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FOREWORD MESSAGE

Law has emerged as one of the most promising career choices in recent years. With a large number of students opting for law as their career with a defined vision, Sharda School of Law, Sharda University, is providing a great opportunity to students through its 5-year integrated UG programs—B.A. LL.B. and B.B.A. LL.B. SUSOL also offers LL.M. and Ph.D. programs that focus on quality research in the field of law.

Sharda Law Review, under the flagship of Sharda School of Law, is a bi-annual, peer- reviewed journal that has consistently published work on various contemporary legal issues covering both national and international domains. Sharda Law Review strives to offer a platform to academicians, practitioners, and scholars for their thoughtful contributions to academic discourse, while simultaneously building analytical and editorial skills.

Sharda Law Review offers a robust platform for scholarly engagement, with its thorough peer-review process upholding the quality and relevance of every contribution to the legal field.

The present issue comprises articles and research papers on numerous contemporary legal issues, emerging trends, and innovative legal ideas, all of which foster critical thinking and intellectual discourse in the field of law.

Prof. (Dr.) Rhishikesh Dave
Dean, Sharda School of Law
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Sharda Law Review

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A Double-Blind Biannual Peer Reviewed Online Journal

Sharda Law Review [SLR] is a double-blind biannual online peer-reviewed journal published by the Sharda School of Law - Sharda University, Greater Noida. The Journal consists of editorial advisors of the highest repute legal luminaries and dignitaries. The first edition of the journal was published in the month of August, 2021 and now this is the second edition of publication.

In the contemporary world of the knowledge society, understanding the legal dimensions of an individual's life constitutes the major crux and thrust of social science research. Against this backdrop, the Sharda Law Review (SLR) stands to serve as a mirror to all these conflicting currentsof Law & Society. It publishes research writings, book reviews and case-comments in the Socio- Legal field that seek to explain different aspects of individual in relation to their society, polity, economy, culture, and psychological well-being. The journal covers a wide variety of sub-fields in the area of social science research mainly focusing on the conflicting currents of socio-cultural- economic, psychological, and political aspects of human life in a contemporary globalized society.

The aim of Sharda Law Review is to avail platform to intellectuals and academicians for expression of their original ideas and creations whether in the form of Research Paper, Article, Case Comments or Book Reviews, etc. The journal is published twice in a year during the 6th and12th Month of every Calendar year.

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- All articles/papers must be accompanied by abstract not exceeding 300-500 words. Case Comments and Book Reviews do not need to be accompanied by abstracts.
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FROM EDITOR-IN-CHIEF……!



As we present another volume of our esteemed law journal, I am pleased to introduce this issue as a constellation of intellectually stimulating and thought-provoking articles that address pressing legal challenges. Sharda Law Review is a bi-annual, peer-reviewed journal committed to publishing high-quality research and analysis on contemporary legal issues. In a constantly evolving legal environment, the journal serves as a platform for academicians, practitioners, and researchers to engage in meaningful intellectual discourse and promote scholarly exchange.

This issue explores several of the most urgent legal matters of our time. It features insightful articles on topics such as personality rights, the protection of whistleblowers, gender justice, cybercrime and data privacy, and the legal dimensions of artificial intelligence, among others. Our contributors comprising esteemed academicians, legal practitioners, and research Scholars bring their expertise and fresh perspectives to these complex issues. The research presented here reflects both the sophistication and relevance of modern legal concerns, offering innovative approaches and contributing to ongoing debates in the legal domain.

I extend my heartfelt gratitude to all the contributors for their thoughtful and original insights. I am equally thankful to our reviewers and editorial team, whose dedication and perseverance through the demanding editorial process have made this publication possible.

Finally, I deeply appreciate the trust and support of our readers, who continue to engage with and uphold the journal's mission. I hope you find the content in this issue informative, engaging, and intellectually enriching.

Prof. (Dr.) Rhishikesh Dave
Editor-in-Chief
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Climate Tech, Environmental Justice and Liability: Emerging Legal Frameworks for a Decarbonising Economy

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Abstract

The climate technology or climate tech, comes in a wide range of innovations that have been created to either reduce the emission of green house gases, combat atmospheric carbon or help people adjust to the effects of the climate change. These technologies include renewable energy, grid scale storage and electric mobility as well as negative-emission approaches like ecologic direct air capture, nature-based carbon sequence and geo-engineering schemes not to mention the facilitation of digital tools, such as artificial intelligence (AI)-powered monitoring, climate risk analytics, and precision agriculture. Along with the various efforts by governmental bodies and market dynamics to achieve decarbonisation in line with the Paris Agreement and net-zero targets, climate tech has become a critical component of modern-day industrial policy and financial regulation, thus changing the historical understanding of environmental law, energy law, technology regulation, and financial supervision.

Keywords: Law, Climate, ESG, Decarbonising Economy, AI

1. Introduction

The environmental justice aspects of climate policy are based on the widely-reported fact that low-income communities, less-privileged social groups and societies in the Global South are facing uneasy climate risks even though they contribute insignificantly to the aggregate emissions. Climate change magnifies existing inequalities by heightening the impact of heat stress, flooding, sea-level rise, and food insecurity as well as reducing the adaptive capacity by reducing access to finance, infrastructure, and healthcare. Such a metamorphosis also presents complex questions of how the benefits, burdens and risk of technological change should be allocated by legal structures, and in particular to communities who are already overrepresented by the enhancement of environmental degradation and climate susceptibility. In this milieu, the normative framework of environmental justice can be used to evaluate whether the climate-tech deployment and decarbonisation policies alleviate or increase the impact of structural inequalities and liability doctrines civil, administrative, and criminal can be used to overcome the absence of accountability of both public and private actors towards climate-related damage, technology breakdowns, greenwashing, and rights abuse.

As states enact mitigation policies like carbon pricing, phasing out coal, renewable energy corridors, and large-scale transmission or green hydrogen infrastructure and introduce new localised costs, including mining to access important minerals and the location of massive solar or wind farms, these policies can be displacementary, dispossessive, or imposing clean-up duties of their own. According to the environmental justice paradigms, climate action must be procedurally fair meaning the rest of the communities mobled must participate and access information on the issue, and substantially fair which distributes the costs and benefit of decarbonisation in a way that it safeguards the vulnerable cohort and secures equality across generations. These principles have become more and more embedded in the court and regulation system, such as by interpreting as a constitutional or statutory entitlement that climate justice, intergenerational equity and the right to a healthy environment are inherent rights or enforced through questioning whether climate policy and technology meet these standards in practice.

2. Climate Tech, Environmental Justice and Liability

A recent entry into this field is climate-change litigation as a major contributor of responsibility and norm-making on the matter, which provides the context on the liability issues associated with climate tech and decarbonising economies. Internationally, litigants have taken claims on states, state agencies, and corporations over non-implementation of emission-reduction targets, permitting high-carbon projects, climate risks misrepresentation, or human rights invasion upon poor climate policies. According to recent reports of global trends, there has been a fast growth of practices around climate justice which prefigures the rights of the children, Indigenous people, and frontline communities with an increasing frequency of actions termed climate-washing; litigating false claims to net-zero, ERS reports, and green marketing. A common approach to these cases is that the public law (constitutional rights, administrative law review), the private law (torts, nuisance, negligence, consumer protection) and the international law (human-rights treaties, the law of the sea, due-diligence principles) are used to qualify the conventional regulatory enforcement of liability towards the climate harmed with the involvement of the third party. Notably, litigation is involving the impact of technology as a contributor and/or solution to climate damage- such as by questioning the suitability of monitoring systems, the soundness of risk modelling, or the Invariance of carbon-removal and offsetting technologies as a justification of ongoing emissions.

3. Emerging Legal Frameworks for a Decarbonising Economy

Soft-law tools and new advisory views at the international level transform the existing view of the role of the state in climate damage in ways that will influence the future liability risks involving climate technology and decarbonisation futures. Even though the Paris Agreement is more of a treaty of procedural commitments, the expectations of progressive ambition, transparent reporting, and long-term low-emission development plans are anchored in the agreement and are increasingly being regarded by national courts as references in the review of domestic policy and in allowing decisions. More specifically, groups of countries have made it clear that states have positive obligations to avert the anticipatable climatic-related human-rights offenses, to control corporate entities under its oversight and to collaborate in giving money, technology, and assisting capacity

to weaker states. There is an emerging perception that the inability to put into place technological and other means of controlling high-risk climate technologies, failure to control emissions and damage attributable to climate as a result of activities within the territory of a state may generate obligations of cessation, non-relocation assurances, and redress, such as monetary compensation, restoration, or other forms of redress to societies injured by climate harms. Such trends promise a shift in thinking about climate action being no longer an issue of solely political choice but instead one of legal obligation, which also sets the stage later possible conflicts about the ways states should authorise, control, and distribute the benefits of climate tech implementation on the domestic and extraterritorial levels.

In national law regimes, the basic principles of environmental law still embody the structuring of liability against climate harms and instruments to question climate technology projects and decarbonisation policies. Precautionary principle advocates regulation and limitation of high-risk technologies, even scientifically uncertain ones, even where the harmful effects are irreversible or transboundary. It is based on the polluter-pay principle of emission charges, carbon taxes, emission trading schemes and liability regimes that externalize environmental costs on business models so as to allow funding of climate adaption measures and loss-and-damage measures. The need to balance the sustainability, equity between generations and ex-post facto sustainability between ecological integrity is guided by the policy and the sustainable development principles, intergenerational equity, and principles connected with the formation of the concept of sustainable development anthropocentric gaps, including the examination of the approvals of new fossil-related infrastructure, renewable energy-based monad, or value-choice settings, like outsourcing high-emission segments. Together, they act as guiding principles to the interpretation of laws and the formulation of regulatory systems, along with judicial review guidelines, and this determines the legal context within which climate technologies have their studies, funding, approval and implementation.

4. Climate Technology: Issues and Challenges

Climate technology is not a specific sector, but instead it traverses several fields such as energy, transport, built environments, agriculture, industrial processes and finance, thus requiring

coordination between different regulatory regimes that have long been regarded as discontinuous. Renewable energy projects such as these engage environmental impact assessment legislation, land-acquisition and forest-conservation legislation, biodiversity protection legislation, and community-rights legislation, besides grid-code regulation and the market design of the power-sector. Integrity of long-term stored and monitored, impact across boundaries and responsibility in the case of leakage are very high, especially concerning technologies like carbon capture, utilisation, and storage technologies and negative-emission solutions. The current pollution-control regulations and mining or petroleum laws might not have inherent foresight into these problems. Technology in mind takes the form of climate-sensitive seed varieties, digital advisory technology, high-technology irrigation, and carbon-sequestration projects including afforestation and soil-carbon schemes that interact with land-tenure policies, the Indigenous and community land rights, food-security policies and the biodiversity protection systems. Financial climate technology Fintech Finance Finacle twin Fintech Climate Finance Fintech Climate Analytics Fintech Climate Bonds Fintech Climate Index Fintech Climate Securities Fintech Tokenised Carbon Credits Fintech Fintech Intersecting Fintech, Financial, Stability, Data protection, Cyber-security and consumer law Fintech Fin The key legal dilemma is to develop harmonious models which, on the one hand, would facilitate cross-sectorial innovation and, on the other hand, ensure environmental health, human rights, and social justice.

With an economy that is decarbonising the liability gains broader significance beyond those historically committed to environmental offences, extending to include new forms of climate-related risk, which include failures in the design, deployment or regulation of climate technologies. Civil liability can arise out of negligence, nuisance or analogues to product-liability in case of breakdown of climate-relevant technologies or leading to other kinds of foreseeable harmful outcomes, such as the disastrous failure of climate-resilient dams or coastal defences, ecological disparities as unexpected outcomes in geoengineering experiments, or inaccurate climate-risk analytics which give investors or authorities mistaken information. Corporate climate liability is also shifting up to take on different responsibilities of climate-related due diligence through a value chain and is based upon the changes of business and human-rights frameworks of supply-chain

transparency legislations. Those in senior management can face fiduciary-duty actions of not considering high-carbon climate material risks, or any action that approvesaigning high carbon asset strategies that cannot be walked or than net-zero targets, and financial institutions may find themselves sued over financing climate-altering projects that do not meet national or international climate-commitments. Meanwhile, environmental-criminal law is increasingly broadening to incorporate actual severe environmental harm, and looking to future change some jurisdictions are considering or are already prosecuting offences of ecocide or aggravated climate crimes, potentially ultimately extended to gross climatic misconduct or the squandered utilization of risky climate technologies.

There is a separate but similar field on liability of misinformation, misrepresentation or even a form of climate -washing, in advertising and funding of climate technologies and net-zero solutions. Government agencies and companies are progressively turning to sophisticated modelling, scenario evaluation, and computer platforms in evaluating the risks related to climate and investment and product emission profiles as part of investments and products, such as offsetting programs and carbon-credit programs. In cases where such tools underprice risks, overprice mitigation possibility, or misprice high-carbon activities as being green, they subject issuers, middlemen and service providers to securities-law liabilities, consumer law, advertising law or unfair-trade-practice law. The recent development of litigation has given rise to claims that corporate climate commitments and aspirations of net-zero do not have concrete transition strategies or rely in part on speculative carbon-removal schemes, which are looked at by courts and by regulators as accurate and sound. The rise of data-based climate-risk products and AI-enabled decision devices into financial markets and government acquisition can raise the question of professional standards, audit, explainability and responsibility assignment amidst technology developers, deployers, and users. This is an indication of the need of having clarity on the rules of liability, transparency requirements and the use of controlled systems to cut across the ever-changing climate-tech ecosystem.

The issues around environmental justice are even more acute when there is a implementation of climate technologies and decarbonisation projects in the communities of or near those impacting society because of historical pollution and land loss as well as socio-economic marginalisation.

New types of localised environmental harm, livelihood displacement, or cultural and spiritual attachment to land can be produced by large-scale renewable power stations, transmission lines, lithium, cobalt, and rare earths mining, especially affecting Indigenous and the rural population.

5. Conclusion and Future Scope

The beginner technologies like AI and digital twins are becoming more and more central to climate-tech systems, ranging over extreme weather prediction and energy systems optimisation to climate litigation and enforcement. The surveillance and monitoring capabilities created with AI will enhance the regulatory officers to be better able to notice a breach of accounts of emission limits, deforestation, or illegal mining, and they can produce evidence against climate -justice demands. Nevertheless, they also question the aspect of privacy, excesses of surveillance, prejudice of data and models, and inequitable accessibility of technological devices. As courts and regulators explore AI in managing cases, predicting and estimating risks, they have to make sure that this type of systems can augment and not diminish environmental justice by maintaining transparency, predictability, and challenge characteristics with definitive lines of human responsibility. Liability regimes around AI and digital climate-risk instruments are still developing but concerns are emerging as to developer liability in cases of wrongly-programmed models, responsibilities of professionals who use the results of algorithms and the standard of care when automated systems are used by public bodies and authorities to allow, enforce, or respond to disasters. The principles of AI-governance described as human control, proportionate-ness, non-discriminationism, and data-protection compliance will be necessary to ensure that the suite of applications around climate-related will avoid creating another strata of digital injustices to mount on the already existing disparities.

In the future, legal frameworks of climate tech, environmental justice, and liability in a decarbonising economy will probably be developed through a series of interactions between legislation, regulation, litigation, and technological practice. The environmental, energy, infrastructure, and financial laws will have to be revised by legislatures to deal with long-term climate risks, trans-boundary effects, and multi-faceted life-cycles of novel technologies, and the mainstreaming of justice provisions and the protection of human rights within the climate-

innovation policies. Regulators will be faced with the challenge of creating adaptive rules and standards that will keep up with the quick technological change and dynamic permitting, performance-based regulation, and sandbox which will enable controlled experimentation. Courts will retain the central role of how they interpret the norms of the constitution and statutory standards in reference to the development of climate science and ability to meet the demands, gaps in which the political arms operate overly slowly, and responsibilities of care, prudence, and clean-ups that an individual or company must bear. To both legal scholarship and practice, the nexus of climate tech, environmental justice, and liability provides a rich way to reconsider fundamental principles of responsibility, risk, rights and governance in an age where making the argument that decarbonisation is inseparable as well as the democratisation and humanisation of technological and economic power.

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Enhancing Legal Practice For Lawyers Through Artificial Intelligence

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Abstract

The legal profession is undergoing a transformation, not only in India but around the world with the integration of Artificial Intelligence (AI). AI in the legal practice is a promising technology that has the potential to deliver enhanced productivity and efficiency for lawyers, and meaningful access to legal services for litigants. AI tools are revolutionizing routine and core legal tasks for lawyers and law firms, such as document review, legal research, contract analysis, predictive analytics, preparing case briefs, and constructing legal arguments, which is saving lawyers a significant amount of time and cost, and also improving their accuracy and decision-making in this ever-demanding profession. The author in this paper has conducted a doctrinal research methodology based on reviewing the reports, surveys, articles, and emerging AI applications in the legal profession to explore how AI is reshaping the legal practice for lawyers. This study also addresses the ethical challenges such as transparency, bias, confidentiality, and accountability, and is also proposing recommendations for responsible adoption, integration, and use of AI within this profession. The goal is to empower lawyers to adopt AI as a tool to modernize their practice while enhancing the legal services for their clients.

Keywords: Artificial Intelligence (AI), Legal Practice, Law Firms, Lawyers, Legal Profession, Legal Research, Document Automation

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1. Introduction

The legal professionals in this ever-demanding profession face a high amount of pressure continuously to deliver high-quality and time-oriented legal services to their clients. This pressure further expands with the more cases being handed over to them due to various reasons, either working as associates in law firms or working independently in their offices, but every human being is expected to have a limit. This is where a gap exists, and AI can be a potential game-changer in the legal profession, assisting lawyers and law firms in their day-to-day routine work to efficiently perform every task being assigned to them. India is a country with brilliant and thoughtful minds, which has the potential to use any kind of technology to its maximum benefit, and is even utilizing it today. As per the recent reports, a huge percentage of legal professionals believe that AI has the potential to transform this profession within the next five years.

The case backlog in our country is ever increasing as there are approximately 5 crore cases pending in all the courts in India, including the District Courts, the High Courts, and the Supreme Court of India. This backlog is certainly increasing due to the growing population of our country and the growing intolerance with it, and also due to the resources available to the people who are willing to litigate rather than settle. Lawyers in this profession are already over-burdened with miscellaneous tasks in the court procedures, thus, AI can be a possible solution to enhance the efficiency of legal professionals and provide improved services to their clients. AI tools can perform various tasks such as assistance in document drafting, legal research, managing case files, handling communication with clients, etc. These artificially intelligent systems can serve the legal profession with a huge amount of automation for repetitive work, enhancing the efficiency of lawyers in preparing legal arguments to be presented in courts. This paper explores the potential of AI tools in the legal practice while also addressing the ethical use of AI and proposing recommendations for accountable and responsible use of AI in the legal profession.

2. Scope of AI in Legal Practice for Lawyers

The application of Artificial Intelligence in the legal practice can prove to be a game changer in performing a number of key functions:

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- **Legal Research** – AI-powered tools use Natural Language Processing (NLP) algorithms to rapidly search through huge amounts of legal databases to find relevant case laws and statutes in a matter of seconds, saving a huge amount of time for lawyers to ultimately focus on framing strong legal arguments.

- **Drafting Assistance** – AI systems can frame initial drafts of contracts, memos, applications, briefs, and miscellaneous documents, allowing the legal professionals to shift from manual drafting to strategic refinement. This move can ultimately save time for lawyers, using their efforts in a more concentrated manner for arguments.

- **Case Management** – eCourts Project in India is a systemization of digital case management for lawyers and litigants, thus improving transparency and speedy access to court functions such as filing of cases, order sheets, virtual hearings, etc. which has ultimately saved time in this profession.

- **Predictive Analytics** – AI has the power to interpret data and predict the outcome of cases based on that data, and visualise litigation forecasts, eventually assisting lawyers in creating strategies for cases along with risk assessment. This power of predictive analytics of AI can enable lawyers to make better decisions.

Adoption of AI in the legal profession has a huge potential to improve efficiency, and increase performance of lawyers significantly while also proving to be an aid for the litigants waiting to get justice in courts.

3. Benefits of AI in the Legal Practice

AI has the potential to greatly enhance India's legal profession. AI has multiple advantages for lawyers ultimately proving to be beneficial for the litigants:

- **Increased Productivity and Cost Efficiency** – Automation by AI can eliminate lengthy and repetitive tasks, thus, enhancing the efficiency of the lawyers and maximising productivity focused on value-added craft of legal professionals. This will also reduce overall costs paid by the clients.

- **Improved Accuracy and Reduced Errors –** AI can analyse data more accurately since it works on algorithms which can quickly find relevant portions in the legal databases, minimising the chances of human error, thus overall increasing the reliability of legal outcomes in the cases.

- **Better Client Service and Access –** Virtual Assistants and AI-driven systems can make it easier for common people, including underserved clients, to have better access to legal services to gain legal information and help. AI can significantly help bridge the gap between access to legal services and people looking for legal aid.

- **Enhanced Legal Services –** AI's ability to conduct in-depth legal research, find relevant case laws in a matter of seconds, prepare quick case briefs, assist in crafting legal arguments, creating well-developed legal strategies, all cater to enhanced services by legal professionals for their clients.

AI has the potential to make legal practice much more efficient, cost-effective, result-oriented, with less margin for error, and ultimately providing enhanced legal services to the litigants, thus improving overall experience.

4. Legal and Ethical Framework for AI Use in Legal Practice

Currently, there is no AI-specific legislation in India towards responsible AI regulation. As a result, increasing AI integration in legal practice raises ethical and regulatory considerations that must be addressed with priority:

- **Algorithmic Bias and Fairness** – AI systems must operate on balanced and neutral data to prevent any form of bias. Databases that are standardized and uniform are necessary for a transparent, fair, and inclusive legal framework to create an ethical atmosphere for the use of AI in legal practice.

- **Confidentiality and Security** – The legal data is highly sensitive, thus, strong cybersecurity measures are needed to be into the framework to protect and safeguard

sensitive information. This will also maintain public trust in the use of AI, and eventually safeguard personal information and confidentiality.

- **Transparency and Accountability** – Lawyers must also understand the workings and limitations of AI tools which they use, so that the decisions based on AI can be explained and justified to the clients and as well as to the courts. This step will surely maintain the transparency and accountability in the legal practice.

- **Ethical Use and Professionalism** – AI should not replace the intellect of lawyers, rather it should complement it. Lawyers must consider AI as a tool to assist them to increase their efficiency, and not be overly dependent on the technology. The legal professionals shall use AI in an ethical manner while maintaining professionalism.

Lawyers must act with caution while using AI in their legal practice, with an objective of increasing the efficiency of their work, but also without compromising in their ethics and professionalism. However, certain steps to regulate AI in the legal practice can also be taken to oversee the use of this technology to maintain transparency and accountability in the legal system.

5. Challenges in AI Implementation in Legal Practice

There are certain challenges which must be addressed while implementing the technology of Artificial Intelligence in the legal practice:

- **Data Quality and Bias** – To ensure that AI is correctly used in the legal practice, it is essential to maintain the best and unbiased data. It is also necessary that the collection of data should be of high quality so that accuracy and correctness of the output are also maintained.

- **Technology Infrastructure** – There are many lawyers and smaller firms that lack the necessary means to adopt and use AI in their legal practice, which can be a disadvantage to them in comparison to those lawyers and law firms who have adequate resources to integrate the technology.

- **Financial Costs** – The cost of adopting, integrating, and using AI in the legal practice may also be high for freshers or solo practitioners in this profession, where certain AI tools could be required to compete in the market, which may either be expensive for beginners, thus, creating a gap in affordability.

- **Ethics and Accountability –** Use of AI in the legal practice can also face a significant challenge related to ethics and accountability of lawyers, as there is a possibility of over-dependence on AI tools to make their work easier without taking due care and maintaining a correct balance between human efforts and technology.

It is essential to take care of these challenges as well to create a transparent and trustworthy AI ecosystem without compromising the fairness and accountability in the legal practice, and eventually maintaining the trust of the litigants and clients.

6. Recommendations for Responsible AI Use in Legal Practice

These are some of the recommendations given by the author, which comprise of an approach to responsibly use AI in the legal practice:

- **Develop Policies** – Certain legal committees shall be set up by an appropriate body or organization to create formal guidelines on the use of AI tools to maintain ethics, confidentiality, transparency, and accountability by lawyers while discharging their functions in obtaining relief for their clients.

- **Invest in Training** – Lawyers shall be informed and educated regarding the proper use of AI in the legal practice to enhance the efficiency of their work and use this technology to its full potential. This will also help legal professionals to tackle possible challenges while using AI in performing their tasks.

- **Infrastructure Investment** – AI is a technology that can be used by both lawyers and judges in their respective works in the legal profession, thus, investment in infrastructure shall also be a priority to bring the best outcome of this technology to overall enhance the system, and eventually bring relief to the litigants.

- **Public Awareness Campaigns** – The public awareness campaigns shall also be organized for the general public to make them aware about AI technology and its potential to bring relief in the overall legal system. This will create trust and confidence in the eyes of the public, and the use of AI will become more meaningful.

Collectively, all these recommendations, if implemented, will certainly have a positive impact on the use of AI in the legal profession, and this technology can be used with its full potential while maintaining ethics, transparency, fairness, and accountability of lawyers in their legal practice.

7. Conclusion

Artificial Intelligence is a technology that is entering our lives like never before and being used on a daily basis in almost every sector, including education, healthcare, automotive, etc., and is no longer a thing of the future. AI is happening right now, thus, this is the right time to adopt, integrate, and use AI in the legal profession to provide enhanced legal services to the litigants who are seeking justice in the courts of law. AI has the potential to automate routine tasks for lawyers, improve legal research, enhance document analysis, prepare case briefs, focus on legal arguments, and provide cost-effective services to clients. India is a country where the population is very tech-friendly, and will not face much of an issue in understanding and realizing the true potential of such a technology like AI. Thus, AI can certainly be proved to be beneficial in the legal practice to deliver faster, more accurate, much enhanced, and cost-efficient legal services by lawyers. However, for the successful usage of AI in the legal profession, requires certain challenges to be addressed such as standardized data quality, technology infrastructure, costing, awareness on the technology, and responsible use of AI. Lawyers can use AI as a game changer in their legal practice, overall enhancing the experience of their clients, if used ethically. Thus, the future of AI in the legal profession is bright, if lawyers adopt this technology and use it responsibly.

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Biotech, Genomics and Digital Health Law: Regulating AI-Driven Innovation in Precision Medicine

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Abstract

Biotechnology, genomics and digital health are coming together to make medicine less of a population level phenomenon where previously treatment, diagnosis and prevention all depend on an individual more of a molecular profile, environment and lifestyle. The core of this change is artificial-intelligence systems, which are at the heart of genome sequencing and variant interpretation, biomarker discovery, image-based and signal processing models, clinical decision-support, and sustained-distributed monitoring via wearables and mobile health applications. This convergence has significantly increased the amount and sensitivity of health data thus blurring the boundaries between clinical care, biomedical research and consumer technologies, at the same time raising challenges of privacy, discrimination, autonomy and inequality that have always existed.

Keywords: Precision Medicine, Digital Health, Biotech, AI-Driven Innovation, Legal Provisions

1. Introduction

Regulatory frameworks of biotechnology, genomics, and digital health should thus not only touch upon traditional aspects of safety and efficacy but also on the question of algorithmic bias, data governance, accountability of a newly developed AI tool, as well as benefit equity associated with precision medicine. The uncertainty surrounding AI-led innovation regulation is therefore how it can be introduced to foster trustworthy, clinically useful systems without limiting scientific advances and enhancing health disparities.

Numerous efforts at artificial-intelligence regulation in healthcare have since taken a more risk-based approach, with more oversight on systems where artificial-intelligence poses more risk, including diagnostic tools, AI-enabled medical devices and clinical decision-support software. In the European Union, the medical devices utilizing high-risk AI systems need to be compliant with the Medical Device Regulation (MDR) and the AI Act, both of which require such systems to be assessed prior to being placed in the market via rigorous pre-market conformity testing and post-market surveillance aimed at the safety, performance, robustness, and bias mitigation. These frameworks require the implementation of quality-management systems, the delivery of clinical evidence, as well as risk-management protocols, human oversight, and transparency, where the degree of risk is sufficiently high to indicate that AI that creates a statistically significant impact on patient outcomes should be subject to strong ex-ante and ex-post controls. Other jurisdictions, including the U.S. Food and Drug Administration (FDA) and the Medicines and Healthcare products Regulatory Agency (MHRA) of the United Kingdom are also working on guidance of adaptive learning algorithms, where there must be pre-determined change-control plans defining what in an AI system may change and how safety and efficacy will be ensured during the changing of models. These new directions recognize that device paradigms are inappropriate to AI and that law would have a hard time being confined to the purely conceptual realms of constant learning, real-world monitoring of performance, and life-cycle governance.

2. Biotech, Genomics and Digital Health Law

Digital-health law is not limited to device regulation, but rather to the whole ecosystem of telemedicine, mobile health apps, remote monitoring, electronic health records (EHRs), and

integrated care platforms most of which currently include some elements of AI. Regulatory regimes make a distinction between software that is a medical device such as a diagnostic algorithm, or decision-support system that has an input on clinical decisions, and wellness or lifestyle tools, the former which are regulated under medical-product regulations and the latter which are not. At the same time, digital-health rules govern professional licensing, cross-border teleconsultation, in-relocation standard of care, cybersecurity, interoperability, and advertising and consumer-protection of health-related applications and platforms. To use a specific example, in India, telemedicine practice, health-data management, and the Digital Personal Data Protection Act interact with health sectoral regulations to formulate the AI-enabled digital healthcare services, setting the conditions of consent, and defining the data-sharing and localisation regulations to follow. The digital-health platforms have emerged as the primary infrastructures of precision-medicine, and thus the demarcations between device regulation, data protection, consumer law, and professional regulation are unclear and coordinated governance is necessary.

The legal issues surrounding genomics are unique due to the appellation of genetic information as unique, familial, enduring, and predictive information, which can be produced in both clinical and direct-to-consumer (DTC) settings. Preexisting regulations, such as research-ethics regulations (the Common Rule), health-privacy laws (e.g., the Health Insurance Portability and Accountability Act in the United States), or genetic-non-discrimination legislation (such as GINA) are only partial measures, which often do not fully regulate the genomic information produced outside a traditional health-care setting, and do not always prohibit all types of insurance or employment discrimination. There are legal controversies about the ownership of data, the sufficiency of consent (especially broad consent to unspecified future study), usage by third parties (insurers and employers), and the possibility of re-identification based on so-called de-identified data. In countries such as India, the increasing population size and size of related biobanks and population scale genomics initiatives have attracted criticism as to whether current general data protection legislation, such as the 2023 Digital Personal Data Protection Act sufficiently deal with overarching genomic risks of misuse, long term storage, cross border transfer, and commercialization. This means that precision-medicine law would need to enshrine in general data-protection and health-information law genomic-specific protections, explicating the right to

access, synthesize, transfer, restrict data-processing and, where practicable, erase genomic data, and regulating the security, minimization and purpose-limitation of genomic data.

3. Genomic Research and Biobanking

Genomic research and biobanking shed light on socio-legal issues of collective interests, sharing benefits, and trust on AI-enabled precision medicine. Massive genomic projects are based on biobanks that are consolidations of biological samples and related data of thousands or millions of participants, using AI techniques to design patterns, disease connections, and therapeutic objectives. Examples of legal and ethical issues are deciding whether wide consent in future research is sufficient to honor the autonomy of study participants, handling re-contact, re-consent with advances in technology and research interests, and avoiding abuse of the genetic information by third parties. There is increased interest in community regulation especially concerning Indigenous people and marginalized individuals who can be subjected to exploitation when regarding the use of their genetic material without meaningful engagement, culturally responsive protection or fair gains resulting in diagnostic or treatment outcomes. In those areas with fragile legal frameworks, the unpredictability of owning data, governing it, and sharing the benefits might undermine confidence of people in AI-based genomic medicine, despite the fact that these technologies demonstrate potential benefits in alleviating urgent health-related pressure.

4. Regulating AI-Driven Innovation in Precision Medicine

The law of data protection and privacy is central to both digital health and precision medicine, firstly due to the reliance of artificial intelligence systems on extensive and high-quality datasets which often combine clinical records, imaging, and genomic data with behavioural and social-determinant variables. Considerable data-protection frameworks also tend to treat health and genetic data as sensitivity-categories and subject them to rigorous consent, higher processing-conditions and greater security restrictions. However, still exist such practical shortcomings, as direct-to-consumer (DTC) testing out of a health-system viewpoint, general secondary use to technology companies, and transnational data flows towards cloud-based analytics, or with multinational research collaborations. Legal tools should eliminate the conflict between data accessibility in AI studies and model training and the requirement of minimisation, anonymisation

or pseudonymisation, and overt restrictions on repurposing, and simultaneously deal with the inherent issue of the irreversible anonymisation of genomic information. Regulatory bodies like data-protection and consumer-protection, often review health-app privacy-policies, algorithm-profiling, and veil of secrecy data-sharing deals, but they often do not have specific monitoring-procedures of genomics or AI-procedures.

Other regulatory issues in AI-based precision medicine are algorithmic fairness, transparency, and accountability. Clinical AI tools that have been conditioned on biased or nonrepresentative data groups are likely to reproduce health inequities by not working as well in underrepresented groups, accidentally not labeling health risks, or suggesting non-optimal interventions. Methods of governance of AI in health care highlight the key ethical concepts of fairness, openness, explainability, resiliency, safety, and responsibility, and propose mechanisms to observe any bias and performance across the model development and implementation and its long-term utilization processes. Outcome-based measures are thus of greater focus to regulators and professional organisations such as validated performance in a wide range of subgroups, adequately documented intended use and constraints, and mean by which clinician override could be made - as surrogacy measures of explainability, and with post-market surveillance and audit.

The AI-based liability in precision medicine is still underdeveloped and uncertain, with several potential defendants and different jurisdictions of laws involved. Product-liability and medical-device regimes deal with the issues of defects in the design, manufacturing and labelling of AI-based devices, but how performance changes over time can be managed since models learn new data is an issue of concern. The medical malpractice law keeps regulating the responsibilities of the clinicians but shared decision-making with AI decision-support continues to pose complex questions regarding the quality of care: is it rational to act upon or ignore AI suggestions, and in what cases clinicians must understand or assess algorithmic results. Responsibilities can be assigned to healthcare organisations and vendors under contractual, negligence, or regulatory systems, especially when the governance framework cannot evaluate risks, performance, or give sufficient training and assistance to users. In the United States, recent policy indicators, one being the 2023 federal Executive Order on AI, are suggestive of the shift to defining the liability of developers and deployers in high risk industries like healthcare, but statutory restructuring has not

been completed. Similar arguments are taking place around the world on the relative division of risk between technology firms, health care providers and patients.

AI governance within organisations in the health care sector has become a central mediating factor between top-down regulation and bottom-up clinical care. Multidisciplinary AI governance committees or boards are also becoming common at the hospitals and within health systems, acting as stewards of the AI solutions lifecycle, which includes their conception, procurement, implementation, monitoring, and decommissioning. The bodies are mandated with the responsibility to align AI application to institutional values of safety, efficacy, equity, privacy, and regulatory adherence in collaboration with clinical departments with regard to operational issues including integration into workflow, clinician contentment, and education. The structure of organisations is usually ready with data stewardship policies, model validation and re-validation policies, bias testing, incident reporting and communication with patients, and informed consent to AI-enabled services.

The law of precision medicine ethics and equity will not be limited to simple and individual consent and privacy but instead must focus on structural determinants of benefit of AI-driven innovation. It is possible that precision medicine will end up being accessible to, and beneficial, only well-resourced health systems and populations, thus contributing to intra- and global disparities when marginalized groups are under-represented by research, inaccessible to genomic testing and advanced therapy, or are not part of digital health infrastructures. Some countermeasures in legal and policy contexts in response to these trends encompass the mandates or encouragement of diversity in clinical trials and datasets, publicly funded genomic health, and digital health capacity in underserved areas, and health services modernization against the use of genetic data to limit access to health services, changes or employment.

5. Conclusion

The global and the comparative lenses give the impression of a patchwork in regulating AI-related biotechnology, genomics, and digital health. The interaction of the Medical Device Regulation (MDR), the AI Act, and the General Data Protection Regulation (GDPR) has resulted in the formation of strict terms of existence of high-risk medical AI and also established more certain

avenues of compliant innovation through the European Union. United States health-privacy laws based on specific sectors, anti-discrimination legislation and an emerging FDA policy towards AI/ML-enabled gadgets are complemented by larger initiatives by the executive and agencies regarding reliable AI. Other jurisdictions, such as India and other countries in Africa and Latin America, are developing digital-health, data-protection, and health-sector legislations, which will need to fit AI-enabled diagnostic tools and genomics in resource-limited, and various legal-tradition forthgrounds. The goal of harmonisation is still not reached, resulting in difficulties in cross-border research partnerships, cross-border deployments, and regulation dependency by providing soft law advice on issues, including AI ethics, clinical validation, and data governance, by global standards-setting bodies and professional associations.

Going forward, the governance of the AI-driven innovations in the field of precision medicine will require multi-layered governance that could react to the rapid pace of scientific progress and maintain the fundamental legal and ethical commitments at the same time. The lawmakers and regulators will be required to set risk-based frameworks of adaptive AI systems, seize loopholes in the credits of privacy and anti-discriminations, and promote global collaboration on safety, interoperability, and data-sharing guidelines. To become a better in-house manager of AI, healthcare organisations need to enhance internal capacity of AI-governance, spend in data infrastructure and workforce education, and instill culture of skeptical engagement with algorithm-based methods instead of blind faith. The intersection of biotechnology, genomics, digital health, and AI provides a productive labyrinth to the law in rethinking the notions of informed consent, data ownership, professional responsibility, product safety, and justice in the age in which medical decision-making is becoming mediated by complex, data-driven systems.

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The Double-Edged Sword: Democratising Justice in the Age of Technological Jurisprudence

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Abstract

The paper explores how tech-driven democratisation of justice offers unprecedented opportunities vis-à-vis the challenges and pitfalls in this direction. The paper touches on various aspects of tech-driven justice, i.e., Online Dispute Resolution, Artificial Intelligence-driven Legal Research and Practice, theories of evidence and others. The papers delve into deep jurisprudential analysis to firm the positioning on the mentioned theme. The research methodology adopted in this paper is Doctrinal & Philosophical Legal Research. The methodology also engages with Mixed-Methods Pragmatism as a over-arching approach. The study interrogates whether the modern-day, technological jurisprudence fosters democratisation of justice or exacerbates inequalities.

Keywords: Legal Technology; Access to Justice, Algorithmic Governance, Procedural Fairness, AI Ethics, Online Dispute Resolution (ODR)

1. Introduction

The global fusion of technology and law is creating a new era called Technological Jurisprudence. This article critically examines the discussion surrounding the 'Democratisation of Justice' through technological innovations within the framework of Technological Jurisprudence, focusing on issues such as legal accessibility, equity, and the rule of law. The Fifth generation of computers is based on intelligent technology. This is leaving no domain untouched. This technology is being considered a disruptive technology, as it can replace humans where human involvement was previously unavoidable. The article concludes with recommendations for policymakers, legal practitioners, and technologists. These recommendations aim to ensure that technological innovation enhances access to justice rather than becoming a tool for exclusion.

The democratisation of Justice is a cornerstone of the modern legal system[i]. The advocates of Artificial Intelligence argue that AI would bring Transparency, accountability and explainability in all spheres of its engagement, whereas the Prophets of Cassandra; bring forth all the negatives of the intelligent technology. The truth lies somewhere in the centre. The marriage of intelligent technology with law, coupled with human agency, can bring unprecedented positive results. Various jurisdictions are using such novel integration in predictive policing, risk assessment, sentence framing, legal research and in various other domains. This has brought efficiency in the system, reducing time in justice dispensation. Though effectiveness can be questioned. Digital innovation would aid in reducing the costs associated with legal representation in court proceedings. This assists in simplifying the legal language, vis-à-vis assistance in translations through a user-friendly interface. Systemic barriers such as procedural complexity, barriers to entry, and high litigation costs are points of concern. These factors deprive marginalised communities and subaltern groups of access to justice[ii]. Modern technological innovations (*Artificial Intelligence, Block Chains, Online Dispute Resolutions, Cloud Computing, Brain-Computer interfaces and Humanoid Robots*) have emerged as potential solutions for these challenges vis-à-vis posing significant ethical concerns about accessibility, procedural fairness, procedural transparency, issues concerning privacy, etc.

The ethical concerns associated with this novel integration are traditional. The ethical concerns associated with human engagement are being carried away with technology. The concern became severe, as in human-induced deviances, the human culpability and answerability can be ensured, whereas in intelligent technology-induced deviances, ensuring culpability and penalisation is not possible. The ethical concerns associated are biases, transparency, black-box nature, lack of explainability, etc. On the intelligent technology being integrated with the justice delivery system, it may severely compromise the due process doctrine of law, in India, flowing from Article 21, read with Maneka Gandhi v. The Union of India, AIR 1978 SC 597[iii].

The integration of technology in justice delivery rests on the theoretical edifice of *Legal Realism, Legal Positivism, Digital Constitutionalism, and Access to Justice Theory*. Oliver Wendel Holmes Jr, one of the towering American realist legal theorists, in his book '*The Common Law*', remarked that "*The life of the law has not been logic: it has been experience*"[iv]. Legal Realism contends that the emphasis should not only be on the abstract rules, but also on the social implications and public policy, as opposed to purely formalistic legal considerations. It suggests that the law should evolve to reflect societal needs. The swollen case files in Indian Courtrooms, leaving no court untouched from the Supreme to the Lower, demand integration of law and technology. Digital Constitutionalism is the value that adopts the present-day values of constitutionalism to the digital society. Digital constitutionalism ensures that constitutional values such as *Due Process of Law, Privacy, Liberty, and Equality* are maintained in the Digital Sphere[v]. The rigid application of legal positivism provides opportunities as well as challenges. Legal positivism facilitates a structured legal order but struggles to address normative and interpretative challenges, focusing on the contents of law rather than its merits. The democratisation of Justice challenges the traditional notion of legal positivism. This has the effect of blurring the lines between recognised legal sources and algorithmic legal governance in algorithmic Societies[vi].

2. Online Dispute Resolution

Modern digital innovations enhance legal accessibility in the form of Online dispute resolution platforms, Artificial Intelligence Legal Research and Practice, smart contracts with Blockchain technology, and drafting and complaint-filling applications. ODR platforms, such as *Modria* and

Rechtwijze, use algorithmic tools to facilitate dispute resolution[vii]. Modria is an advanced software that helps parties reach an agreement, reducing dispute resolution time by up to 50%. It combines law, economics, and psychology with intuitive information and communications technology to help citizens prevent, manage, and resolve their disputes. The *Rechtwijze* (legal signpost), developed in the Netherlands by the Dutch Legal Aid Board in collaboration with HiiL (The Hague Institute for Innovation of Law) and Modria to assist individuals in resolving legal conflicts about civil legal disputes, such as family disputes, tenancy disputes, and debt issues. The *Rechtwijze* follows structured legal pathways based on statutes, minimising judicial discretion. This emboldens legal positivism, whereas the critics argue that AI lacks moral reasoning, contrary to the standing of natural law theorists. The critics further emphasise the lack of transparency (*Black-Box*) in algorithmic decision-making and the potential for power imbalances between parties. The power imbalances between parties are the consequential result of the Digital Divide and Accessibility Issues, Imbalance of Legal Knowledge and Resources, Negotiation Power and Psychological Pressure involved in the settlement.

3. Artificial Intelligence-driven Legal Research and Practice

The advent of Artificial Intelligence and its integration into Legal Research has made legal research swift, easy and efficient. Legal research has conventionally been a tedious, time-consuming, and time-consuming task, with volumes of law reporters. The Artificial Intelligence-driven legal research platforms, such as *ROSS Intelligence, LexisNexis* and *Westlaw*, utilise Natural Language Processing (NLP) to analyse vast legal databases in a fraction of a minute[viii], enabling legal practitioners to retrieve relevant statutes, scholarly writings, and judicial precedents. The Machine Learning algorithms further assist in predicting case outcomes. These tools democratize access to legal information by reducing the time, space and cost associated with traditional research methods. Before the advent and integration of AI in legal research, the research was based on physical copies of commentaries, hardbound copies of expensive judicial reporters, hard copies of journals to access scholarly writings, etc. Modern technology has brought a vast repository of data within a few mouse clicks. The bias present in training data perpetuates and reinforces the biases as the outcome of the legal research through intelligent technology.

4. Blockchain and Smart Contract

The emergence of Blockchain technology and smart contracts has the potential to bring revolutionary changes to the legal system. The Blockchain is a shared, immutable ledger network that facilitates the process of recording transactions and tracking assets across a business network, whereas smart contracts are the digital contracts stored in blockchain technology that automatically get executed when the predetermined conditions are met. The modern tools coupled with intelligent technology have the potential to reduce transaction costs, eliminate intermediaries, and increase trust in the legal process. The technological advancement also raises important questions about the rule of evidence, contractual consent, obligation, enforceability and liability, fraud prevention and dispute resolution.

The element of automated contract execution reduces the conventional judicial dependency, transparency, and immutability ensures the integrity of legal transactions, and smart contract-based dispute resolution is a cost-effective alternative to litigation[ix]. The decentralised, transparent and accessible legal framework, through modern technology, has the potential to democratize justice.

5. Access to Justice through Applications

The access to justice mobile applications are designed to facilitate law practitioners to draft legal documents, file complaints, and access legal advice to litigants. These applications provide online legal consultations, legal document generation, dissemination of legal awareness resources, connecting litigants with lawyers, etc. The primary focus of these apps are those who face constraints in accessing justice or due to limitations of geographical locations are in a disadvantaged position to access justice. Mobile applications such as DoNotPay, LegalZoom, Tele Law and Citizens' Advice have come to the rescue for everyone and have empowered those who cannot afford traditional legal services. The Citizens' Advice is a British independent organisation assisting people with debt. Consumer, housing-related legal issues in the United Kingdom, DoNotPay is an American company using Artificial Intelligence to facilitate robot lawyer services to secure legal rights, and LegalZoom is an American legal service providing company that aids in creating legal documents without necessarily hiring legal practitioners. Later, DoNotPay was asked not to exaggerate its claims of having the potential to substitute humans and render the

expertise of a human lawyer. Though these technological advancements in the form of access to justice applications are playing a seminal role in democratizing justice and empowering individuals who cannot afford traditional legal services, nevertheless, the quality of services and potential for oversimplification of complex legal issues, as well as erosion of dynamism, remain a concern.

6. Conclusion

To ensure responsible and ethical legal technology, stakeholders must move beyond the simplistic "*democratisation*" narrative and focus on potential limitations and risks associated with legal technological advancements, with a nuanced context-sensitive slant vis-à-vis having a human-centred approach and sustainable development in its core idea. To address the concerns associated with legal technological advancements, the Inclusive Design of the technology, efficient Regulatory Frameworks with a futuristic vision, collaborations between public and private tech companies and foremost, people's education and training must be ensured.

The comprehensive test must be developed to assess the risk of AI integration, state to stage basis and based on the test, a determination must be made whether to integrate AI or not. The test and consequential assessment must also answer the integration to be at what extent. The answer at three levels would answer many questions pertaining to fair use of intelligent technology in justice dispensation. The three levels may be Integration, Integration with Human agency and no integration. The areas where the integration may cause deprivation of individual liberty or widely compromise the due process doctrine should be kept aloof from any introduction of AI in the process.

By adopting a critical and inclusive approach, the stakeholders can ensure that the legal technological advancement remains both meaningful and equitable, creating a safe space for all. The integration of technology must be done with utmost caution and alacrity. As the negative consequence can be severe and chilling on the institution, and there would be no rolling back, once moved ahead.

The irresponsible and non-mindful integration would perpetuate existing inequalities in society due to the insufficiency of fair data, socio-legal, and socio-political causes, rather than bringing fairness in the system. The wisdom suggests never unleashing the force, which can't be tamed. The intelligent technology is one of such genies, which can't be put back in the lamp; caution and care is prequalification for any and every step.

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Marital Rape: A Comparative Study of India and Australia

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Abstract

The paper compares the legal reform and laws in context to marital rape in India and Australia. Australia and India both deals with the issue in contradictory manner, Australia has criminalized the marital rape (partially criminalized in 1976 and fully criminalized in 1994) as an offence. On the other hand, India is debating around not to criminalize the marital rape as there is an apprehension in the society and legislature that the law could be misused and will disturb the marriage institution. Through legal considerations husband are given the exception or immunity to rape their wife. India only provides remedies under Domestic Violence Act, 2005 for physical and mental abuse but not for the sexual abuse or marital rape. Therefore, in India marital rape is neither a crime nor a civil remedy for divorce. Firstly, the paper will explore the trajectories of laws, judicial discourse regarding marital rape in Australia and India. Secondly, it will investigate the societal and cultural norms concerning marital rape in both the countries and their intersection with laws.

Keywords: Marital Rape, Criminalization, Mariage, India, Australia

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1. Introduction

As per 2011 United Nations research, around 52 countries criminalize marital rape as an offence punishable under law. Marital rape is abuse and violence between the spouses, one in three women experience marital rape by their husbands (WHO). The issue of marital rape is often outlooked by the countries in terms of right of a husband, but for promoting gender equality under laws some countries took the initiative to criminalize marital rape. Abuse within marriage is a common instance that a woman usually faces, and sexual abuse is something which women across the globe face. The abuse of any kind should be subjected to human rights discourse and guarantee every individual the right to be protected. Many countries have while criminalized marital rape, others still follow the societal norms more than the legal norms or constitutional norms.

The ancient and medieval period states that marital rape is not any kind of crime as it is the duty of wife to fulfil needs of her husband. The women have already given consent by getting married, and the women were considered the property of the husband, who could do whatever he thought was right with the wife. The concept of *coverture* (the merging of the identity of a woman with her husband) was prevalent at that time, where it was stated that a wife is within the authority of the husband (The doctrine of Coverture, 2022), so this is a valid reason not to ask for consent. After the late 19th century, the world became aware of women's rights and had activists around the globe who were fighting against all evils in society. The change starts after the case of *R vs Clarence* (22 QBD 23, 1882) in the court of Britain where the exemption of marital rape was upheld, and a spark was Enlighted against marital rape which infused debate all around the globe.

In India, despite of being a developing nation with many positive changes, activism and legal transformation there is still no provision for marital rape victims as it is deeply rooted in the culture and history. People consider that the marital rape term is a western concept and not the original concept of Indian society which is a form to deprive women by patriarchal acts. According to the Indian society husband is considered a God or the protector and has every right regarding the wife because the wife was only considered for caregiving to the husband and family. Wife is merely treated as a chattel, and the male of the family has the power to dominate her. Before marriage, it

is the father who controls their daughters and after marriage, husbands. Marriage is a form of patriarchal norms which are constructed through the means of people who are in power.

Conversely, in Australia the laws are efficient enough to deal with marital rape and punish the wrongdoer. The historical background from the common law highlights that husband and wife getting married has already given the consent, but with time the law maker realized the need of consent as an essential thing between husband and wife also. Bodily autonomy and dignity as an individual cannot be compromised, as it could violate the human rights of the individual. The Australian law requires consent as an essential part to be involved in any sexual act, regardless of their marriage or marital status. A woman should have the right to protection through criminal laws; no matter if she is married or not, she is entitled to get every right that a human has. The husband cannot be guilty of raping their wife was said by Sir Mathew Hale as he further says that there is consent through marriage.

2. Privacy and sexual autonomy of women in marriage

The privacy and sexual autonomy of women in marriage are closely associated with the human rights and equality perspective. The concept of rights and equality in terms of autonomy refers to the personal space, bodily rights of an individual, sexual rights and the decisions related to the life of an individual. The concept of privacy should be available to all humans regardless of their gender, for incorporating gender equality among all. The rights are supposed to be surrendered when a female gets married, as it is considered the duty of the wife to fulfil all the needs of the husband, no matter if the needs violate her fundamental rights or not. The married women do not even have the right to decide about their bodies regarding reproduction, fertility or sexual rights. The rights related to reproduction; fertility also play a vital role in incorporating privacy and bodily autonomy for women. The existing human rights law also highlights the need for providing rights for women towards their sexual autonomy over their bodies and privacy. The need to protect the rights of married women is also essential to protect their bodies from harms that exist in a way that violates basic rights that a woman as an individual is entitled to.

The historical era is littered with the legal, political, and social ways in which women's autonomy was limited, and women have also been restricted in their rights to equal opportunities and equal

citizenship. The violation of a woman's bodily rights and privacy rights is construed to hinder a woman's mental and physical health due to the suppressed stress of not being able to express her rights. The mind and body are both correlated to each other. Disturbance of the mind could lead to loss of autonomy over her own body, which leads to control of women by society. The woman turns into a powerless and rightless individual. The rights of sexual autonomy deal with the intrinsic rights of a female to govern her own body and have the right to privacy for herself without interference from any outside body. The woman who is married loses all her rights towards sexual autonomy due to the laws which make married women more vulnerable, as they do not even have rights against sexual abuse by their husbands.

3. Legal Trajectories: Analysis of laws in Australia and India

Traditionally, the Australian law followed the laws of Britain, where the concept of implied consent was prevalent and said that the wife has impliedly said yes to marital relations with her husband upon marriage. The legal revolution started from the South Australia by criminalizing rape in marriage in 1976 and setting a precedent for the whole nation. After this step, several parts of country in different timeline brought the reform in their common law by enacting laws for marital rape, by protecting the woman human right. In 1981 in South Wales, Victoria 1985, Australian capital territory in 1990's by providing all the laws necessary for the married woman towards the offence of marital rape.

The Queensland in Australia in the Criminal Code 1899 talks of lack of consent as rape. The section 348 of the code, include the lack of consent also to be included as rape and the offender must be punished for the offence (1899 S. 349 & 352). After the changes in the legislation, several changes in different parts of the country also took place, where later sex without consent was criminalized (Dahlstrom). The cases such as *PGA v The Queen*, (2012) helped the legal revolution to rethink of rape in marriages as crime. The case highlights the woman whose own husband sexually abused her was brought in front of the court in 1963. The husband asked for immunity, but the court dismissed the plea of husband.

The Indian discourse of rape is not as like the discourse of Australia, in India rape as a criminal offence regards the consent of wife as immaterial and not an offence. Marital rape or spousal rape is not explicitly criminalized under section 63 of Bharatiya Nyaya Sanhita, 2023. The issue of marital rape involves many aspects of law, society and culture in an intersectional way, in India laws are often interconnected to the aspect of society and culture. The exception though clearly provides an immunity for the husband who rape their wife or for them to have sex without their consent. This practice could lead towards discrimination between the married and unmarried woman, marriage does not mean to surrender all rights in front of the husband and giving up on their bodily autonomy. In India, a study by the International Centre for Research for Women (ICRW) claimed that one in five men believes that female deserve to be beaten in the family. In the case of *Independent Thought vs Union of India* (10 SCC 800, 2017), the apex court increased the age of consent from 16 to 18 for cohabitation in marriage. In the absence of legislation and apex court judgement, the validity of marital rape criminalization remains in question in India.

4. The role of socio- culture in the state of Australia and India

Marriage is an anthropological, cultural, as well as legal institution in which husband and wife should be subjugated of equal in rights. The Comparative analysis of both nations holds significance also in terms of culture, religion and other practices prevalent in the nation. To understand the marital rape as an offence by the perspective of both the countries are totally different approach to deal with. India as a nation is very rich towards their culture and old age practices, and the practices of Britain somewhat influence Australia, which is already a developed nation in terms of rights and justice. Marital rape is not only the need of man to have sex, but it is also some sought of power and subjugation idea by the patriarchal mindset leading the society. In the comprehensive and most important study about rape, Susan Brownmiller averts that "*when men discovered rape, they started to do it*" and states that from prehistoric times rape plays a critical role in the society. It means that women will always be in a position of intimidation towards this violence of sexual abuse.

In the historical belief, marital rape was a matter of implied consent and husband as the master of the wife. There was a role of the gender and power dynamics within the world where female was

considered as secondary citizens holding very few rights in terms of their bodily autonomy. The culture in Australia shows that women were weak and needed protection for their rights, but no such rights are available to married women. Late twentieth century, the shift towards advocating for the rights against sexual violence within marriages was seen. Traditionally, both in India and Australia, there was a prevalent notion of masculinity and patriarchy as the basis of controlling women by only allowing them those rights which would not affect the males of the society. A shift came in the Australian country in the cultural values, which saw women's rights as necessary human rights which need to be given by the state to protect women's individuality. Human rights are equal for men and woman both, so Australia also took the step to come forward with the criminalization of marital rape as an offence.

However, still in a country like India where the values, culture play a dominant role in the society, where female is still subjected to be considered as the property of their husband and not allowed to ask for any rights. There are many cases according to the report of National crime bureau against the sexual violence and rape with woman, the issue of marital rape is unreported because of lack in laws and legislation. It is believed that marital rape is not rape, as the female owes the duty to fulfill the needs of husband and will not be amounted to rape. The culture plays significant role for the enactment of a legislation or for the implementation of any law. In Australia, the state and society acknowledged marital rape as an offence, yet in India, it is still difficult to enact such laws where the cultural and patriarchal beliefs based on societal morality rejected the existence of constitutional morality.

5. Conclusion

Criminalizing marital rape is one aspect to eradicate gender inequality from the countries. However, India should follow Australia as it can be beneficial for those women who are survivor of marital rape. The role of legislation is to bring positive changes for the vulnerable section of the society and criminalizing marital rape can be a step forward to provide safer environment. Proper evidence should be collected to ensure equality and fairness. The criminalization of marital rape can bring certain positive and negative changes which needs to be addressed by the law enforcement agencies. The dignity, equality, liberty and autonomy of a woman can be ensured by

criminalizing marital rape. India's legal framework should also evolve in upgrading comprehensive laws to the extent of modern human rights standards to ensure the dignified living of an individual. Moreover, there will be need to sensitize all stakeholders concerning marital rape.

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India's Disability Rights Act: A Landmark Law in Need of a Stronger Spine

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Abstract

The article studies the Rights of Persons with Disabilities Act (RPwD Act), 2016, with a critical approach. The researcher, through this article, highlights gaps and pitfalls in the said Act. The article focuses on disabilities defined in the RPwD Act, 2016, along with Intersectional Disabilities, Accessibility in Public Infrastructure, Accessibility in Public educational institutions, etc. The article renders conclusions beneath every concern identified, for mainstreaming Persons with Disabilities in society. The research methodology adopted for the research paper is a sequential explanatory mixed methodology, along with doctrinal research. The research paper would be a seminal contribution to human rights and disability rights jurisprudence.

Keywords: Legal Pluralism, Persons with Disabilities, Enforcement Mechanism, Human Rights, Disability Rights

1. Introduction

The Rights of Persons with Disabilities Act (RPwD Act), 2016, was enacted to align India's commitment with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006. India is a signatory to the convention and ratified it on October 1, 2007[1].

The RPwD Act, 2016, shifted India's disability policy. It promotes rights and well-being for people with disabilities across society and development. The Act moves from a 'Welfare-Based Model' to a 'Rights-Based Approach,' adopting a 'Social Model of Disability' in line with the UNCRPD, 2006.

The RPwD Act, 2016, aims to ensure socio-economic and socio-political justice for nearly 2.5 Crore Indians. The Act establishes a comprehensive, rights-based framework by explicitly promoting equality, dignity, and non-discrimination to foster social, economic, and political inclusion, as well as societal participation. The official estimate obtained through the last population census (2011) found 2.21% of the population, i.e., 2.68 crores, disabled in India[1]. Whereas the World Bank report, 'Human Development Unit, South Asia Region', observes 5 and 8 per cent of the Indian population (around 55 – 90 million individuals) to be disabled.

The RPwD Act, 2016, aims to establish substantive equality rather than formal equality. Among the disabled, 49% suffer from vision impairment, 28% have movement impairment, and 23% have other forms of disabilities. However, a significant issue is that, according to the 2011 census, 7.9% of the disabled population in India had multiple disabilities—about 2.14 million people—about whom there is no specific legislative arrangement, thereby failing to achieve the goal of establishing substantive equality.

It is important to note that, in the 2011 Census, information was collected on only seven types of disability, whereas the RPwD Act, 2016, recognises 21 types of disabilities[1]. Although the original seven were inclusive in nature, considering even those not explicitly mentioned, now that 21 types are recognised—and hopefully all will be included in future censuses—the percentage of people with disabilities, including those with multiple disabilities, is expected to increase significantly in statistical data. Despite the progressive framework and attempt to frame an inclusive policy, the

RPwD Act, 2016, suffers from several infirmities. No legislative framework can be perfect. But identifying legal gaps, ambiguities, and implementation challenges, vis-à-vis suggesting a way forward, through critical scrutiny of the Act, is a must.

The RPwD Act, 2016, came as a ray of hope for the Social Justice movement. The 2016 Act expanded the definition of Disability, increasing the number of disabilities from 7 to 21. The Act further enacted enforceable rights and penal provisions, with special emphasis on accessibility. The RPwD Act, 2016, introduced new rights and entitlements (*increased reservations vis-à-vis free education for children with benchmark disabilities between the ages of 6 and 18*), and strengthened the institutional framework, etc.

The authors urge policymakers and social rights activists to urgently address five key concern areas to secure more robust rights and meaningful remedies for persons with disabilities. Immediate collective action is crucial to create a just society where no individual's rights are left behind.

2. The Definition does not tackle Intersectional Disabilities distinctly

The 'Person with disability' has been defined under Section 2(s) of the RPwD Act, 2016. Though Section 2(s) defines a "person with disability", it lacks clarity on intersectional disabilities (*e.g., psychosocial disabilities compounded by gender or caste-based marginalisation*). The progressive legislation must take into account the experiences of the people facing discrimination due to more than one form of disability concurrently (aggravated discrimination), and the legal protection rendered must be proportional.

The experience of the tribal disabled woman would be very different from the experience of an urban disabled man, a member of the elite clubs. Weighing both individuals on the same scale would do an injustice.

To have dynamic categorisations based on evolving medical and social models of disability requires an amendment in Section 2(s), defining 'person with disability'. The ***intersectional language*** to ensure protection for the marginalised sub-groups must be adopted. The traditional way to look at every disability as an independent and discreet unit is jurisprudentially and

sociologically obsolete. The Supreme Court of India, in Patan Jamal Vali v. The State of Andhra Pradesh (2021 INSC 272), a division bench recognises intersectionality and highlights the challenges in applying single-axis oppression models in cases involving multiple interlocking identities, emphasising the need for a more nuanced intersectional approach in legal interpretations.

3. Accessibility in Public Infrastructure

Sections 40 - 46 of the RPwD Act, 2016, mandate accessibility in public infrastructure, transport, and ICT, yet lack strict timelines for compliance. Standardised enforcement protocols, Penal provisions for non-compliance are weak (Section 89 imposes negligible fines). The pecuniary penalty for the first contravention is just Ten Thousand Rupees, and on subsequent contraventions, it shall not be less than fifty thousand rupees up to five lakhs. In Rajive Raturi v. Union of India (2024 INSC 858*)*, the Hon'ble Supreme Court acknowledged the inadequate responses from States and the Union Territories.

To address the accessibility challenge, the Accessibility Compliance Authority must be established, with quasi-judicial powers to monitor enforcement. The authority should regularly seek development and progress in public infrastructure, transport, and ICT, from the municipal level to the national level. Further, there needs to be enacted graded penalties (*disciplinary actions or punishments assigned based on the severity of the offence or misconduct*). A third-party audit of public infrastructure should also be part of a regular course to assess the efforts made in the direction of increasing accessibility.

4. The Struggle for Substantive Inclusion in Private Education

Section 16(a), along with Sections 31 and 32 of the RPwD Act 2016, mandate that every student with disability must have access to free education in an appropriate environment. Section 31 of the RPwD Act 2016 ensures free education for children with benchmark disabilities between 6 to 18 years of age, irrespective of the fact that whether the schools are being aided by the government or not, and section 31 of the RPwD Act 2016 ensures reservation in higher educational institutions receiving aid from the government.

Section 16(a) is an old wine in a new bottle. It is a reflection of Section 26(a) of the RPwD Act 1995. The Section number has changed, but what hasn't changed is judicial angst against non-compliance with the provision of the RPwD Act by the private educational institution.

The Delhi High Court in Siddharth International Public School v Motor Accident Claim Tribunal and Anr, 2016[1], directed Siddharth International School to admit a student of the Economically Weaker Section, vis-à-vis disabled, stating '*one should not forget that the purpose of all law is justice*'. Furthermore, the Delhi High Court again came to the rescue of a disabled student due to the non-cooperation of private schools. The Delhi High Court in G.D. Goenka Public School vs Aadriti Pathak and another, 2025[1], reiterated that '*Private Schools Bound by Obligations Under RPwD Act, Must Provide 'Reasonable Accommodation' To Disabled Students'*.

The state of affairs is concerning. The 2019 State of the Education Report for India: Children with Disabilities highlights that 27% of students with disabilities have never attended educational institutions. The state must ensure compliance with the RPwD Act 2016 in letter and spirit, to ensure substantive justice and substantive equality for all.

5. The Unfulfilled Promise of Disability Employment in India's Private Sector

Section 34(1) of the RPwD Act, 2016 mandates a 4% reservation in government jobs for persons with benchmark disability, but private sector obligations under Section 35 are vague and non-binding. There is also a lack of any monitoring mechanism to verify compliance. There is a lack of disaggregated data on the employment of people with disabilities in the private sector. India has ratified the UNCRPD. Article 27 of UNCRPD "*recognises the right of persons with disabilities to work, on an equal basis with others; this includes the opportunity to gain a living by work freely chosen or accepted in the labour market and work environment that is open, inclusive and accessible to persons with disabilities*[1] *"*.

As reported by The Economic Times, among the private companies, Titan has the highest participation of the disabled population in its workforce, which is 1% and the immediate next is ITC, which has just 0.5%[1]. Section 35 of the RPwD Act, 2016, requires review. There should be a mandatory reporting requirement for private employers regarding the employment status of

individuals with disabilities within their company. To ascertain the employment and mainstreaming of disabled individuals, a company's social credit system should be created.

The company's social credits in its account should be counted in prioritising the company in its interactions with the state and its instrumentalities. A model, already functional in China, can be adopted with necessary adjustments, suitable for India. The Corporate Social Credit System (CSCS) of China evaluates the trustworthiness of businesses based on a credit score[1]. Each company in China is provided a Unified Social Credit Identifier (USCI)[1] to facilitate this entire system. The HR policies of private enterprises must also be brought in sync with the objective of the RPwD Act, 2016, to ensure adequate participation of the disabled in the workforce.

6. Lack of adequate Research

Section 28 of the RPwD Act, 2016, titled *'Research and Development'*, does not mandate disaggregated data collection, leading to policy formulation in a vacuum. In the absence of data, policy formulation would not address the core concern; rather, it would be like beating around the bush. Section 28 of the RPwD Act, 2016, should pave the way for periodic national disability surveys. The periodic national disability surveys should be done considering intersectional disabilities, as mentioned in the initial part of the article. The disaggregated data collection, including intersectional disabilities, is necessary to have a holistic picture in front of policymakers.

7. State Advisory Boards, merely decorative bodies

Sections 60-66 of the RPwD Act, 2016, establish *Central and State Advisory Boards; however*, no statutory powers are provided to enforce decisions, rendering them a decorative body with little authority. Also, due to less publicity and discussions over the rights of people with disabilities, the PwDs lack awareness and a redress mechanism for their rights.

The Chief Commissioner for Disabilities appointed under section 74 should be empowered to take *Suo-motu* cognisance of the incidents affecting the rights of the people with disabilities. Subsequently, the disability rights cells should be integrated with district courts for expedited hearings.

8. Conclusion

To ensure the RPwD Act, 2016, transitions from symbolic legislation to an enforceable rights-based framework, structural reforms are desirable. The imperative reforms can be achieved through legislative amendments, strengthening institutions, and adopting intersectional & data-centric approaches, alongside spreading awareness with a special focus on capacity building. By adopting desirable reforms through targeted amendments, policy interventions, and strengthening institutions, India can move closer to achieving substantive equality for persons with disabilities. The substantive equality is a constitutional promise, ensured to all Indian citizens. The fundamental rights are to be ensured with affirmative action for all. The era of fundamental rights to be merely a negative right is parred, and the state is in the capacity of *parens patriae* (parent of the nation). The equal rights and equal opportunity for the disabled population are part of human dignity, and every individual must be ensured the same with the positive rights. Further research should work on collecting empirical data, along with taking into account the real-world experiences of people with disabilities. The assessment must include how workable the subjects of the Act consider the Act, for themselves.

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Children in the Age of Artificial Intelligence: Examining Privacy, Consent, and Digital Protection under Indian Law

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Abstract

The pace of technology development in India has been accompanied by a rapid and profound evolution of AI technology on AI platforms to which minors have access. This paper, therefore, seeks to determine whether the Indian legal system is sufficient to protect the privacy, consent, and safety of children on AI platforms. This paper employs a doctrinal research method, analyzing some of the best norms of law based on various statutes of Indian law and India's compact obligations to the United Nations Children. The article dealt with how rapidly, with little control and less consent from the minors themselves, the technology of Artificial Intelligence is used to harvest the personal characteristics of minors. The present Indian legal system suffers from a great deal of lacuna about accountability, redressal, and even transparency in dealing with individual changes to minors.

Keywords: Artificial Intelligence, Child Rights, Data Privacy, Consent, India

1. Introduction

Being one of the most digitally advanced countries in the world, it ranks among those at the forefront in the use of AI technology in various fundamental fields of life, including education. These fields relate to the delivery of public healthcare systems, as well as those involving social welfare systems in a public capacity, and those related to online surveillance systems (Maghsoudi et al., 2025). While those that relate to including the utilization of AI technology in the field of education technology and for purposes of developing better experiences in relation to technology-related innovations within an educative field, to some technology-related fields that relate to social welfare benefit distributions through biometric identification, to those fields that relate to social identification and social welfare benefit distributions to those that involve social identification and distributions through biometric data are now placed within and ideologically implicated within some experiences and dimensions of AI technology, in ways, means, and measures never before imagined within world history (Rahman et al., 2024). While some of them may ultimately offer potential for improved experiences through various convenient means, the risks associated with this technology are substantial in some respects, including those related to privacy, identification, and manipulation within digital technology. Are the concerns of children regarding their safety, privacy, consent, and security on the internet adequately addressed in the governmental laws and regulations related to AI? This is what this paper aims to determine. This paper seeks to examine the terms on which the concerns of children regarding their online safety have been addressed in the aforementioned Indian governmental laws and regulations, including the Indian Constitution, the Information Technology Act, 2000, the DPDP Act, 2023, and child-friendly acts. Actually, there is a practical try through the same paper towards establishing that children from our country, children from our generation, children from our country, children from our nation, children from India, are also getting driven towards “the power of AI” present in our same circle of activity on the internet through profiling, online tracking, and online behavior driven towards the AI algorithms.

2. Conceptualization and Theoretical Framework

The present paper is based on the evolving discourse of child rights in the digital age, with a particular focus on the impact of Artificial Intelligence on children's experiences regarding their rights to privacy and autonomy. Historically, children were considered passive beneficiaries of care and protection; recently, the discourse of child rights enshrines the child as an agent with rights who also enjoys an evolving capacity (Varadan, 2019). The UNCRC provides a conceptual point of reference, particularly under Articles 16 (the right to privacy), 17 (the right to access to appropriate information), and 19 (protection from all forms of neglect and harm), with the general norm of the 'best interests of the child'. It also draws on concepts from the digital rights framework, which aims to extend traditional human rights to digital and algorithmic arenas, as well as child-centric governance approaches that promote the integration of children's voices and perspectives into governance (Özkul et al., 2025). Moreover, the draft affiliates itself with a risk-sensitive regulatory approach that suggests that to address the risks associated with technologies such as AI, particularly those which are opaque and have the potential to be data-driven, appropriate measures must be taken to address the potential risks of these technologies, especially to those who are considered to be 'vulnerable,' in this case, children. It is based on these approaches that concepts of informed consent, age-appropriate design, algorithmic transparency, and data reduction become crucial in promoting the ethical implementation of AI.

3. Children's Rights and Digital Risk in the AI Era

In the AI-driven setting, the interactions of children generate significant volumes of data about their behaviors and biometrics, including emotive information, without, typically, much understanding on their part, let alone active participation. This highlights significant concerns regarding privacy, consent, and the long-term implications of digital profiling. In this respect, the UNCRC, to which India is a signatory, provides valuable guidance. Article 16 grants freedom from unlawful interference with a child's personal data. Article 17 mentions access to reliable and appropriate information for children through the media. Article 19 demands that states take necessary measures to protect children from all forms of abuse, online as well. These have to be

read together in one direction: children have the right to protection from physical harm, no less than from digital dangers linked with manipulation, exploitation, and data misuse.

The principle of the "best interests of the child", underlying all UNCRC provisions, insists that any use of AI systems involving children has to focus on their well-being over and above commercial or administrative convenience. A second, no less crucial, principle is that of informed consent, which remains hard to apply in the case of minors, indeed in automated environments with passive data collection or opaque interfaces (McStay & Rosner, 2021). Meanwhile, with a lack of age-appropriate consent mechanisms and transparency in the use of data, children are vulnerable in terms of surveillance, behavioral profiling, and targeted advertising. It follows that embedding children's rights, again, most particularly those related to privacy, consent, and protection, into the design and governance of AI systems becomes not a policy option but a legal and ethical imperative.

4. AI Systems Impacting Children in India

Artificial intelligence technology is also growing at a rapid pace in terms of the methods by which children in India are impacted regarding their participation and usage of education and welfare services provided through web platforms. Although this technology may have some potential based on the enhancements made regarding acquisition and services provided, there also exist some risks related to children (Ali et al., 2024). The solutions being developed by EdTech within the educational system framework also incorporate concepts and approaches related to Artificial Intelligence, such as predictive analysis of assessments, analysis of learning outcomes, and adaptive learning content. Even though the tools are convenient for improved efficiency and effectiveness, the emerging applications have the potential to process and perform analytics on highly sensitive and vital information with minimal consent from the minor and their concerned guardian (Wang et al., 2024). Furthermore, it is used in targeted welfare programs and Aadhaar projects, such as attending mid-day meals or verifying digital identities for school enrollments. However, the biometric school absence application has itself proved exclusionary, particularly for individuals with disabilities or those from geographical sites with limited digital infrastructure. The algorithms used by content recommendation systems on social media or entertainment sites

are essentially guidance systems that help shape and influence their processing of content. Nevertheless, the application of AI algorithms in processing children's online interactions appears to be much more concerning, as it leads to certain behavior zones that infringe on children's privacy entirely (Fitas, 2025). The rising alarm, however, is about online grooming itself, where children are introduced to predators through a design of certain loopholes creatively organized by AI algorithms used in assistance and support by itself. This is most evident in the pressing demands for reevaluation of the interaction between AI technology and children, particularly. All this is precisely happening within the context of India itself. The primary concern is the safety and inclusivity required in technology throughout its implementation process, particularly in relation to enhancing children's rights.

5. Legal and Policy Framework in India

When it comes to its laws and constitution, specific key components of protection have proven highly relevant in cases involving digital rights for children and AI; however, when applied within the context of AI, they remain insufficient. The Constitution of India outlines several key fundamental rights that are implicitly relevant to the protection of children's data and their online safety. It includes the right to equality, as guaranteed in Article 14 of the Indian Constitution, which ensures freedom from arbitrary and discriminatory action by state authorities. Then comes the right to life and liberty, as outlined in Article 21 of the Indian Constitution, which encompasses the right to privacy and freedom. Article 21A specifically enforces the child's right to free and compulsory education, which includes within the purview of AI-driven educational technology platforms in relation to their accountability to child safety and deliberate access.

The Information Technology Act of 2000 is the governing act for the activities and crimes in the cyber world in the Indian environment. However, this Act lacks any child-related norms in the realms of Artificial Intelligence, Profiling, and Automated Decision-Making. The Act criminalizes the misuse of cyber and the illegal disclosure of data. However, the Act does not impose any responsibility on making AI child-friendly and privacy-friendly. The DPDP Act of 2023, which was recently passed, provides an overall safeguard for personal data and establishes parental consent requirements for the processing of personal data of children under the age of 18 years.

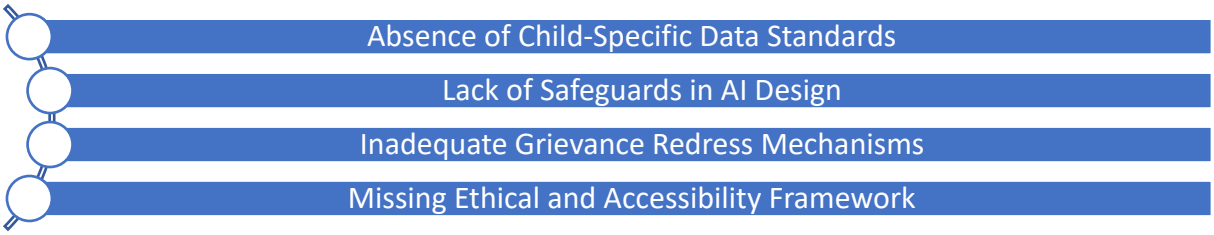
Still, there is no mention of AI processing when performed on children, which reveals substantial gaps in safeguarding the overall processing of children's personal data through AI applications. It does not mention AI-based processes when applied to minors.

In this context, two other laws are considered incidentally relevant: the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Juvenile Justice (Care & Protection of Children) Act, 2015. Even though these are offline forms of child exploitation, their provisions can be found applicable in AI-enabled forms of child risks, such as "grooming" or "digital consent" when it comes to "algorithms." The Children's Online Privacy Protection Act in America requires all child-focused Websites and online services to have transparent privacy policies and obtain parental consent from those parents whose children are members under 13 years of age. While framing the General Data Protection Regulation for Kids in the European Union, it has been emphasized that AI-controlled virtual realities require an effective and robust system to address the concerns of the sensitive generation in the context of AI-regulated virtual reality spaces.

6. Critical Gaps in AI Governance for Children

Although acknowledging that due to digital technology, childhood is necessarily influenced in its experience in an irrevocably altered way, a new expanding delineation of the rights of children is therefore necessary from the off-line world, in which the current construct takes into account the issues of body security, education, and protection in the absence of harm, a new perspective emerging due to AI, data, and algorithms. In artificial intelligence, one finds a type of data generated from the activity of children that is truly biometric-emotional, with, of course, limited intelligence.

Figure: Major Shortcomings in Child-Centric AI Regulation in India



Other material gaps not required by CNIL laws and regulations include the lack of age verification methods, levels of explanation, and the type of AI influence on the involved individuals. Minors are also afforded the freedom to use AI-enabled platforms through user behaviors and predictions from AI-enabled algorithms, without necessarily requiring the platform to verify their age and produce content suitable for their level of maturity (Novelli et al., 2024). Secondly, it is also worth noting that the AI system deployed within these platforms is one that lacks explanation about recommendations, disqualified recommendations, and learning abilities, thus lacking the capacity to allow the minor and their guardian to interpret the aforementioned, and Deven Dare challenges them anytime transparency is lacking via AI decision-making processes.

Even more concerning is the fact that mechanisms for redress for grievances are not considered in respect of needs stemming from problematic activity on the website towards children. In the scenario where a grievance arises in respect of a problem concerning data preventing a child from entering an online learning website or coming from a problem and exploitative utilization of a child by a recommendation system driven by an algorithm comprising improper content for a child, there will be no means by which a consideration of needs on behalf of the child shall be made (Putturaj et al., 2021). The means presently available is not a means that considers the needs of a child at its forefront, and their guardians shall be provided with no information about it. Finally, to conclude, it appears that there is no particular focus on ethics and regulation in the area of the intersection of children's rights and the use of Artificial Intelligence in the Indian context. The list seems to be getting longer with each passing day in the absence of child-focused ethics and the assessment of the use of AI in the particular context of the opaque digital environment, with an unquenchable thirst for data.

7. Recommendations for Child-Centric AI Regulation

To support the rights and well-being of children in a rapidly growing, automated digital environment, India needs to adopt a regulatory framework that prioritizes integrating a ‘children-first’ approach into AI regulation. An essential step for this would be to make ‘Children-by-Design’ a principle. Just like ‘Privacy by Design’ and ‘Safety by Design’ guidelines, ‘Children by Design’ would make it a mandatory requirement for ‘AI Systems, particularly those used for

educational, recreational, health, and welfare purposes, to be designed with 'child-friendly' interfaces, non-misleading designs, and minimal 'Data Collection' requirements.'

Furthermore, an assessment of the impact of AI must be strictly mandated before the application or use of any technology that disproportionately affects or interacts with the child population can take place. The assessment must evaluate the potential adverse effects caused by profiling, harmful use, and denial-of-service, and also verify whether the tool is child-friendly and accessible to socio-economically and linguistically diverse children.

In addition to this, there is an urgent need for the development of age-specific consent channels beyond the generalized standard of consent for individuals under 18 years old and their parents. Finally, there also needs to be the integration of age-verification technology to provide information in a manner that is easily comprehensible for children to understand. This initiative should also be implemented in conjunction with digital literacy education for children and their parents.

Ultimately, in an effort to bring about change and ensure an accommodative and child-friendly structure for the governance of AI in India, it is essential to highlight that there is an imperative need for the formation of child data ethics boards for various governing and regulatory bodies with the help of experts in the areas of law, child psychology, technology, and education. These boards are tasked with reviewing the importance of child-friendly AI products, providing advice and guidelines regarding the use of children's data, and conducting periodic reviews of child-friendly AI products that work with children's data. This is a crucial aspect of creating an ethical AI governance structure that aligns with the Indian system of constitutionalism and global norms regarding child rights.

8. Conclusion

The current scenario introduces a new element related to the application of artificial intelligence that is not relevant to the rights of children. Nonetheless, its relevance and application are also essential and valid within the Indian context. On the other hand, some elements recognize the limitations of the requirement for valid legal protection, as seen in the right to privacy and the consent necessary for the application of artificial intelligence technology. Nonetheless, as soon as

the essential rights about the Indian constitution are pinpointed within the framework of equality and dignity of the children, the point that the complexity being noticed within the Indian perspective within the platform of the artificial intelligence technology within the years to come has not been appropriately addressed by the Indian constitution is essential. It is therefore necessary, within the years to come, to understand the personal experiences of children regarding the application of artificial intelligence technology to derive valid suggestions for the appropriate technological platform that supports the above-stated rights within the highly advanced Indian context.

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Artificial Intelligence and Disability Rights in India: A Socio-Legal Study of Inclusion, Bias, and Accountability

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Abstract

Artificial intelligence is being increasingly harnessed in the public sector in India, including health, education, and welfare. While such developments create new possibilities and prospects for the future, they also continue to pose prospective challenges to the welfare of the disabled population. With over 26.8 million disabled people identified in India during the Census of 2011, the challenges of biased and non-transparent algorithms and non-accessible technology cannot and should not be disregarded or overlooked. This paper intends to discuss and observe whether emerging challenges and concerns related to the disabled population are being addressed by enabling provisions under Article 14 and 21 of the Indian Constitution, the Right of People with Disabilities Act of 2016, the UN CRPD Convention on the Rights of People with Disabilities, and the Digital Personal Data Protection Act of 2023.

Keywords: Artificial Intelligence, Disability Rights, Algorithmic Bias, Accountability, India

1. Introduction

Artificial Intelligence is currently disrupting and changing the paradigm in public governance, health care, education, and social security in India. While AI is being touted as a solution to enhance the diagnosis capabilities of public hospitals through AI-based diagnostic tools, as well as to make online education platforms in India more innovative through AI, in fact, AI is increasingly being incorporated into decision-making processes and patterns in public service deliverables. However, in this process, concerns are being raised with respect to the issue of inclusiveness in these new technologies, particularly in relation to marginalized groups in society, such as persons with disabilities. Currently, there are 26.8 million persons with disabilities in India, as revealed in the results of the Census of 2011 (Dr Deepthi R, 2018). Persons with disabilities, in fact, with disabilities understood in terms of social constructs and rights perspectives, are not just disabled as persons but are, in fact, disabled as a result of inaccessibility.

In this respect, the promise and danger of AI coexist. While on one hand, the autonomy of people with disabilities can be enhanced through assistive technology, friendly interfaces, and adaptive technology, on the other hand, biased data, lack of inclusivity in design, and unregulated use of AI increase disparity among people with disabilities and exclude them from benefit programs, health triaging, and online public services (Giansanti & Pirrera, 2025). This condition raises an imperative research question: Are the rights of people with disabilities adequately protected within the Indian public space, where AI plays an integral part of the environment? This paper addresses the aforementioned question by examining the interface between the rights of people with disabilities and the application of AI technology within Indian law and policy. This paper will analyze the relevant provisions of the Indian Constitution and international commitments, and examine how effectively the Indian regulatory environment protects people with disabilities today.

2. Conceptualising Disability Rights in the Age of AI

To comprehend the concept of disability within the context of AI, one must move beyond the typical thought process that has hitherto outlined the phenomenon primarily within the context of the medical model. In fact, within the medical model, concepts associated with the idea of disability arise from the specific concept of impairment or defect within the human being or entity.

This was, in turn, displaced by the medical model of disability and further updated to the human rights concept of disability within the context of the past seven decades or so (Berghs et al., 2016). This, in turn, reflects the shift in the understanding that the concept of the phenomenon of disability is not an outcome dependent on the factor of physical or mental disabilities but the consequence arising from the intersection of those with disabilities within a non-suited or ill-suited space or context.

The human rights paradigm is further promoted by affirming categorically that people with disabilities enjoy the same rights in relation to Autonomy, Dignity, and Participation as people who are not disabled. These were further explained in relation to technology and the new era of AI. Welfare triaging or AI in online education, for instance, must be applied universally in a manner that is acceptable worldwide and can respect Autonomy and Dignity (Series, 2019). However, failure to do so will make AI a hindrance for people with disabilities and will thus contribute to discrimination on the grounds of the algorithm or the technology used. Artificial intelligence is not an objective technology; rather, it reflects the values, beliefs, and data of the people involved in its development and deployment. If, for example, this technology is being developed based on data that is not inclusive of people with disabilities, then the technology discriminates against access to our citizens. Therefore, the discourse involving people with disabilities and technology, particularly AI, needs to move beyond the functionality aspect. It is a much-needed perspective when analyzing the digitalization of public governance within the Indian national context.

3. AI Applications Affecting Persons with Disabilities

The use of AI technology in various areas, including health, social services, and governance, is also spreading at a pace that is hard to resist within the Indian context. Although technology is valuable and effective in light of the need to increase efficiency and reach the maximum possible numbers, it is a technology that raises the utmost concern with respect to people with disabilities, who are also often overlooked in the design of such technological innovations (Sivasubramanian & Raval, 2025). An area where the application of AI is increasing is the healthcare sector, in the triaging and diagnosis systems employed at government-owned healthcare facilities and healthcare

programs. The data employed by the AI algorithms in these programs may overlook the manner in which individuals with physical and cognitive disabilities can exhibit symptoms. For instance, individuals with speech and physical handicaps might not be considered by an AI-operated triaging system. In similar ways, AI-based assistance schemes, such as disability benefit eligibility verification, Aadhaar-based verification, or means-tested benefits, also discriminate against individuals with disabilities. These schemes are mostly reliant on biometric authentication, completing forms, or technological competence, which people with disabilities often lack. This leaves the disabled individual denied important benefits, although unjustly.

In the digital public service sector, AI is utilized to streamline administrative processes and enhance citizen engagement. However, most applications lack accessibility features such as screen reading, screen captioning, and voice guidance, thus limiting their use by visually impaired, deaf, and physically impaired individuals (Chemnad & Othman, 2024). This not only affects the application of the public service but further alienates persons with disabilities from other essential applications like e-governance, telemedicine, or grievance applications. A large number of these issues are caused by the absence of inclusive design and the failure to incorporate accessibility norms into the design and development of AI. The failure to adopt proactive measures for making AI accessible to the disabled population means that the vision for inclusiveness is only an illusion, as the rights to participation, accessibility, and dignity for this population must be preserved through the adaptation of AI applications in the Indian context. Therefore, it is imperative that the current level at which applications for AI affect this population be critically examined and modified to ensure their rights to participation, accessibility, and dignity.

4. Legal and Constitutional Framework

The Indian judicial system, within its ambit, encompasses all provisions to ensure the rights of persons with disabilities at all levels, whether in conformity with various sources of law or otherwise. With AI entering the picture in healthcare administration at every level, the legal framework will also address the concept of whether the rights of people with disabilities are adequately protected or not.

Article 14 also guarantees equality, envisioning it in the sense of equality before the law and equality in the administration of justice. The equality thus guaranteed by this Article of the Constitution is enclosed by the facet that states the government and its agencies should not, in any manner, discriminate against a person with a disability. As far as the topic of AI and its role in government is concerned, there should be assurances regarding the aspect of equality. These would mean AI in one field alone, and more persons with disabilities have lost their opportunities to access their fundamental rights as humans in the essential fields of health and education. The second one is the one stated in Article 21 of the Constitution of India, which guarantees the right to life and liberty of every individual. The Supreme Court of India has liberally used the aforementioned factor of guarantee of equality regarding this of persons with disability about equality in the aspect of guarantee of equality in relation to the lives of persons with the disability under the aforementioned element which is about assuring the privacy about the operation of AI about the aforementioned component which has persons with disability and persons who can be benefitted by the fundamental service offered by the government. The Rights of Persons with Disabilities Act of 2016 is essentially a symbolic law of the kind that satisfies the commitment of the Constitution of India and the international obligations of the Constitution of persons with disabilities in relation to equality and opportunities, accessibility, non-discrimination, and reasonable accommodation regarding healthcare, education, employment, and other public services in general. While the AI Act is silent on the issue, the need for accessibility and infrastructure in ICT does not necessarily require or mandate the importance of accessibility in AI technology. It is also a member of UNCRPD, which has further strengthened the importance of a human rights approach to disability. States need to take measures to advance the use of technology, information systems, and assistive devices that respect the dignity and autonomy of persons with disabilities. In the current AI technology world, this includes developing non-discriminatory and accessible algorithms and the decision-making processes for AI. Finally, the Digital Personal Data Protection Act of 2023 provides detailed consideration to the importance of consent, fairness, and the restriction of personal data, particularly sensitive personal data, which includes data of a healthcare and clinical nature. As individuals with disabilities who have shared our personal life experiences, including our healthcare information, social security schemes, and assistive devices, the DPDP Act of 2023 stands out as a beacon of hope. However, the point of concern is that it

lacks any special provision that could have otherwise supported the demands of persons with disabilities.

5. Algorithmic Bias, Exclusion, and Accountability Deficit

With increasing integration of AI into the Indian public service delivery space comes a large set of associated concerns linked to fairness, traceability, and accountability—especially in the context of structurally marginalised communities such as persons with disabilities. One of the major issues arising in the context of AI technology development is the existence of bias in the algorithms used by these systems (Meduri et al., 2024). In an Indian context where data regarding persons with disabilities is already scarce, the use of an able-bodied and urbane dataset in an Indian education platform or an Indian healthcare setup can lead to persons with disabilities being denied critical services by an AI system based in those applications. Further complicating this problem is the lack of transparency in AI decision-making, also referred to as "black box" AI. Such models rely on intricate machine learning algorithms that are not explainable, which makes it hard to clarify why a particular outcome was made, such as denying welfare benefits or a decision regarding health triage. To people with disabilities, who go through many bureaucratic and institutional barriers, not being able to refute or even explain decisions made by algorithms leaves a vacuum in accountability.

Moreover, the grievance redressal frameworks for addressing injuries caused by decisions based on AI are not robust. The traditional legal framework may not be efficacious if the reason for denial/exclusion, or discriminatory treatment, lies in the code. Currently, no law mandates the obligation to explain, justify, or provide a grievance redressal framework to people with disabilities regarding the impact caused by providers of AI services, whether public or private. Moreover, the fact that no disability-friendly audits or impact assessments are required during the implementation of AI technologies is equally worrisome. Environmental or social impact assessments are generally conducted on large-scale development projects (Jain & Jain, 2024). However, AI technologies that impact public policy are rarely held accountable to the principle of inclusion. Moreover, there are no provisions within the RPwD Act, 2016, to ensure that the AI tools being developed are accessible or free from discrimination. This creates not only an enabling environment for practices

associated with exclusion but also slowly drifts the development of technological advancements away from the human rights regime, which the Indian government is bound by.

6. Regulatory and Policy Gaps

Nevertheless, despite the increased integration of AI systems in the delivery of public services, there is no general disability-inclusive framework currently being used in India that specifically addresses the issue of persons with disabilities within the framework of AI system regulation. Even though the RPwD Act of 2016 and the Digital Personal Data Protection Bill of 2023 are general Acts that are yet to be surpassed by Disability special standards of AI systems regulation within the framework of the laws of India, the requirement of being Disability compliant while AI Algorithm testing is not mandatory upon AI Developers/ Public Departments.

Another important matter at issue here is the lack of enforcement related to accessibility mandates in the Indian information and technology governance space. Although the matter of accessible information and communication technologies has been addressed in Section 42 of the RPwD Act, there is a lack of compliance with this requirement regarding accessible portals and e-governance resources for persons with hearing and physical disabilities, as well as related AI tools.

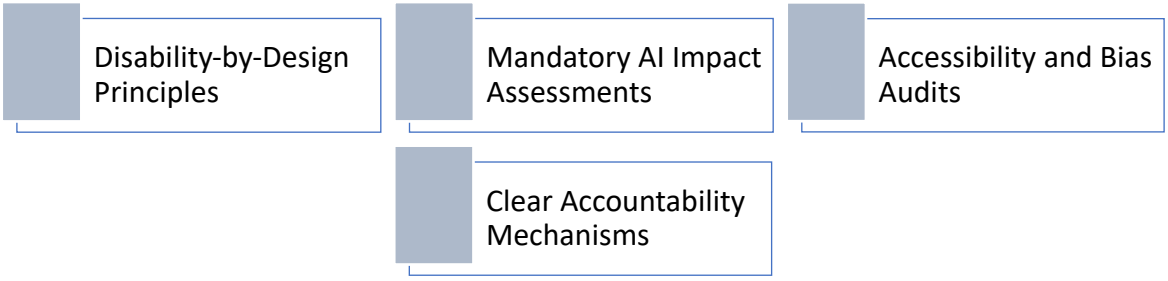
Regulatory treatment becomes an even more complex issue due to the fragmented regulation that exists for different industries. Artificial intelligence is also addressed on a sector-by-sector basis, specifically in healthcare, education, social welfare, and finance; however, there is a lack of a governing agency assigned to handle artificial intelligence in terms of equality and rights.

Finally, the current legal and policy regime in India provides very few instruments for enforcing cases of harm and exclusion caused by AI. There are no applicable instruments available concerning the issue of accountability for algorithmic discrimination, and nearly all redressal mechanisms are unsuitable for complaints about AI, especially for persons with disability. The potential of AI in enabling persons with disability in India can be threatened by exclusion and inequality.

7. Disability-Inclusive and Accountable AI Governance

An inclusive and rights-friendly AI environment in the Indian context requires careful policy intervention. First, there is a dire need to incorporate the idea of disability by design. This is where AI should be developed right from the inception of the system, catering to various physical, sensory, and cognitive disabilities (Umucu, 2025). Moreover, the requirement for AI impact assessments in public-facing systems cannot be overlooked. An AI impact assessment should measure the impact on any public-facing AI system in terms of discrimination, data biases, and accessibility, which may affect individuals with disabilities.

Figure 1: Key Pillars of Disability-Inclusive and Accountable AI Governance in India



Furthermore, it would also be a highly pragmatic approach to make the conduct of accessibility and bias audits compulsory for both the government and the corporate world, particularly when they employ AI systems in sensitive domains such as healthcare, education, and social services. The accessibility and bias audit would, in this case, examine whether the outcomes produced by the algorithms have the potential to unintentionally create a barrier for individuals with disabilities, in accordance with national and international accessibility standards (Laine et al., 2024). Lastly, it is a significant assignment to approach accountability between the government and the corporate world, necessary for the disabled individuals, who may, in any manner, encounter any form of injustice by the employment of the AI systems, as the AI technology is, in this case, leaving the disabled individuals behind, who shall greatly benefit from it.

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8. Conclusion

In the foregoing discussion and analysis of the paper, we have identified how the immense possibilities of useful services being provided to the common masses by AI threaten the specter of exclusion and discrimination faced by persons with disabilities in India. From the foregoing discussion and analysis, we have identified how the constitution and the RPwD and DPDP Acts have played a crucial role in ensuring safeguards and have contributed substantially to the presently existing legal and social environment; however, the constitution and the acts have inadequacies with respect to accessibility and lack a concrete and enforceable mechanism to ensure the absence of biased algorithms and accessibility deficits of AI. There is a grave requirement to ensure the constitutionally imperative requirements of equality, dignity, and inclusion in requiring the improvement of AI relative to persons with disabilities in India.

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Extinguishing The Past: The Clean Slate Principle Under IBC Sections 31(5)-(6) And Its Impact On Operational Creditors

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Abstract

The article critically explores how, with the introduction of the amendments to the Insolvency and Bankruptcy Code (IBC), 2025, the judge-made clean slate doctrine gets converted into a codified rule of exhaustion of all claims on the date of approval of a resolution plan by the court through the newly inserted Sections 31(5) and 31(6) of the IBC. While the license and permit protection under Section 31(5) helps in protecting the regulatory continuity of the corporate debtor, Section 31(6) ensures that all pre-resolution claims, operational, financial, statutory, contingent and even arbitral stand extinguished save expressly preserved which brings in the finality of the resolution application. The article suggests that this design locks in a structural imbalance: operational creditors are already disenfranchised from the vote in the Committee of Creditors, in addition to being subordinated in the Section 53 waterfall, and therefore have the highest risk of extinction with little control over the content of the plan. Through studying recent Supreme Court jurisprudence and developments in regulation, the piece argues that the post-2025 IBC framework is all about one thing: certainty, speed, and revival, at the cost of distributive fairness, and as a consequence the sacrifice of operational creditor's interests is now accepted as the price of having a robust clean slate regime.

Keywords: Clean slate principle, Insolvency and Bankruptcy Code 2016, Sections 31(5) and 31(6), Operational creditors, Committee of Creditors, Insolvency policy

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1. Introduction

The Insolvency and Bankruptcy Code (IBC), 2016 has been driven by an underlying assumption that insolvency management of companies is a matter of fresh starts. The fundamental principle of this philosophy is the so-called clean slate principle- a rule which provides that, after a resolution plan has been adopted, all claims created prior to the adoption of such a plan unless explicitly saved are destroyed. This principle has been modified by judicial interpretation into statutory form by the new Sections 31(5)-(6) of the 2025 Amendment Bill, which basically reforms the treatment of pre-resolution operational creditor claims post-approval.

The clean slate principle gives finality and certainty to resolution applicants at the cost of operation creditors, who have no say in the Committee of Creditors (CoC) decision making processes and they therefore assume no power of influence on the choice of claims to be preserved in resolution plans. The provisions are the introduction of license and permit protection measures (Section 31(5)) and codified comprehensive claim extinguishment (Section 31(6)) but these are not helpful to fix the structural weaknesses of operational creditors under the insolvency regime. This paper focuses on the statutory provisions, judicial development and practical consequences of clean slate extinguishment, and how in practice operational creditors are disadvantaged in the face of statutory protection allegedly to their favor. The analysis shows an underlying policy decision; that IBC focuses more on corporate revival and certainty than on fair treatment to creditors, especially the unsecured operational creditors that lack market power or statutory priority.

2. Legal Provision: Section 31(1), (5) and (6)

- **Section 31(1)- Plan Binding Force foundation**

Section 31(1) of the IBC enacts that approved resolution plans are binding on all the stakeholders such as creditors, employees, government authorities and other local bodies whether they were involved in the insolvency process or not. The language used in 2016 was ambiguous to the extent to which the plans could be said to have binding effects, but the amendment of 2019 made it clear that plans apply in rem to the assets of the corporate debtor, and to all individuals in general, not only to the individual parties involved in the proceedings. This description made resolution plans

non-consensual binding mechanisms similar to court orders that exclude the opportunity of any avoided creditors having parallel recovery rights after approval.

- **Section 31(5) - Protection of License and Permit (New 2025)**

The new Section 31(5) provides a protective measure which makes it impossible to suspend or revoke any licenses, permits, registrations, quotas, concessions, clearances, and other grants or rights conferred by Central Government, State Government, local authority, sectoral regulator, or other statutory authority due to pre-resolution defaults on operational dues. It applies irrespective of anything in any other law, and is a statutory protection against administrative suspension on the basis of past non-compliance.

The protection is however conditional. The government authorities and the regulators may continue to suspend licenses in case the corporate debtor does not pay up current obligations after the approval of the resolution plan. This is a mechanism that promotes the going-concern value of the corporate debtor, which allows him to continue operating and generating business that could benefit the financial creditors who are the primary beneficiaries, over safeguarding the chances of operational creditor claims to recover. The holder of environmental permits even though the pollution is pre-resolvedly violated that is referred to as a manufacturing facility, the debt of debt due (classified as operational debt under Section 5(21)) of the supplier is extinguished under Section 31(6). The direct benefit of the continuation of licenses is not to the operational creditor.

- **Section 31(6)- Comprehensive Claim Extinguishment (New 2025)**

Section 31(6) has two mechanisms, which take place in a coordinated manner. In clause (a), it has been determined that all claims whatever they are, whether money or not against the corporate debtor existing before the date of the resolution plan are extinguished unless the plan specifically provides otherwise. This includes operational debts (supplier invoices, service agreements, wage debts), statutory debts (taxes, environmental penalties, labor contributions), contingent debts (estimated debts, crystallized warranty claims), disputed debts (sub-judge situations, on merits claims), and arbitral debts (pending and decided but unenforced). The time condition before date of approval--is such that the approving date of Section 31(1) of the NCLT will be taken to be the

final cut off. The claims whose approval is made less than one day prior are subject to the extinguishment. The mechanism of exception allows overt preservation in the language of a resolution plan, but the interpretation of preservation provisions is narrow by the courts and this requires a reference to the claims or clear categorical expression instead of an aura of a general reference to dispute resolution after the resolution.

Clause (b) barred any action, civil or criminal, administrative, or arbitral, based upon actions upon extinguished claims after approval. This wide ban includes taxation evaluation, civil litigation, and enforcement of the labor department, criminal prosecution of pre-CIRP frauds, and arbitration. In Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd., the Supreme Court indicated that arbitral tribunal cannot preside over the claims not covered by the plan after approval and thus the moratorium period was considered as a permanent flow of unnotifying the claim and not a temporary stay.

3. Judicial Evolvement: The Transformation of Principle into Legislative Requirement

- **Ghanashyam Mishra (2021) - Foundational Clean Slate Principle**

The watershed ruling of the Supreme Court in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. made clean slate doctrine an absolute rule of the insolvency law. The Court decided that the approved resolution plan upon its becoming effective binds all creditors, including government authorities and statutory bodies, and the claims not covered by the plan are totally wiped off. Importantly, the Court has stated the 2019 amendment of Section 31 as having a declaratory and clarificatory character to it, which retrospectively applied its ruling since the creation of the IBC in 2016. Under this retrospective effect, all judgments that were made before 2019 were subject to reinterpretation under the clean slate lens, which removed the precedential backing of exceptions on equity or fairness.

- **Essar Steel (2019) - Hydra-Head Prevention of Litigation**

The reason behind clean slate extinguishment policy described in the earlier Supreme Court case of Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta was the need to avoid hydra-headed litigation, where applicants to the resolution can still be subjected to surprise claims

after the fact. The Court held that it would be uncertain to permit excluded claims to survive, which would turn the whole structured insolvency resolution to shambles. The business sense of the CoC dominated by financial creditors got the foremost judicial deference and courts were of the view that their decision on the plan could not be questioned except on very limited statutory grounds.

- **Electrosteel (2025) - Extinguishment of Arbitration Claims**

The 2025 case of Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd. introduced the doctrine of clean slate to the context of the arbitral proceedings by the Supreme Court. On appeal, Ispat Carrier requested the adjudication of its claim under arbitral tribunal which was not covered by the resolution scheme after the approval had been granted but there was a moratorium in place in the matter, the Supreme Court determined that once the moratorium was lifted, tribunals had no jurisdiction. The claims do not simply remain in a suspended state during CIRP, they are actually killed. This ruling made it clear that the moratorium is not a freeze but a mechanism of extinguishment and the 180-day CIRP window is the only chance of creditors indicating claims.

- **Operational Creditor Structural Vulnerability**

Operational creditors hold a curious place in the clean slate structure with the greatest exposure to extinguishment and the least power to control preservation of claims. The IBC also stipulates in Section 30(2) that CoC must include a financial creditor having voting rights in proportion to their claims. The type of creditors that are involved in operations do not in most cases have CoC membership and cannot exercise any kind of votes in plan approval. This asymmetry of governance introduces a structural disadvantage: stakeholders whom claims are extinguished have no influence at all when it comes to which claims the plan will retain.

More so, the Section 53 waterfall prioritizes the operation creditors in the order of distribution though it ranks them after the financial creditors, secured creditors, and wages of employees. In the majority of insolvencies, where aggregate debts are more than the value of the enterprise, the liquidation value of operational creditors is determined as zero when higher-priority classes of liabilities use up available resources. The waterfall distribution mechanism generally achieves zero actual recovery even in situations where CoC has OC claims in the verified claims list. Taken with

rejection of claims on verification (extinguishment ensured by inadequate documentation) operational creditors have two ways of extinguishment: admission rejection or CoC plan exclusion.

These structural disadvantages are aggravated by the so-called invisibility problem. Small suppliers, service providers, and workers tend to be unaware of the CIRP initiation, and the 180-day deadlines of filing claims are not present to them. The insolvent individuals without the slightest idea of their insolvency are quietly doused without being even informed of the claims being filed, much less are they even made aware of the approval of the plan of permanent extinguishment.

4. The 2025 Amendments: Codification and Explanation

- **Reworking Doctrine into Statute**

The Amendment Bill 2025 is a legislative choice of refining the judicial clean slate doctrine into a clear statutory framework. Instead of continuing to be subject to judicial interpretation on a case-by-case basis, the principle has been given binding expression in Sections 31(5)-(6), abolishing judicial discretion to cut exceptions on ground of fairness, hardship or equity. The legislative notes that were attached to the amendments state codifying the clean slate principle and eliminating ambiguities introduced by litigation as the major goals. Until 2025, varying standards were used by different NCLT benches in terms of the scope of claim extinguishment, exception of the administrative law requirements, and maintenance of claims of the unknown creditors. After 2025, the statutory language has no such discretion. An exception only exists in cases where: (1) the claim is expressly maintained by the resolution plan; (2) the claim continues to be protected by a license grounded on compliance (Section 31(5)); or (3) the plan expressly permits criminal proceedings.

- **IBBI Regulatory Implementation**

A set of coordinated regulatory directions of the 2025 amendments has been provided by the Insolvency and Bankruptcy Board of India. The Fourth Amendment of the Insolvency Resolution Process Regulations explains Section 30 approval procedures and mechanisms of binding plan and

defines the fact that claims that are not clearly preserved automatically suffer extinction. The Insolvency Professionals Guidelines provide a standard in the resolution professional claims verification procedure, which underlines that the claims rejected in the verification procedure are substantively extinguished after the plan is approved.

5. Finality vs. Fairness: The Irresolvable Tension

The clean slate principle puts an unsolvable conflict between finality (the more important of the two components, based on the statutory regime) and fairness (pivotal to effective creditor protection). Finality advantages are high: the applicants of resolution are able to estimate the values of acquisitions with a high degree of accuracy without being surprised by post-closing claims; investor confidence enhances; the cost of litigation reduces; and corporate revival is more rapid. These advantages justify the finality decision. Nevertheless, operational creditors bear unfairly high fairness costs. Small suppliers not even included in CoC negotiation tables are not able to impact the terms of the plans. The preservation of claims cannot be promoted by service providers. Wage-earning workers (ion which wages are deemed as operational debt) are powerless in deciding on the payment of historical wage arrears. The upstream financial creditors, who are predominant in the CoC, are able to structure resolution plans in ways that maximise their recoveries, with operational creditor claims viewed as discretionary expenditures and not a major priority in the plan. The legislative silence with respect to obligatory operational creditor protection beyond the liquidation value floor is indicative of legislative approval of this fairness finality trade-off. The principle of clean slate has developed into a rule of law principle of judicial law but now is statutory in nature, and operational creditor fairness is plainly compromised in Favor of certainty and rapidity.

6. Post-Admission Therapy: COC Composition And Distribution

Although the amendments in 2025 have simplified the admission criteria in the case of Section 9 application (admission has become almost obligatory in the case of default proving), the operational creditors are persistently confronted with inequity in treatment even after the initiation

of the CIRP proceedings. The composition of the Committee of Creditors gives the financial creditors a majority, which is voted on a pro rata basis. Operational creditors are not allowed to vote and only take an informative role in a situation where their claims are subject to extinguishment. In the waterfall hierarchy, which prioritizes operational creditors, insolvency resolution costs, secured creditors, employees, and financial creditors, the fifth position is taken by operational creditors. This sequencing, although compulsory by statute, provides that in most insolvencies the operational creditors are receiving genetic recovery. The amendments of 2025 will entail a concept of minimum distribution floor to specific groups of creditors, but this is limited to apply only to financial creditors and employees, rather than to the group of operational creditors.

The partial acknowledgment of the concerns on operations creditors is depicted by the land authority exception. The amendments of 2025 provide land authorities (themselves operational creditors) with a formal input route to the CoC, which does not require a vote, as there are operation stakeholders who should have their structured participation. But this is only a narrow exception to land authorities and not to other major classes of operations, namely suppliers, service providers, small contractors, workers.

7. Coordination Clean Slate Doctrine And Statutory Dues

This becomes an especially acute issue where statutory dues (taxes, environmental penalties, labor contributions) fall under the Section 5(21) category of operational debts. The government officials and regulatory authorities will need to claim the cases within the 180 days period under the CIRP or default to automatic extinction. The departmentalized government agencies such as income tax, GST, environmental, labor, have not always been able to under-arrange efficient claims filing and consequently lead to inadvertent extinction of government funds and other statutory liabilities.

The amendments in Section 215 of the 2025 Amendment Bill make it even more complex by making even statutory creditors (even those) register claims with Information Utilities prior to applications under Section 9 depending on the government bodies already burdened with coordination. Although this procedural change bears the intention of simplifying and clarification,

it practically harms un-sophisticated government agencies that do not have the insolvency monitors.

The extinction of statutory dues produces a comical effect: the sources of public revenue (GST, income tax), sources of law compliance (environmental remediation, labor law dues), become extinct after the plan is approved and resolution applicants can attain ownership of corporate debtors without these obligations. Environmental protection and worker welfare objectives of the public law have second place tenure to the private law insolvency finality.

8. Severe Gaps And Unaddressed Problems

The new ambiguities caused by the statutory codification in 2025 are a step in the right direction, yet pose new problems. The meaning of explicitly given language of preservation is still judicially undefined. The issue that the courts need to establish is whether general language, such as all disputed claims were to be settled after the plan, was used, or whether or not specific claim identification had to be used. Such interpretive ambiguity will create litigation regardless of the will of the law to eliminate ambiguity by codifying the statutes in a statute book. It is constitutionally questionable that Section 31(5)-(6) should be retroactively applied to continuing CIRPs. Plans that were granted prior to 2025 amendment date do not have license protection clauses. Does the lack of language of Section 31(5) in plans in existence as of June 2025 destroy the benefits of license protection after the amendment, or is the amendment automatic protection of license benefits after the amendment with respect to all post-amendment periods?

Moreover, the exceptions to the policy by the government have not been addressed. Although the operation of 31(5) is not subject to any other law, there is conflict where the national security, anti-corruption or criminal law issues warrant suspension of the license although the operation is performed. The statutory text does not give any indication regarding the priorities in situations where clean slate finality collides with constitutional or law imperative.

9. Conclusion

The legislative crystallization of the clean slate principle of the 2025 amendments to Sections 31(5)-(6) is the codification of the clean slate principle applicable as a matter of law, making the

hitherto judicially-interpreted doctrine a matter of law. The amendments have competing purposes by codifying absolute extinguishment of pre-resolution claims (except where expressly preserved) and providing a license/permit cover provided on conditions of responsible post-resolution operation. Nevertheless, the operational creditors are structurally disadvantaged under this structure. Section 31(5) license protection maintains corporate debtor operations and mostly benefits financial creditors, but does not provide operational creditors with the direct claim recovery benefits. Section 31(6) leaves operational creditors at the mercy of voluntary decisions as to CoC preservation in which they have no voting power. The legal silence regarding statutory operational creditor protection is an indicator that the legislation is open to the policy decision: the revival of corporate entities beats common sense in Favor of fair treatment of operational creditors.

The principle of clean slate has grown out of the judicial doctrine to statutory requirement with operational creditor fairness made expressly the casualty of certainty and speed. To operational creditors the wording is clear: make claims early, bargain hard before the plan has been finalized and accept that insolvency recovery is not hewn in stone but a matter of CoC discretion and of the terms of the plans. The ones who are silent or who are on the other side of the information barriers are fully extinguished and nothing can be done about it. It is this fact that the 2025 amendments crystallize into law and as a result, finality and certainty have become the most crucial insolvency policy goals.

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Deepfakes' Distress on the Copyright Regime in India

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Abstract

Deepfakes are an emerging form of AI-generated content that pose significant challenges to existing intellectual property regimes. They involve the manipulation of audio and visual material using software based on deep neural networks. While such technology has creative applications, ranging from harmless memes to digital entertainment, it also enables more troubling uses, including the creation of non-consensual pornographic content and fabricated videos in which public figures appear to say or do things they never did. This dual capacity highlights the serious risks deepfakes pose to both individuals and society at large. This article seeks to examine the strain placed by deepfake technology on the current intellectual property framework in India and other jurisdictions, with particular emphasis on rights of publicity, personality rights as embedded within copyright law, and issues relating to damages and royalties. At present, the degree of likeness or resemblance remains a key factor in determining how deepfakes are legally classified. The risks posed by artificial intelligence intensify when voices and facial features of multiple individuals are blended together, raising complex questions about identity, ownership, and consent. This article endeavours to disentangle the rights of affected individuals in such scenarios. In addition to civil liability, deepfakes also raise serious criminal law concerns. Where the source code and creator can be identified, appropriate regulatory and policy responses may be developed to address these challenges, which are growing increasingly urgent.

Keywords: deepfake, neural networks, artificial intelligence, copyright, moral rights, infringement

1. Introduction

AI can be a precursor to the menace of deepfakes. It has given rise to a technology that can manipulate reality with high-resolution pixels, leaving no impression on the viewer that the content may be fabricated or distant from what is real. It would be an understatement to state that deepfakes are mere manipulations, but the Deepfake technology transgresses upon a user's privacy and content available, and also to one that he/she had made public on the internet, further transpires evident threats on the copyright, cybersecurity, right to publicity, forgery, defamation, criminal intimidation, among a few.

By far deepfakes operate through a huge data corpus comprising of videos and images which are well within the domain of Intellectual Property more specifically, copyright. The models are trained over certain algorithms making use of the copyrighted corpus tailoring unrealistic images and videos. The usage however has been outlawed as it leads to a copyright infringement. Furthermore, it requires an inquiry on conferring copyright on deepfakes as they may qualify the test of minimal creativity, a prerequisite thereof. The dynamics are further thrown for a challenge due to the technological intervention of artificial intelligence and outweighing human support and intellect. It discerns the conceptual understanding of authorship from ownership under the Copyright domain reiterating the question, can right be extended to machines?

Besides, the deepfakes thwart the Personality/ Publicity Rights of an Individual who is acclaimed in a particular field. It is surely giving a dent to the royalties earned from the Publicity Rights, which are directly proportional to the likeness of celebrity.

2. Copyright Concerns

A copyright confers an exclusive right ousting others from its usage unless it is authorized. These may include an artistic work, literary work, dramatic play or a musical work. The grant here is restricted by time. Therefore, the data corpus that contains audio, video and images are copyrighted work, based on which a model is trained with an algorithm, resultant work is produced without authorization/consent granted from the author of the original 'work'.

If we split into categories of available data corpus on the internet – there are visual recordings or there may be sound recording embedded in a visual recording which form part of a cinematographic film. The original work has been contributed by the author who is also the first owner but if a consideration is involved then there is a distinction between the owner and the author because of the terms carried out as per the contract. The rights under copyright – economic and moral rights are discerned on the basis of who takes the ownership and the authorship of the work created.

Author in respect of cinematographic film[6] is the producer whereas for a photograph will be the person capturing it in the first instance. Section 14 spelts out economic rights granted to the author, who is the first owner or the owner in other cases, where contract confers changes these dynamics, where an exclusive right to licence making a copy, cropping images or stills, sound recording out of the work, rests under the Copyright Act, 1957. The copyright owner has the right to sell, distribute or store it in any medium or even give it for a commercial rental.

On account of any trespass to the rights guaranteed under this act to the owner of Copyright there is strict observance of Copyright Infringement under Section 51, whereby the light turns to the deepfakes' compulsive nature of drawing work from an original copyrighted work. The deepfakes have been fairly sighted as an instrument of revenge porn, manipulating political campaigns[8] and tarnishing the image of an acclaimed personality. This further draws into the discussion of moral rights which are exclusively granted to the author of the original work. As deepfakes extrapolate further distortion of an author's reputation preservation of which the author's special rights have guaranteed him/her under said act, it becomes important to delve into the distress deepfakes causes to Copyright in India. Under the author's special right – he/she has a right to protect, preserve the creation with the measures that can be taken to foster the creation in its true sense. Therefore, the author has the right to claim the authorship of the work created and restrain or claim damages in case of any mutilation, distortion or modification that has been carried out to tarnishes their reputation or idea of the work it is associated with.

The case of *Amar Nath Sehgal v. Union of India* a landmark case for moral rights -

"Section 57 should be interpreted in its widest sense to include destruction of a work of art, being the extreme form of mutilation. Destruction of work reduces the volume of the author's creative corpus, thereby affecting his reputation prejudicially. Mutilation is nothing but destruction to render the work imperfect. The Court elucidated the scope of moral rights under Section 57 by categorizing it into four types: Paternity right, Dissemination right, Moral Right of Integrity and Right to Retraction"

The only waiver possible of the moral rights are when they hail against the public policy, where "public policy is an unruly horse" are non-negotiable and thereof strikes on any law being inconsistent to it.

The role of intermediary here is of utmost importance as the deepfakes are released on a specific social media platform for dissemination. This was classified under the *Myspace Inc. v Super Cassettes Industries Ltd.* Where an actual knowledge or acquired knowledge through affected person of the content being released was a determined as a test, responding to which the intermediaries should disable the access taking control of the content.

The provisions and laws are defeated when we run through the analysis of how successful has been our regime in dogging deepfakes through Copyright prosecution cases. As the rights vest only with owner therefore, the subject of the work, meaning the person in the photograph, or actors in the cinematographic film have no freedom to bring about a case of copyright infringement, therefore the remedy available does not extend to the living subject of the "work" considered copyrighted.

3. Right of Publicity vis-à-vis Personality Rights

Personality rights here pose a greater challenge to the present regime. As they haven't been generously addressed under the Copyright law. The Delhi High Court, in *ICC Development (International) Ltd v Arvee Enterprises*,

"The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice etc. Any effort to take away the right of publicity from the individuals, to the organizer/non-human entity of the event would be in violation of Articles 19 and 2l of the Constitution of India. No

persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from it."

The determinable factor here would be that there is an enforceable right originating from the identification of the personality that that of the accused portrayal done through an unauthorized usage. The primary importance has been given to the work created originally depicting the persona in a certain way than that of the morphed work appearing through a different source altogether. Confusion, falsity and deception propel only a second most important premise in this.

Alternatively, there exists Performer's Rights under the Copyright Act, where the visual recording/ sound recording broadcast or production can only be carried out with the consent of the Performer, otherwise it would be blatant infringement of Performer's Rights.

Digital advancements challenge the legal regime, which cannot protect any rights in an absolute sense, and this includes performer's rights, also known as 'neighbouring rights', So far, there is no precedent in which performer rights have been violated because of a deepfake was created and went viral on the internet but as the technological boom becomes inevitable phenomena leaving no room for traditional laws to battle against them and efficiently win over them.

4. Testing the Copyrightability of Deepfakes

There are primarily two questions to be evaluated under this frame, if deepfake is worthy of being accorded copyright in its substance and if that is to happen to whom shall it vest, AI or the human enabling such AI.

Copyright law does not ordinarily inquire into the purpose or use of a work once it satisfies "the minimum modicum of creativity test". In most cases, the copyright in deepfake imagery may vest in the programmer who developed the design, trained the models, and devised the algorithm. In contrast, where freely available software is used to create deepfakes, the acts of selecting, arranging, and processing images may

Under the Copyright Act, the definition of author has been expanded to include author in relation to any literary, dramatic, artistic, musical work, where it may be a computer- generated work, the

author would solely be considered if it causes the work to be created. Computer generated works are understood as the work where human inputs enable the work to be created. But where the AI is self-dependent and generates results on its own, such creation and explorations require a proportionality test to see what part of the source code or machine learning has enabled the self-emitting work. These tests will redirect the future into realizing that the right and onus of that right will have to be vested in human author partly with a machine enabled author to demystify the obstacles and challenges posed by AI.

Recently court dealing with a matter on patentability connoted "*Innovation in the field of artificial intelligence, blockchain technologies and other digital products would be based on computer programs, however the same would not become non-patentable inventions - simply for that reason. It is rare to see a product which is not based on a computer program. Over the years, the Patent Office has introduced various guidelines in respect of various technological subject matters, in order to guide the examiners as to the settled case law by way of judicial precedents and the legal position internationally"*

There is a gleam of light projected but yet to be dawned at the jurisprudence of Intellectual Property Rights to envision the need and necessity of divulging the rights to the rightful owner, natural or juristic/artificial entity.

5. The Way Forward

Copyright remains to be at the pedestal to curb the proliferation of deepfakes owing to exploiting, mutilating or destroying the image of a person in both literal and figurative sense. Therefore, its role cannot be underestimated but the challenge posed by AI's enabled work to be brought before the courts, and to whom the onus to justify will lie, remains to be the most pertinent question yet to answered by the authorities.

Certain measures can help distinguish between a genuinely creative work and a distorted or unlawful one. One important factor is the purpose and intent behind the creation of a deepfake, which should ideally be identifiable at the stage when data is retrieved from its source. This involves examining whether the data was accessed lawfully or unlawfully. Unauthorised access

may also give rise to breaches of Technological Protection Measures (TPMs) and related contractual obligations.

Further, the copyright holder's reproduction rights may be implicated where a work is uploaded into a trained model and subsequently used to generate outputs. In contrast, where the original work has undergone substantial modification, the creator may infringe adaptation rights. An exception arises where such modification is genuinely transformative in nature; only in such cases can reliance be placed on fair use or fair dealing provisions. Therefore, to not let AI transgress the systemic produced TPM where the address of the downloaded work be accessed to check on its purpose and usage before that data is turned into a deepfake would be the most effective step in curbing the deepfakes' distress on the Copyright regime.

Furthermore, it is undeniable that artificial intelligence is the future and that its application in content creation cannot be disdained. Human involvement in artificial intelligence activities are on the verge of getting diminished as more and more AIs self-enabled programmes are occupying the space. It is anticipated that the content generated by artificial intelligence algorithms is as original as the human created work. As a result, India and other countries must address the legal issue and status of artificial intelligence in order to accommodate the future needs of the digital era.

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