of the gadget involved and certify that record is an accurate representation of the original. This requirement ensure that the electronic evidence is both genuine and has been obtained without tampering. Indian courts have consistently emphasized strict compliance with these provisions.

For instances in *Rakesh Singla v. Union of Indian (2021)*,¹¹ the Punjab and Haryana High Court reiterated the necessity of a Section 63 certificate for WhatsApp message to admitted as evidence. Indian courts are very careful when accepting digital evidence like WhatsApp messages.

The US legal system for digital record is more flexible and adaptive compared to India. The Federal Laws of Evidence provide a broad set of guidelines that allow for the admission of electronic evidence, including WhatsApp chats, primarily focusing on authenticity. Under Rule 901, the

⁸ Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).

⁹ Bharatiya Sakshya Adhiniyam, 2023, § 62, No. 47, Acts of Parliament, 2023 (India).

¹⁰ Bharatiya Sakshya Adhiniyam, 2023, § 63, No. 47, Acts of Parliament, 2023 (India).

¹¹ *Rakesh Kumar Singla v. Union of India*, CRM-M No. 23220 of 2020 (O&M), decided on Jan. 14, 2021 (P&H).

proponent of digital record must produce sufficient evidence to support that the object is what it claims to be.

The EU's approach to digital record is heavily influenced by its strong emphasis on data protection and privacy. For digital evidence like WhatsApp chats to be admissible, they must meet standard ensuring their authenticity. Under GDPR the use of personal data as evidence must comply with principles of lawfulness, fairness, transparency, and purpose limitation. This means that while electronic evidence such as WhatsApp chats can be admitted, their use must be proportionate and necessary, respecting individual privacy rights.

3. AUTHENTICATION AND RELIABILITY OF EVIDENCE

In the Country like India, the emphasis on a document u/s 63 of the BSA reflects a stringent approach to authenticating electronic evidence. This requirement makes sure that any electronic document or communication, like WhatsApp chats, is verified by an official in a position of authority, adding a layer of reliability and credibility to the evidence presented in court. Indian courts have upheld the necessity of this certificate to prevent the admission of fraudulent or manipulated digital evidence. In *the M/S*

Karuna Abhushan Pvt. Ltd v. Shri Achal Kedia,¹² decision highlighted that even features like WhatsApp ‘blue tick’ could be relied upon as evidence, provided there is compliance with Section 63, thus ensuring that digital evidence is scrutinized for authenticity.

In 2024, the Canadian court in the case of *South West Terminal Ltd. Vs Achter Land and Cattle Ltd*,¹³ held that a ‘thumbs up’ emoji in a text message was a valid form of acceptance in a contract. This case highlights the evolving role of electronic signature and electronic evidence.

4. RELIABILITY CONCERNS AND RISK OF MISUSE:

While the law allows WhatsApp chats as lawful evidence, it poses a risk of misuse:

Digital data is very vulnerable; it can be altered or manipulated as held in *Anvar P.V. v. P.K. Basheer*,¹⁴ by the Supreme Court that electronic

¹² M/s Karuna Abhushan Pvt. Ltd. v. Shri Achal Kedia, CS (Comm.) No. 327 of 2019, decided on Jan. 25, 2020 (Com. Ct., Delhi).

¹³ South West Terminal Ltd. v. Achter Land & Cattle Ltd., 2024 SKKB 115 (Can. Sask. K.B.).

¹⁴ Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.

evidences inclusive of WhatsApp Chats are susceptible to deletion, manipulation, or fabrication, thereby calling for strict compliance with statutory safeguards. All these can be done via basic tools, which means altering chats might become accessible, and distinguishing between the real and fake ones becomes difficult. This would lead to an unfair trial and injustice to the victim.

The end-to-end encryption employed by messaging platforms like WhatsApp poses challenges. Under Section 67C¹⁵ of the *IT Act, 2000*, Intermediaries are required to preserve and retain information, whereas the encrypted nature of communication limits third-party verification of content.

Further in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*,¹⁶ the Supreme Court acknowledged that secondary forms of electronic evidences like screenshots or printouts, lack complete metadata and forensic markers, making it difficult to establish authorship, integrity, and absence of tampering.

Whenever electronic data is procured through unlawful means, whether it be hacking or unauthorized access, its evidentiary value automatically weakens, as held in *M. Malkani v. State of Maharashtra*¹⁷, where the court raised concerns over the acceptability of evidence acquired through

¹⁵ Information Technology Act, 2000, § 67C, No. 21, Acts of Parliament, 2000 (India).

¹⁶ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

¹⁷ *M. Malkani v. State of Maharashtra*, (1973) 1 SCC 471.

unauthorised access.

5. CONCLUSION

WhatsApp messages have emerged as a potent and a common kind of evidence in Indian courts. They can effectively determine the course of justice when verified regarding Bharatiya Sakshya Adhiniyam, 2023. Courts have decided in cases like Anvar P.V., Arjun Panditrao and Ambalal Sarabhai in favor of authenticity, certification, chain of custody and reliability. Although technologies and AI can improve verification and efficiency, issues of privacy, bias, cost, and transparency still exist. The WhatsApp evidence of the future is finding a balance between technology and the legal safeguard in a way that digital evidence can be used to reinforce justice and not undermine it¹⁸.

¹⁸ LEGAL CORPUS, <https://legalcorpus.in> (last visited April 2, 2026).