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AI-GENERATED CRIMES IN INDIA: A SOCIO-LEGAL EMPIRICAL STUDY ON CRIMINAL LIABILITY, LEGAL CHALLENGES AND DIGITAL EVIDENCE UNDER THE BNS AND BSA, 2023

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ABSTRACT

Artificial Intelligence (AI), and generative AI in particular, has altered the generation of realistic digital content, such as synthetic photos, voice cloning, manufactured films and AI-generated papers. Although these technologies have valid uses, they can also facilitate fraud, impersonation, forgery, defamation, privacy violations, harassment and other criminal activities. These advancements present major hurdles to criminal justice, particularly in identifying perpetrators, establishing criminal intent and demonstrating the legitimacy and provenance of digital evidence.

This research employs a socio-legal empirical study to investigate stakeholder attitudes on AI-generated crimes, criminal responsibility and the reliability of digital evidence in India's new criminal-law framework. The main legal framework is the Bharatiya Nyaya Sanhita, 2023 (BNS) and Bharatiya Sakshya Adhiniyam, 2023 (BSA) which was implemented from 1 July 2024. The study assesses the perceived effectiveness of existing legislation and underscores real issues related to attribution, investigation, forensic authentication and institutional preparation.

The report contends that the primary difficulty is not the lack of AI-specific offences, but rather the application of traditional conceptions of authorship, intention, causality and authenticity to quickly expanding synthetic-media technologies. It advocates technology-neutral criminal regulation supported by specific AI-forensic standards, increased investigation capacity, professional training and strong evidence-preservation systems.

INTRODUCTION

Generative Artificial Intelligence (AI) has altered the way written information, images, speech, video and other synthetic media are created. While these technologies have genuine uses in education, business, entertainment, and public administration, their capacity to mimic human identity and produce seemingly authentic information has generated substantial prospects for criminal abuse. Content created by AI can enable fraud, impersonation, forgery, defamation, privacy violations and other cybercrimes.

A popular example is deepfakes, which enables manipulation of facial appearance, speech or both to generate false representations of humans. Such material can be swiftly spread over social-media platforms and messaging services, posing issues for investigation, attribution and timely remedial action. This gives rise to two key legal issues, that is, what criminal culpability should be imposed on AI-assisted conduct and how to verify the authenticity and origin of digital evidence?

India's adoption of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Bharatiya Sakshya Adhiniyam, 2023 (BSA), effective from 1 July 2024, provides an important framework for analysing these challenges. While neither statute specifies a separate offence of "AI-generated crime", their technology-neutral provisions on cheating, personation, forgery, false electronic records,¹ defamation and electronic evidence could be relevant to AI-assisted criminal conduct. This research takes an empirical method to investigate stakeholders' awareness, perceptions of criminal culpability, confidence in digital evidence, perceived adequacy of the BNS and BSA and the need for institutional reforms.

LEGAL, EVIDENTIAL AND INSTITUTIONAL CHALLENGES OF AI-BASED CRIMINALITY

The rapid development of generative Artificial Intelligence (AI) has produced a considerable gap between the technological capacity to make synthetic content and the institutional capacity of the criminal justice system to recognise, attribute and establish its unlawful misuse. Content produced by AI can impact several stages of criminal proceedings including the commission and concealment of offences, investigation, evidence gathering, forensic examination and judgement. This presents issues that cannot be solved by the mere application of standard criminal law rules.

One basic challenge concerns identification and attribution. The problem for investigators and

¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 335–336, 340, India Code (2023).

judges, however, is that they may discover AI-generated photos, audio recordings or films without knowing immediately whether they are real or where they came from. Even where forensic examination can demonstrate that content is synthetic, it may still be difficult to determine the identity of the individual who developed, manipulated or spread it. The mens rea question complicates criminal responsibility especially when people wilfully develop or distribute damaging synthetic content, unlike those who unknowingly send material under the impression it is real.

The evidentiary dimension is another challenge. Before digital material to usefully support criminal prosecutions, it must be appropriately kept, authenticated and proved to be dependable. This calls for a lot from police officials, forensic laboratories, legal practitioners and judges, all of whom need proper technological knowledge and institutional capability.

In this context, the present study aims to assess whether the existing criminal and evidentiary regime in India, specifically the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), is practically competent to combat criminal conduct created by AI. The study further explores stakeholder perceptions of criminal responsibility, digital evidence, institutional preparation, and the need for legislative and procedural reform, thru a non-doctrinal empirical methodology.

RESEARCH FRAMEWORK RESEARCH QUESTIONS AND OBJECTIVES

The present study aims to explore the practical suitability of the emerging criminal and evidential framework of India in dealing with AI-generated criminality, with specific reference to the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). The study is framed around three key research questions: (i) Do respondents consider the current provisions of the BNS and BSA to be sufficient to address the offences enabled by AI and the use of synthetic digital evidence? (ii) What are the perceived challenges faced by stakeholders in establishing attribution, criminal intent, causation and authenticity in the case of AI-generated criminal conduct? and (iii) Do respondents consider the need for bespoke forensic standards, professional training and specific legal or institutional reforms to be necessary to enhance the criminal justice response?

Correspondingly, the study seeks to assess the awareness of respondents on AI-generated crimes and deepfakes, examine perceptions on adequacy of existing criminal and evidentiary provisions, identify challenges relating to attribution, mens rea and digital evidence and

evaluate institutional preparedness. It also aims to examine stakeholder views on accountability among users, disseminators, platforms and technology providers and develop evidence-based suggestions for effective legal and institutional reform.

LEGAL AND CONCEPTUAL UNDERPINNINGS

AI as a Tool for Crime

AI should not be instantly perceived as an independent criminal agency. The legal responsibility should largely be on human conduct and the legislative ingredients of the offence. Artificial intelligence can be used as a tool for deception, impersonation, forgery, harassment, privacy invasion, financial fraud or spreading false representations. The same technology may be used for permissible and illicit objectives. Criminal responsibility must therefore depend on the nature of the conduct, the surrounding circumstances and the requisite mental element.

Criminal Liability under BNS, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) has technology neutral rules applicable to AI-enabled offences. Section 318 could apply to AI-assisted cheating, while section 319 deals with cheating by personation,² including conduct using synthetic identities or cloned voices. Sections 335 and 336 on false documents³, fake electronic records and forgeries may be applicable if AI produced material is created or altered with fraudulent or criminal purpose. Section 340 also concerns the use of falsified documents or electronic records as real for fraudulent or dishonest purposes. Section 356 may be relevant where synthetic content satisfies the elements of slander. However, content produced by AI alone does not create criminal responsibility absent proof of the legislative requirements and essential intent.

Electronic Evidence under the BSA, 2023

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) recognises digital and electronic records. Sections 61-63⁴ provide for their legal recognition and admissibility subject to stipulated criteria. But admissibility isn't genuineness. AI-generated evidence poses a unique issue because a technically sound file may nonetheless represent a contrived occurrence. Thus, effective adjudication involves analysis of file integrity and content provenance, backed by trustworthy forensic methods.

² Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 318–319, India Code (2023).

³ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 335–336, 340, India Code (2023).

⁴ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 61–63, India Code (2023).

CRIMINAL LIABILITY FOR AI-ASSISTED CRIME

Attribution and Mens Rea

Attribution is the act of attaching forbidden activity to a specific person. In AI related offences, the investigation of authorship may need study of prompts, account records, payment details, device logs, metadata, platform records and communications. A synthetic video or cloned voice may prove untruth or impersonation but not necessarily the individual who created or disseminated it. Proof of authorship must therefore be distinguished from proof of untruth.

The mental element is also important. The person who purposefully makes and distributes a deepfake with fraudulent intent is in a different position than the person who innocently shares synthetic information thinking it is real. Evidence of prompts, account activity, communications and surrounding circumstances may help in demonstrating knowledge or intention. The criminal responsibility should therefore be dependent on the legislative elements and required mens rea of the individual act rather than just the usage of artificial intelligence (AI) technology.

Developer and Platform Responsibility

Another legal question concerns the possible liability of AI developers and digital platforms. General-purpose artificial intelligence systems may be used for acceptable objectives. They may be misused by users without the provider's knowledge or participation. Therefore, the automatic criminal culpability for any misuse would be too heavy a restriction.

The balancing approach should also include knowledge, participation, purposeful facilitation, compliance with applicable legal responsibilities and the actual role of the platform or developer in the detrimental conduct. Thus, the present analysis takes platform and developer responsibility as an empirical matter, rather than assuming either absolute immunity or automatic obligation.

EVIDENTIARY BARRIERS

The primary evidentiary problem in synthetic media cases is proving that digital content accurately depicts an event, person or conversation. This should be cross-validated with other information sources, such as the original file, the device data, the metadata, the source accounts, the timestamps, the platform records, the cryptographic hashes, the witness evidence and the expert analysis. Provenance is equally important, requiring analysis of the origin, transfer history and any change of the material. The loss of metadata does not always make the evidence inadmissible but it can impact its evidential trustworthiness.

Chain of Custody and Forensic Analysis

A documented chain of custody describing how the evidence was acquired, stored, transferred and subjected to forensic investigation is required to preserve digital evidence. In AI-related instances, the evidential value of synthetic material may also require underlying digital context, including account activity, conversations and other relevant traces.

AI Detection and Expert Testimony

AI-detection tools can assist investigations, but should not be treated as flawless. Their correctness may differ by generation methods, compression, editing, language, quality and technical improvements.⁵ Expert evidence should thus reveal the detection system's approach, validation, limitations and mistake rates. And importantly, proving that content is synthetic does not prove who generated or propagated it.

Burden of Proof and Fair Trial

Generative AI might potentially generate evidence against innocent people, such as doctored recordings, screenshots and communications. Hence, criminal proceedings must separate suspicion from proof. Automated detection should be an aid to, rather than a replacement for, judicial assessment and unclear expert opinions need to be weighed against the whole of the evidence and the appropriate level of proof.

EMPIRIC STUDY OF PERCEPTION AND AWARENESS OF AI-GENERATED CRIMES

The empirical part of the study explores the knowledge and attitudes of the respondents around the use of Artificial Intelligence (AI) as a tool for aiding or perpetrating criminal conduct. The respondents include graduates, advocates and legal professionals, police personnel, judicial officers, researchers, private sector employees, government sector employees and other participants with age spread generally from their twenties to fifties. This variety offers a useful platform for the assessment of awareness in various professional and age groups.

The replies show a moderate or developing awareness, as a significant inclination to the response “somewhat familiar” was identified regarding the concept of AI being used to enable or commit crimes. This finding indicates that respondents usually have knowledge of the developing connection between AI and criminality, but that their knowledge may not be sufficiently extensive or specialist at this point in time. The outcome is relevant as the respondents from legal, judicial, policing, scientific and professional backgrounds, who may

⁵ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 39, India Code (2023).

face technology and evidentiary challenges in varied roles.

The trend so suggests that there is knowledge of AI-generated crimes, but it is not yet fully mature. understanding of the overall notion does not necessarily equate to understanding of specific forms of AI-enabled criminal conduct, attribution issues, mens rea, deepfake detection or the evidential criteria relevant to synthetic media. The findings thus underline the necessity for systematic awareness-raising and specialised training among the key stakeholders.

From a socio-legal perspective, these perceptions do not, on their own, show the inadequacy of the BNS or the BSA. Instead, they point to a pragmatic aspect of legal effectiveness that needs to be measured against the legislative framework. Thus, the empirical findings supplement the doctrinal study by showing how knowledge, professional preparedness and comprehension of technology may affect the practical application of legislation on AI-generated crimes.

Perceived Modes of AI-Enabled Crime

Respondents were asked to identify AI-related behaviours that they felt could amount to or facilitate criminal crimes. The replies show that AI-produced deepfake videos and photos, AI-generated voice impersonation, AI-assisted financial fraud, and online harassment or cyberstalking were the most frequently identified potential types of AI-enabled criminal action. This pattern indicates that respondents are relatively more aware of AI applications that involve deceit, impersonation, financial harm and targeted online abuse, particularly where synthetic media can be used to misrepresent an individual or manipulate digital interactions. Deepfakes and voice impersonation also may be recognised more strongly because of the greater public awareness to concerns with manipulated audio-visual content. However, the findings should not be interpreted as reflecting comprehensive awareness of all forms of AI-enabled criminality. Other forms of AI-enabled criminality such as fabricated digital records, phishing, identity-related offences and AI-assisted social engineering may require greater legal and technological awareness. Overall, the responses indicate a growing but uneven awareness of the spectrum of illegal behaviours that can be facilitated by AI, highlighting the need for more public awareness and specific professional training.

Adequacy of the Existing Criminal-Law Framework as Perceived

The replies reveal that most of the respondents did not agree with the concept that the existing Indian criminal code sufficiently addresses crimes committed or aided thru Artificial Intelligence. There is a strong view that the current legal system may not be sufficient to deal with the unique issues presented by AI-generated criminal conduct, in particular in relation to attribution, criminal intent, synthetic media and technological complexity. The result does not

itself amount to a statutory flaw but rather indicates an apparent disconnect between current legal rules and their practical implementation in respect of new AI-related crimes. This viewpoint underscores the necessity for a more thorough review of legal clarity, investigative competence and institutional readiness.

Perceptions of Criminal Responsibility, Human Intent and Evidence Generated by AI

The responses together point to a human-centred and evidentially complicated legal problem of AI-generated criminality. Regarding criminal liability, the responses reflect a tendency to place primary responsibility on the individual who intentionally uses or manipulates an AI system for criminal purposes, rather than automatically imposing liability on the developers or companies providing the technology. At the same time, the fact that the choice is that blame should depend upon the facts of each instance represents an important acknowledgement that AI-related criminal action cannot be addressed with a single rule of attribution. The contrast between the person who creates a system of AI and the person who knowingly uses it for illegal purposes is therefore essential in calculating proportionate criminal responsibility.

This stance is further supported by the comments emphasising the need of identifying the human user's purpose or knowledge. Taken as a whole, the pattern demonstrates that the mental aspect plays a substantial role in the responsibility assessment for AI-assisted offences in the eyes of the responders. This view is important in law, because the simple employment of artificial intelligence (AI) technology does not, in itself, prove criminal intent. Establishing culpability will probably continue to rest on determining whether an individual deliberately created, modified, used or distributed harmful content. The answers therefore support a tiered approach whereby criminal culpability is judged on the basis of the individual's conduct, knowledge, intent and degree of involvement.

The question that illustrates a related concern about AI-generated digital evidence is. The respondents usually view deepfake videos, synthetic sounds, AI-generated images and falsified documents as creating considerable challenges for courts in evaluating authenticity and dependability. This perspective is especially significant since artificial intelligence (AI) technology can affect not only the committing of offences, but also the creation or modification of material which may later be offered as evidence. This means, courts and investigators can find it hard to differentiate between real digital records and advanced synthetic content.

Perception of the Adequacy of the Evidentiary Framework and the Need for Institutional Reform

The replies show that the respondents are not totally pleased with the present legal and institutional processes to deal with AI generated and AI altered evidence in India. The majority

found the provisions of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) concerning electronic and digital evidence to be only partially adequate. Thus, while the existing framework is recognised as providing a basic legal foundation, it is considered not sufficiently robust to address the specific challenges of synthetic media, deepfakes, and AI-manipulated digital records.

This view is based on worries about the practical efficiency of the present framework rather than an absence of provisions in the BSA on electronic evidence.⁶ The respondents appear to realise that the increasing sophistication of content produced by AI calls for more robust systems for authentication, provenance verification, forensic analysis and reliable retention of digital evidence. The responses consequently reflect a perceived need to improve implementation and institutional capability rather than to rely primarily on current law measures.

This argument is further supported by the reactions to the suggested reform initiatives. There was substantial support among respondents for increased regulation and oversight of AI developers and digital platforms, as well as more transparent processes for dealing with AI-assisted criminal behaviour. The necessity to have dedicated cybercrime investigation teams and better forensic technologies shows worry about the capacity of current investigative institutions to spot, track down and attribute advanced synthetic content. Similarly, the support for obligatory authentication and provenance methods underscores the increasing need of confirming the origin and integrity of AI-generated or modified material before it is relied upon in criminal proceedings.

Other significant initiatives highlighted by respondents were improved public awareness and online literacy, as well as specialised training for courts, attorneys, police officials and forensic experts. The answers indicate that the perceived issue lies not only in the laws, but also in the competence and readiness of the institutions that are supposed to implement the law.

Perceptions of Forensic Authentication and Content Produced by AI Empirical

The answers to the Questions demonstrate that in practice, respondents are more aware of and concerned about the risks of AI-generated and AI-manipulated information. A large majority of respondents said they had personally seen or come across content produced by AI that they thought may be possibly deceptive, misleading or damaging. The importance of this finding is that it suggests that material produced by AI is no longer seen as simply a future technology issue, rather, the respondents seem to acknowledge its existence in today's digital world and its

⁶ Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 (India).

possible impact on people and organisations.

The replies also show considerable backing for checking the integrity of digital records generated by AI before they are used as criminal evidence. When asked if the prosecution should prove that an AI-generated digital record has not been corrupted before it is used in criminal proceedings, respondents largely answered “agree” or “strongly agree.” This reflects a clear worry about the prospect of introducing manufactured or manipulated digital material into the evidential process. Simultaneously, any such requirement must work consistently with the applicable rules of evidence and the prosecution’s overall burden of proving the case by legally admissible and reliable evidence.

An equally important conclusion is the substantial support for the inclusion of technical and digital-forensic experts to determine the legitimacy of AI-generated evidence. The vast majority of respondents agreed or strongly agreed that courts should use expert help when analysing synthetic audio, video, pictures and other AI-generated documents. This perspective is illustrative of an understanding that judicial assessment of more sophisticated synthetic media may necessitate specialised technological expertise that is not always available from the digital record itself.

Perception of Regulatory Responsibility and Need for AI-Specific Legal Measures

Responses to Questions reflect a strong opinion among respondents that the existing legal framework lacks additional regulatory support and clearly defined duties for AI developers and technology businesses. Most respondents agreed that developers and technology providers should have a legal duty to put in place safeguards to prevent the misuse of their systems for criminal purposes. This finding indicates a growing recognition that successful control of AI-generated criminality cannot rest just on the accountability of the individual user. Due to the scale, accessibility and technological complexity of generative artificial intelligence systems, preventive responsibilities may also develop at the level of system design, deployment, monitoring and risk management.

But the respondents’ opinions should not be taken to mean that developers or technology companies should be automatically held criminally liable for any unauthorised use of their systems. The replies show support for reasonable and proportionate controls, especially if providers have the ability to anticipate, mitigate or respond to foreseen misuse. Such precautions might include procedures for identifying abusive use, reporting and responding to misuse, retaining important technical information, improving content authentication and increasing openness regarding synthetic content. The specific scope of such duties would have to be carefully drafted legally to balance public safety with innovation and legitimate uses of

AI.

The answers also point to an equally important trend. The respondents were mostly in agreement that there is a need for unique legal provisions in India concerning crimes committed by AI and evidence fabricated by AI, apart from the existing technology-neutral provisions of BNS and BSA. This assessment indicates that respondents saw the current framework as an important basis but not necessarily a complete regulatory response for the unique issues presented by generative AI.

The need for specific provisions is particularly pertinent to issues of deepfakes, synthetic impersonation, AI-assisted fraud, attribution, authentication, provenance and manipulation of digital evidence. A focused framework could provide additional clarity regarding the activity that is illegal, evidentiary safeguards, investigative procedures, and the duties of key technology intermediaries.

RECOMMENDATIONS, NEW INSIGHTS AND CONCLUSION

The empirical findings show that criminality caused by AI necessitates a reaction that exceeds the current criminal law restrictions. First, India should develop a clear, technology-neutral legislative framework that recognises AI-assisted activity that has the potential to draw criminal culpability without stifling legitimate uses of generative AI. Criminal responsibility should be principally attached to the human actor on the basis of knowledge, purpose, involvement and the statutory ingredients of the offence.

Secondly, AI-forensic capability needs to be bolstered with specialised cybercrime units, trained forensic personnel and proven tools for the detection of synthetic audio, pictures, videos and documents. Authentication must include provenance, metadata, source information, device records, and other corroborative digital traces, rather than relying solely on automated detection techniques.

Third, courts should institute particular evidence rules for synthetic media concerning authenticity, provenance, preservation, expert examination and evidential weight. Technical specialists should be made available to courts, while ensuring that expert opinion remains open to judicial review and does not supplant the judicial determination of guilt.

Fourth, AI developers and technology platforms should be required to provide proportionate safeguards, including procedures for reporting misuse, retention of important technical information, transparency measures and adequate authentication or provenance systems. Such requirements should be based on knowledge, foreseeability, competence and actual participation, rather than assuming automatic accountability for every misuse.

Finally, persistent training and awareness programs should be created for police-officers, prosecutors, advocates, judges, forensic professionals and the public. As material produced by AI may be created, hosted and disseminated across many jurisdictions, cross-border cooperation should also be strengthened.

NEW PERSPECTIVES AND INSIGHTS

The study shows that the main regulatory challenge isn't just whether India needs a new offence called "AI crime." The bigger question is whether existing institutions can effectively determine who created the content, who intended its misuse, how the content was disseminated and whether the digital material presented before the court is authentic.

A key developing finding is the need to differentiate between the generation, dissemination and resultant usage of material produced by AI. The guilt of the person who makes the synthetic substance, the person who intentionally transmits it, and the person who uses it to do a specific criminal offence may be different. Such an approach can avoid under-criminalisation and over-attribution of liability.

The findings also suggest that evidential robustness should be a key goal of AI policy. The judicial system needs to be prepared not only for AI crimes, but for the prospect of fake evidence being created to frame innocent people. Future research and policy should therefore explore provenance standards, authentication systems, forensic benchmarks and procedures for disputing unreliable AI-generated evidence.

CONCLUSION

Generative AI is a rapidly emerging threat to India's criminal justice system. The BNS and BSA lay down important technology-neutral underpinnings for regulating AI-assisted offences and electronic evidence. Their actual success, however, will depend on attribution mechanisms, forensic capability, professional knowledge and institutional preparedness.

The empirical findings indicate that respondents are becoming more aware of AI-based criminality, but also worry about the sufficiency of existing legal and institutional solutions. They clearly require better implementation by means of support for stricter regulation, specialist forensic processes, professional training, authentication standards and AI-specific legislative measures.

The study so concludes that in India, the response should not be limited to the creation of new offences. A balanced socio-legal architecture combining technology-neutral criminal liability,

reliable digital-evidence safeguards, proportionate platform obligations, specialised forensic capacity and constant professional training is important. Such a strategy can protect persons from new forms of AI-enabled damage, while allowing for innovation and legitimate technology usage. At the end of the day, the efficacy of India's AI-crime architecture will not be measured by the mere presence of statutory provisions but by the capacity of institutions to transform those provisions into trustworthy investigation, fair adjudication and efficacious protection of digital rights.

