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# **VERIFIED, NOT MERELY CITED: REFORMING ACCOUNTABILITY FOR GENERATIVE AI USE BY ADVOCATES AND JUDGES IN INDIA**

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## **Abstract**

*A fabricated judgment looks exactly like a real one: it carries a case name, a neutral citation and a confident ratio, yet it exists nowhere. As generative AI enters legal practice, Indian courts have begun to treat the filing of such authority as professional misconduct, most notably in Pooja Ramesh Singh v. Jammu and Kashmir Bank Ltd. (2026 INSC 668), and have set aside orders that rested on non-existent precedent. Yet India still has no framework that says who is answerable, for what state of mind, and with what consequence. This paper argues that the present position is incomplete in four respects: the disciplinary law for advocates is generic and blunt; the accountability route for judges is fragmented and ill-suited to verification failures; the question of disclosure has been left to individual courts; and the remedy of treating a tainted decision as “no decision in the eyes of the law” sits uneasily with finality and res judicata. Its answer is a single organising principle, a non-delegable duty of verification, applied in a role-sensitive manner to advocates and judges alike, with consequences scaled to culpability rather than to outcome. For advocates, the paper proposes a technology-neutral amendment to the Bar Council of India Rules under Section 35 of the Advocates Act, 1961, a four-tier culpability ladder and a referral protocol from courts to Bar Councils. For judges, it proposes a graded ladder that begins with correction and training. It recommends a verification certificate in place of a blanket AI-use disclosure rule, assesses the Kerala High Court’s 2025 policy for the district judiciary, and offers a point-of-reliance rule and a national model policy for subordinate courts. Finally, it proposes a materiality test, with remand as the preferred remedy, so that courts nullify where contamination is real and correct where it is not. The method is doctrinal and comparative, drawing on recent Indian decisions and on practice in the United States, the United Kingdom, Canada and New Zealand.*

Keywords: generative AI; hallucinated citations; verification duty; professional misconduct; culpability; Advocates Act, 1961; judicial accountability; Kerala High Court; disclosure; subordinate judiciary; void orders

## 1. Introduction

A fabricated judgment is a peculiar kind of error. It does not misread a real authority or stretch a doctrine; it invents the authority altogether, with a case name, a neutral citation and a confident ratio, and it does so in the register of a genuine law report. Generative AI systems produce such material because they predict plausible text rather than retrieve verified records. For a legal system that runs on precedent, and where Article 141 makes the Supreme Court's declarations of law binding on every court, the consequences of this failure mode reach well beyond an embarrassed lawyer.

India reached this problem later than the United States, where *Mata v. Avianca* (S.D.N.Y. 2023) became the first widely reported sanction, but it has moved quickly. In 2026, the Supreme Court in *Pooja Ramesh Singh v. Jammu and Kashmir Bank Ltd. & Anr* (2026 INSC 668) set aside orders of the NCLT and NCLAT that rested on non-existent precedents, held that citing such judgments without verification is misconduct on the part of an advocate, and described reliance on them by a decision-maker as a serious lapse. It also asked the Bar Council of India to frame norms and consequences. These are important steps, but they are reactive. They decide the case in front of the Court and leave the surrounding architecture unbuilt.

### *Research questions*

This paper asks five questions.

1. How should Section 35 of the Advocates Act, 1961 and the Bar Council of India Rules on professional standards be interpreted, or amended, to address AI-related lapses, and what sanctions should be available?
2. What state of mind should separate negligence from misconduct when an advocate files a fabricated or misdescribed authority?
3. Through what mechanism, if any, can a judge be held accountable for relying on hallucinated material, given that judges sit outside the Advocates Act?
4. Should India require disclosure of AI use in filings and judgments, and in what form?
5. Is the doctrine that a tainted order is "no decision in the eyes of the law" compatible with finality, res judicata and the available remedies?

A sixth, practical question runs through the paper. The trial courts and magistrates before whom most Indians encounter the justice system are the least resourced to detect fabricated authority, and the Kerala High Court's 2025 policy for the district judiciary is the most developed attempt so far to regulate them. The paper asks what it achieves and whether other

States need something similar.

### ***Thesis***

The paper's central claim is that accountability for AI-assisted legal work should be guided by a common principle of verification: legal authorities must be appropriately verified before they are submitted to, or relied upon by, a court. However, this principle does not impose identical legal obligations upon advocates and judges. Advocates are accountable primarily through professional conduct standards and the disciplinary framework governing the legal profession, whereas judges exercise an independent adjudicatory function and are subject to distinct constitutional and institutional mechanisms of accountability. Accordingly, this paper proposes a role-sensitive framework in which the applicable standard of care, assessment of culpability, and consequences of a verification failure depend upon the actor's institutional role, the circumstances of the error, and the legal mechanism available to address it.

### ***Methodology and scope***

The approach is doctrinal and comparative. The primary materials are the Advocates Act, 1961, the Bar Council of India Rules, constitutional provisions on judicial conduct, the Kerala High Court policy, and recent decisions of the Supreme Court. Comparative material comes from the United States, the United Kingdom, Canada and New Zealand, chosen because each has either sanctioned AI-related misconduct or issued guidance on disclosure. The decisions of 2026 are very recent, and much of the commentary on them is practitioner writing rather than peer-reviewed scholarship, a gap this paper partly aims to fill. The paper does not address AI in judicial decision-making generally, predictive tools, or bias; its subject is verification, fault and remedy.

## **2. Background: How the Indian Courts have responded so far?**

### **2.1 Two kinds of failure**

The phenomenon has two distinct forms, and the distinction matters later for fault. In the first, a tool invents a case that does not exist. In the second, a tool cites a real case but misstates what it held, or attributes a proposition to it that it does not contain. The SSRN article "The Verification Duty as Architectural Specification: A Four-Layer Framework for AI-Assisted Legal Practice," authored by Thomas Potter, draws exactly this line in the American sanction cases. A verification duty that checks only whether a citation exists would catch the first failure and miss the second.

## 2.2 The Indian decisions

The Supreme Court's ruling in *Pooja Ramesh Singh v. Jammu and Kashmir Bank Ltd. & Anr*<sup>1</sup> establishes the domestic judicial baseline. A bench comprising Hon'ble Justices P.S. Narasimha and Alok Aradhe set aside decisions of the National Company Law Tribunal and the National Company Law Appellate Tribunal that grounded their substantive reasoning in fabricated authorities. Holding that citing hallucinated judgments without independent verification constitutes professional misconduct, the Court directed the Bar Council of India to frame explicit disciplinary guidelines and consequences. Crucially, the Court clarified that utilizing generative AI tools is not per se improper; rather, the professional breach consists in placing unverified, machine-generated legal material before an adjudicatory forum.

On 2 September 2026, in *Vijay Ghanshyam Gadiya v. Union of India*<sup>2</sup>, a bench of Hon'ble Justices Dipankar Datta and Sheel Nagu set aside a customs penalty of Rs 425.27 crore imposed under Section 114 of the Customs Act, 1962 because the adjudicating order relied on non-existent authorities and hallucinated ratios. Further, in February 2026, a bench of Hon'ble Justices Narasimha and Aradhe in *Gummadi Usha Rani & Anr. v. Sure Mallikarjuna Rao & Anr.*<sup>3</sup> noted fabricated citations in the matter and stayed a trial-court ruling said to rest on AI-generated authority. Three features of these decisions deserve emphasis. First, the Court has attached a disciplinary label, misconduct, to a technical failure without yet saying what state of mind is required. Second, it has located responsibility with advocates and decision-makers in the same breath, but through different vocabularies: misconduct for the former, serious lapse for the latter. Third, it has chosen a drastic remedy, treating contaminated orders as having no legal existence, and has delegated the building of norms to the Bar Council rather than prescribing them.

## 2.3 What the decisions leave open?

Each of these three features opens a question. If non-verification is misconduct, is it so irrespective of intention, and how does a Bar Council tell a careless lapse from a deceptive one? If a judge's reliance is a serious lapse, who responds to it, and how, when the Advocates Act does not reach judges? If an order is void for contamination, how far does that go before it collides with finality? Beneath all three sits a question the decisions do not address, whether the court should be told when AI has been used at all. The remaining sections take these questions in turn.

### 3. Disciplinary mechanics: Section 35 and the Bar Council Rules

#### 3.1 The existing machinery

Section 35 of the Advocates Act, 1961 empowers a State Bar Council, on a complaint or otherwise, to refer a case to its disciplinary committee where it has reason to believe that an advocate on its roll is guilty of "professional or other misconduct". After hearing the advocate, the committee may dismiss the complaint, reprimand the advocate, suspend the advocate from practice for a period, or remove the advocate's name from the State roll. Section 36 gives the Bar Council of India parallel powers over advocates, Section 36B requires disposal within a year failing which the proceedings may be transferred, and Sections 37 and 38 provide appeals to the Bar Council of India and then to the Supreme Court. Section 49(1)(c) authorises the Bar Council of India to make rules on standards of professional conduct and etiquette, which it has done in Part VI, Chapter II of the Bar Council of India Rules, organised around duties to the court, the client, the opponent and colleagues.

Two points about this machinery matter for AI. The Act nowhere defines misconduct, so its content is supplied by the Rules and by case law such as *Bar Council of Maharashtra v. M.V. Dabholkar*<sup>4</sup>, which treats misconduct as conduct falling below the standards the profession expects. And the process is complaint-driven and slow. A court that discovers a fabricated citation cannot itself impose a disciplinary sanction. In *Supreme Court Bar Association v. Union of India*<sup>5</sup>, the Supreme Court recognised that the power to discipline advocates belongs to the Bar Councils under the Act, even though a court retains its separate powers to deal with contempt. That is why, in *Pooja Ramesh Singh* judgement, the Court directed the Bar Council of India to deliberate on consequences rather than prescribing them.

#### 3.2 Do the current Rules already cover the problem?

In principle, yes. The existing duties to the court prohibit an advocate from misleading it, from influencing it by improper means, and require conduct consistent with the dignity of the office. Presenting a non-existent judgment as authority breaches the spirit of each, whether or not a machine drafted it. The Supreme Court's characterisation of non-verification as misconduct can be read as interpreting those duties for the age of generative tools, which is the minimal route and requires no amendment.

The interpretive route has real limits, however. It is silent on what verification means, so an advocate cannot know in advance what diligence suffices. It does not address supervision, even though in practice a junior or a research assistant, human or digital, often generates the citations while a senior signs. It says nothing about client confidentiality when case facts are typed into

a public AI tool. And it provides no gradation, leaving every case to be fought on the single, stigmatising word "misconduct".

### 3.3 A proposed amendment

The Bar Council of India should add a short rule to the duties-to-the-court chapter, with commentary, covering five obligations:

1. **Verification.** An advocate shall not submit or cite before any court, tribunal, or judicial forum any authority, quotation, or proposition of law without personally verifying—or directly ensuring through active supervision—its authentic existence, contextual accuracy, and current precedential validity.
2. **Non-Delegable Responsibility and Vicarious Accountability.** The duty of verification is non-delegable. An advocate who signs, files, or orally argues a pleading, application, or written submission remains strictly accountable for the authenticity and fidelity of every authority cited therein. Delegation of legal research or drafting to a junior colleague, clerk, intern, or automated system shall not constitute a defense or an extenuating circumstance in disciplinary proceedings, but shall be treated as an absence of reasonable professional diligence on the part of the supervising advocate.
3. **Supervision.** The advocate who signs or argues a document is responsible for authorities in it, whoever or whatever generated them. Advocates-on-Record in the Supreme Court carry particular responsibility for pleadings they file.
4. **Candour and correction.** An advocate who discovers that a filed authority is fabricated or misdescribed shall inform the court and the opposing side at the earliest opportunity.
5. **Confidentiality.** An advocate shall not enter privileged or confidential client information into a tool that stores or reuses inputs without adequate safeguards, the principle that already underlies the protection of professional communications under Section 132 of the Bharatiya Sakshya Adhiniyam, 2023.

The verification rule should be technology-neutral. It should say "an authority generated or suggested by any source" rather than naming AI, so that it does not age as tools change and so that a lazy citation from a human junior is treated no differently from a hallucinated one.

### 3.4 A referral protocol

Another gap is procedural. At present nothing obliges a court that finds a fabricated citation to inform the Bar Council. The Supreme Court or High Courts could issue a practice direction requiring a court that makes a finding of fabricated or misdescribed authority to record it in the

order and forward it to the relevant State Bar Council, with the advocate's response. This respects the Bar Councils' primacy in discipline while ensuring that findings do not stay buried in judgments, and it would also let Bar Councils notice repeat offenders across courts. Cost orders, available under the courts' ordinary powers, remain a parallel and faster response and should be treated as a complement to, not a substitute for, disciplinary referral.

### **3.5 Role-Sensitive Verification: Advocates and Judges**

Although advocates and judges share the objective of ensuring that legal proceedings rest upon reliable legal authorities, their respective verification responsibilities operate through different legal frameworks. An advocate's responsibility concerns the accuracy and integrity of the authorities presented to the court and may attract professional disciplinary consequences where the applicable requirements are satisfied. A judge's responsibility concerns the independent evaluation of the material relied upon in adjudication; an error in that process may require correction of the judicial order without necessarily establishing personal misconduct. The proposed duty of verification must therefore be understood as a common principle rather than an identical legal rule. Its application must account for the actor's role, the nature and materiality of the error, the circumstances in which it occurred, and the safeguards governing the relevant disciplinary or judicial process.

## **4. The Mens Rea Question: Negligence or Misconduct?**

### **4.1 The tension in the case law**

The Supreme Court's formulation is categorical: citing such judgments without verification is misconduct. Read literally, it makes non-verification misconduct whatever the advocate's state of mind. That sits uneasily with a long line of service-law authority. In *Union of India v. J. Ahmed*<sup>6</sup>, the Court held that misconduct implies more than an error of judgment, carelessness or negligence in the performance of duty, and that a lapse becomes misconduct only when it is gross or habitual. The same graduated approach appears in the law of professional negligence, where *Jacob Mathew v. State of Punjab*<sup>7</sup> required gross negligence or recklessness before criminal liability could attach to a professional's failure.

There are three ways to read the 2026 holding. On a strict-liability reading, any unverified citation that proves false is misconduct. On a recklessness reading, failing to verify generated material is misconduct because the risk is now well known and a professional who ignores it consciously disregards it. On a graded reading, the holding establishes that non-verification is a breach of professional duty, and the Bar Council then decides, on culpability, whether the

breach is misconduct warranting suspension or removal, or a lesser lapse warranting reprimand or correction.

4.2 Why strict liability is the wrong reading

A strict-liability rule would be easy to apply and would deter. But it would erase morally important differences, and it would sit badly with Section 35's own structure, which offers dismissal, reprimand, suspension and removal precisely so that sanction can track gravity. An advocate who cross-checked every authority against a reputable database and was misled by a mischaracterised headnote is not in the same position as one who pasted unread output into a pleading. A rule that treats them identically invites two bad outcomes: disproportionate punishment of the diligent, and a loss of the stigma that should attach to the genuinely reckless.

4.3 Why pure negligence is also the wrong reading?

The opposite error is to treat every verification failure as ordinary carelessness. Since the Avianca episode of 2023 and a stream of Indian and foreign rulings, the hazard of fabricated output has been publicised in every bar association in the country. A lawyer who files generated authorities today without checking them is not merely failing to take reasonable care; they are ignoring a specific and notorious risk. That is the core of recklessness. The standard of what counts as reasonable verification is therefore rising over time, and the Bar Councils should say so openly.

4.4 A culpability ladder

The paper proposes that the Bar Council of India adopt a culpability ladder, with the question asked at each rung being what the advocate actually did and knew.

| Tier | State of mind         | Typical facts                                                                  | Characterisation        | Suggested response                                                   |
|------|-----------------------|--------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------|
| 1    | Negligent, good faith | Some verification attempted; one real case mischaracterised; prompt correction | Lapse in diligence      | Caution or reprimand; costs where the court incurred waste; training |
| 2    | Reckless              | Generated authorities filed without any check; no supervision of a             | Professional misconduct | Reprimand with a recorded finding; short suspension for repeat       |

|   |                                                 | junior or tool                                                                                      |                                                                             | conduct                                                               |
|---|-------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 3 | Reckless<br>after<br>warning, or<br>concealment | Same lapse repeated;<br>denial or delay after the<br>court raises it; shifting<br>blame to the tool | Aggravated<br>misconduct                                                    | Suspension for a<br>substantial period                                |
| 4 | Knowing                                         | Deliberate invention or<br>deliberate presentation<br>of known-false authority                      | Serious<br>misconduct, with<br>possible contempt<br>or criminal<br>exposure | Removal from the roll;<br>referral to the court for<br>further action |

The tiers turn on four factors, which the Rules should list expressly: the verification steps actually taken; the advocate's candour once the problem surfaces; whether the conduct is a first or repeated occurrence; and the advocate's role and seniority, since a senior or Advocate-on-Record who signs carries a heavier responsibility than a junior working under instruction. The ladder also tells advocates what to do. Prompt, honest correction mitigates, whereas defending a fabricated citation is itself an aggravating act.

#### 4.5 Two refinements

First, outcome should not drive the tier. Whether the fabricated authority changed the court's decision is largely a matter of luck, and it belongs in the remedy discussion of Section 8, not in the assessment of fault. Second, the duty should extend to the second failure mode identified in Section 2.1. An advocate who confirms that a case exists but does not check what it held has still not verified the authority. Any rule or commentary should say that verification covers existence, accuracy of citation, and fidelity of the proposition attributed to the case.

### 5. Judicial Accountability For Hallucinated Material

#### 5.1 The asymmetry

The Supreme Court has called reliance on fabricated precedent a serious lapse on the part of a judge, but a lapse is not a category of liability<sup>8</sup>. The Advocates Act, 1961 does not apply to a judge in office, so the disciplinary architecture of the previous two sections is unavailable. What replaces it is a patchwork whose components were designed for corruption, incapacity and gross impropriety, not for a failure to check a citation. The question is whether that

patchwork can respond proportionately.

## 5.2 The available channels

For judges of the Supreme Court and the High Courts, the formal route is removal for proved misbehaviour or incapacity under Articles 124(4) and 217 of the Constitution of India, operationalised through the Judges (Inquiry) Act, 1968. It requires a motion in Parliament, an inquiry committee and a special majority. It is, by design, a remedy of last resort. Prosecution of a sitting judge needs the sanction of the Chief Justice of India, following *K. Veeraswami v. Union of India* (1991)<sup>9</sup>. Neither mechanism has any gradation, and neither is a realistic response to a first-time verification failure.

Below that sits a set of soft instruments. The Restatement of Values of Judicial Life<sup>10</sup>, adopted by the Supreme Court in 1997, sets out ethical expectations, and the in-house procedure developed in the late 1990s allows the Chief Justice of India or of a High Court to examine complaints against judges, through a preliminary inquiry and, if needed, a committee of judges. Its outcomes range from advice and withdrawal of judicial work to a recommendation for removal. It was upheld in *Additional District and Sessions Judge 'X' v. Registrar General, High Court of Madhya Pradesh*<sup>11</sup>. It is better suited to a graded response than the Judges (Inquiry) Act, but it is confidential, discretionary and has no published standards for technology-related lapses. The Bangalore Principles of Judicial Conduct<sup>12</sup>, which India has helped to shape, list competence and diligence as a core value, and a duty to verify what one relies on follows naturally from it. The Restatement, however, is silent on technology.

For judges of the district judiciary, the picture is more direct. Article 235 of the Constitution of India vests control over district courts and subordinate courts, including discipline, in the High Court. A trial judge who relies on fabricated authority can therefore be addressed through administrative-side counselling, adverse remarks in the annual confidential report, or, in serious cases, disciplinary proceedings under the applicable service rules. This is the strongest channel in the system, and the Kerala policy discussed in Section 7 attaches to it.

| Decision-maker | Source of authority             | Available response                                               | Fit for AI-verification lapses                             |
|----------------|---------------------------------|------------------------------------------------------------------|------------------------------------------------------------|
| Advocate       | Advocates Act, 1961, Section 35 | Reprimand, suspension, removal; costs; contempt in extreme cases | Good in principle; needs graded rules and faster procedure |

|                                    |                                                          |                                                 |                                                               |
|------------------------------------|----------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------|
| District or magistrate-level judge | Article 235; State service and conduct rules             | Counselling, remarks, disciplinary action       | Strongest channel; needs standards and a model policy         |
| High Court judge                   | Article 217; in-house procedure; Judges (Inquiry) Act    | Advice, withdrawal of work, in extremis removal | Poor; in-house is discreet and ungraded; statute is too heavy |
| Supreme Court judge                | Article 124(4); in-house procedure; Judges (Inquiry) Act | Same as above                                   | Poor, for the same reasons                                    |

### 5.3 Error or breach of duty?

Any accountability proposal must respect a settled principle. A judge is not answerable for an incorrect view of the law, which is the business of appeals. In *Union of India v. K.K. Dhawan*<sup>13</sup>, the Supreme Court said that action can be taken for a judicial or quasi-judicial act only where there is something beyond error, such as conduct lacking good faith, recklessness, gross negligence or a failure to observe conditions essential to the exercise of the power. The Court restated the point for judicial officers in *Ramesh Chander Singh v. High Court of Allahabad*<sup>14</sup>. That principle does not insulate a hallucinated citation, because a fabricated authority is not a wrong view of law. It is a defective factual premise, the citation of something that is not there. At the same time, the principle suggests the right culpability threshold, which parallels the ladder proposed for advocates. A judge who copies in good faith an authority supplied by counsel, after the ordinary checks a busy court can make, commits an error corrected on appeal. A judge who personally generates and adopts authorities without checking, or who persists after being alerted, breaches the duty of diligence. And the position is different again where a decision rests on fabricated material that a judge supplied in order to reach a preferred result, which is a matter of integrity.

### 5.4 A proposed accountability ladder for judges

The paper suggests a graded structure that protects independence by focusing on process, namely what the judge did to verify, and not on outcome.

1. **Corrective layer.** The appellate or revisional court sets the decision aside or corrects it and records the nature of the defect in its order, which is itself a deterrent and creates a public record.
2. **Administrative layer.** For district judges, the High Court on its administrative side

should treat a first, good-faith lapse as a training matter and record it in a confidential file for supervisory purposes. For High Court and Supreme Court judges, the Chief Justice may use the in-house procedure to counsel the judge informally.

3. **Disciplinary layer.** Reckless, repeated or concealed reliance on fabricated authority, or any knowing use, should be treated as misconduct under the relevant service rules for the district judiciary and referred to the in-house procedure for the higher judiciary.
4. **Institutional layer.** Courts should not leave the burden to individual judges alone. Registry or research-cell verification of authorities cited in judgments, particularly in the Supreme Court and High Courts, spreads responsibility sensibly.

The design reflects a principle that a verification duty owed by judges does not sit comfortably with punishment-first accountability. Its purpose is reliability. The ladder therefore starts with correction and training and escalates with culpability, which is also consistent with the way the Court has approached judicial error in the past.

## 6. Disclosure duties: what should India require?

### 6.1 The comparative picture

Jurisdictions have answered the disclosure question differently, and the differences are instructive.

**United States.** There is no single national rule. Following the Avianca sanction<sup>15</sup>, individual federal judges began issuing standing orders requiring lawyers to certify whether generative AI was used in a filing and that a human verified its output, an early example being the order of Judge Starr in the Northern District of Texas in 2023. Other courts concluded that disclosure orders were unnecessary because Rule 11 of the Federal Rules of Civil Procedure already requires a reasonable inquiry into the law and facts, and that a new rule would single out one tool. At the professional level, the American Bar Association's Formal Opinion 512 (2024) applies existing duties of competence, confidentiality, communication, candour and supervision to generative AI without imposing a general duty to disclose.

**United Kingdom.** The response has been guidance rather than a disclosure rule. The judiciary's published guidance for judicial office holders reminds judges that they remain personally responsible for material produced in their name, and the Divisional Court's decision in *R (Ayinde) v. London Borough of Haringey*<sup>16</sup> warned that giving false material to a court, including through the careless use of AI, can attract regulatory referral and, in the worst cases, contempt or criminal proceedings. The emphasis falls on existing professional duties and the leadership responsibility of heads of chambers and managing partners.

**Canada and New Zealand.** The Federal Court of Canada issued a notice requiring parties to declare when AI has been used to create or generate content in filings. New Zealand's Guidelines for Use of Generative AI in Courts and Tribunals (December 2023) address lawyers, litigants and judges in separate guidance and stress verification and confidentiality.

The common thread is that verification is the real duty. Disclosure is used, where used at all, as a way of signalling that the duty has been understood and of alerting the court and the other side to a risk.

## **6.2 The case for a mandatory AI-use declaration**

Proponents offer three arguments. Disclosure helps a court calibrate its scepticism and tells the opposing party where to look. It creates a record that makes later findings of misconduct easier. And it deters, because an advocate who must write the words "generative AI was used" is likely to think harder about checking. A Cambridge-published study<sup>17</sup> of generative AI use by judges in Latin America and India, discussed in Data & Policy, argues for mandatory disclosure to parties whenever generative AI is used in a judicial process.

## **6.3 The case against a blanket rule**

The objections are also strong. AI is embedded in everyday tools, including search features in legal databases, translation, transcription and grammar checking. A blanket disclosure rule is therefore either over-inclusive, requiring declarations for trivial uses, or vague, inviting inconsistent compliance. It can also create false assurance. A declaration that AI was used says nothing about whether the output was checked, and a declaration that it was not used may simply be untrue. And a rule triggered by the tool rather than the risk is a poor fit for Indian courts, where a patchwork of local orders could multiply quickly.

## **6.4 A verification certificate as the better design**

The paper recommends shifting the object of the rule from the tool to the duty. Instead of asking "was AI used?", the court should ask the signing advocate to certify the thing that matters:

1. That every authority, statutory provision, quotation, and legal proposition contained in this filing has been verified against an authentic reporter or official primary legal source, for which the signing advocate assumes non-delegable personal responsibility; and
2. That where generative software or automated research tools were deployed to discover,

compile, or draft legal submissions, human verification of the primary source has occurred prior to filing, and the signing advocate assumes sole professional responsibility for the fidelity of all citations presented.

This catches the real risk, covers all drafting methods, does not require disclosure of innocuous tools, and attaches a personal professional representation that can be tested if it proves false. A false certificate becomes an independent act of misconduct, and the Bar Council ladder in Section 4 handles it. Courts can implement the certificate through practice directions, under the Supreme Court's rule-making power in Article 145 and the High Courts' rule-making powers, without waiting for legislation. In the Supreme Court it would fit naturally alongside the existing responsibilities of Advocates-on-Record.

### **6.5 Disclosure in judgments**

For judges, transparency has a different rationale. Litigants are entitled to know the basis on which they were decided, and a judgment is a public record. The paper suggests that where a court uses generative AI for a substantive purpose, such as researching or formulating reasoning, a short statement to that effect should appear in the judgment, whereas routine uses such as transcription or translation can be governed by a general published policy. Courts already flag machine-translated versions of judgments, so the principle is familiar. Given the Kerala policy's prohibition on using AI tools for findings, reliefs and orders<sup>18</sup>, this recommendation is chiefly for the higher courts, whose policies are not yet as developed.

### **6.6 A note on confidentiality**

Disclosure and confidentiality pull in opposite directions. Court records contain sensitive personal data, and the guidance from the Kerala High Court and others discourages uploading it to public cloud tools. A disclosure regime must therefore be paired with a clear instruction that case material is not to be entered into tools without adequate safeguards, whichever party is using them.

## **7. The subordinate judiciary and the Kerala policy**

### **7.1 Why the trial courts matter most**

The Supreme Court's AI decisions arise from tribunals and appellate proceedings, where reasoned judgments are written over weeks and counsel are experienced. The risk profile of a trial court is different. A Judicial Magistrate First Class deals daily with bail, remand, summons, cognizance and interim orders, often within hours, on written submissions that may

be drafted by a junior or by a litigant in person, and with limited research support. Citations in these submissions are rarely checked by an opposing counsel who may not be present. A fabricated precedent that enters a bail order in a district court can govern a person's liberty before any appellate court sees it. The subordinate judiciary is therefore where the verification duty is hardest to discharge and where the consequences are most immediate.

## 7.2 What the Kerala policy does

In July 2025 the Kerala High Court issued the Policy Regarding Use of Artificial Intelligence (AI) Tools in District Judiciary, circulated by an Official Memorandum dated 19 July 2025 that asks all District Judges and Chief Judicial Magistrates to ensure strict compliance.<sup>19</sup> The policy applies to members of the district judiciary, the employees assisting them, and interns and law clerks, regardless of the time and place of use and whether the tool is on a personal, court-owned or third-party device<sup>20</sup>. Its scope extends beyond generative tools to all AI tools, including databases that use AI to give access to case law and statutes.<sup>21</sup>

Its operative provisions are as follows. First, AI tools may not be used to arrive at any findings, reliefs, orders or judgments under any circumstances, because responsibility for the content and integrity of a judicial order lies fully with the judge<sup>22</sup>; the preamble states the same aim, that AI should never substitute for decision-making or legal reasoning. Second, cloud-based services are to be avoided except “Approved AI Tools” cleared by the High Court of Kerala or the Supreme Court of India, because case facts, personal identifiers and privileged material entered into them may be accessed or reused by the provider<sup>23</sup>. Third, even for approved tools, outputs including legal citations and references must be meticulously verified by judicial officers, a requirement that expressly covers AI-enabled case-law and statute databases<sup>24</sup>; translations must be verified by qualified translators or by the judges themselves<sup>25</sup>. Fourth, courts must keep a detailed audit of each use of AI tools, recording the tool used and the human verification process adopted<sup>26</sup>, personnel must attend training organised by the Judicial Academy or the High Court, and errors noticed in the output of approved tools must be reported to the Principal District Court and forwarded to the High Court’s IT Department<sup>27</sup>. Fifth, a violation may result in disciplinary action, with the rules on disciplinary proceedings prevailing<sup>28</sup>.

The policy has genuine strengths. It is issued by the High Court, which controls the district judiciary under Article 235, and is directed to the officers it governs. It draws a clear red line around judicial reasoning. It addresses the confidentiality problem through the approved-tool requirement. It treats AI as a category, which avoids obsolescence. And it is unusual in

requiring an audit record of the human verification actually performed.

### **7.3 What it does not do**

The policy also has limits that the Section 3 and Section 5 analysis exposes. First, it governs judges, their staff, interns and law clerks, and not the advocates who appear before them, so it does not reduce the inflow of fabricated citations. Second, its verification requirement is directed at the output of AI tools that the court itself uses. It does not state what a judicial officer must do when a citation supplied by counsel or a litigant in person cannot be found or appears to be misdescribed. A magistrate who has used no AI tool therefore has no express instruction under the policy, although the decisions discussed in Section 2.2 show that this is a real route by which fabricated authority reaches a decision-maker. Third, the policy provides for consequences in a single sentence: a violation may result in disciplinary action under the rules governing disciplinary proceedings. It does not distinguish a good-faith lapse from reckless reliance or knowing misuse. The audit, training and error-reporting provisions are institutional safeguards, not graded responses. A lapse therefore falls into the general service-rules machinery without guidance on proportionality, which is the gap the ladder proposed in Section 5.4 is meant to fill.

### **7.4 A point-of-reliance rule**

An operational suggestion for trial courts follows from the verification principle. Because most citation risk arises at the moment a judge relies on an authority, the rule should be a point-of-reliance rule: no authority is to be relied on in an order unless the judge or a person acting under the judge's direction has located the report or statute and confirmed the proposition. For routine interim orders the court may simply decline to rely on a citation it cannot readily verify and ask counsel to supply the report. This costs little. A magistrate who adopts the practice of asking for a copy of an unfamiliar authority does what a careful judge has always done, but the practice should now be made explicit and linked to the policy.

To ensure that a point-of-reliance requirement does not disproportionately penalize legal aid counsel, junior advocates, or under-resourced litigants who lack subscriptions to commercial legal databases, this gatekeeping rule must be supported by court-annexed verification infrastructure. District Courts must leverage State Judicial Academies and the e-Courts Project to provide digital kiosks and open-access legal repositories (such as the Supreme Court's e-SCR portal and High Court digital libraries) within court complexes. Furthermore, subordinate judges encountering questionable authorities should be empowered to utilize institutional

verification cells attached to District Legal Services Authorities (DLSAs) or court registries before drawing adverse inferences against counsel or refusing urgent interim relief.

### **7.5 Should other States adopt uniform rules?**

Article 235 gives each High Court its own administrative control, so policies will diverge unless coordinated. The argument for uniformity is strong: advocates practice across States, litigants and judges are transferred, the technology is the same everywhere, and inconsistent rules breed confusion and forum-specific compliance traps. The argument against is also real. High Courts value their administrative autonomy, resources and infrastructure vary, and a policy suited to Kerala's digital readiness may not suit a court without reliable connectivity.

The paper recommends a middle path: a model policy prepared at the national level, for instance by the Supreme Court's e-Committee or its AI committee in consultation with the High Courts, which each High Court adopts by administrative resolution and adapts for local conditions. The model should contain a common core: the prohibition on AI tools for findings, reliefs, orders and judgments, the verification and point-of-reliance rules, the confidentiality rule, mandatory training through the State judicial academies, and the culpability-based accountability ladder. Local variation would then be confined to infrastructure and procedure. This keeps the benefit of Kerala's early lead while ensuring that a litigant's protection does not depend on the State in which the case happens to be filed.

## **8. The void-orders doctrine: "no decision in the eyes of the law"**

### **8.1 What the Court has said**

*In Pooja Ramesh Singh, the Supreme Court treated orders infected by non-existent precedent as nullities—pronouncing them 'no decision in the eyes of the law'. Invoking an analogy to an imperceptible leak of poisonous gas that contaminates the adjudicatory ecosystem, the Court signaled a strict zero-tolerance approach toward hallucinated authorities. While this forceful rhetoric performs a vital expressive function, translating that posture into a mechanical rule of automatic nullification imports the doctrine of absolute voidness into a sphere traditionally governed by standard appellate review and curative correction.*

### **8.2 Finding the doctrinal home**

The Indian law of void orders has recognized categories. A decree passed by a court without inherent jurisdiction is a nullity that can be challenged even in execution, as held in *Kiran Singh v. Chaman Paswan*<sup>29</sup>. A judgment obtained by fraud is non-est and may be ignored, per

*S.P. Chengalvaraya Naidu v. Jagannath*<sup>30</sup>. A judgment that breaches the principles of natural justice may be set aside, and the Court's decision in *Rupa Ashok Hurra v. Ashok Hurra*<sup>31</sup> allows even a final judgment to be reopened through a curative petition for a gross abuse of process or a violation of natural justice.

A decision resting on a hallucinated precedent fits none of these neatly. It is not a jurisdictional defect. It is not fraud on the part of the court. It is also not a decision *per incuriam*, which concerns the failure to follow binding authority that exists, whereas here the court followed authority that does not. The best candidates are three. First, an error apparent on the face of the record, available in civil proceedings through review under Order 47 of the Code of Civil Procedure. Second, a breach of the duty to give reasons, which the Court emphasized in *Kranti Associates v. Masood Ahmed Khan*<sup>32</sup>, because a decision whose stated reasons include non-existent law is not a reasoned decision in the true sense. Third, a denial of a fair hearing, because the parties were not given the opportunity to address the law that actually governs.

The paper's view is that the third and second characterizations are the most principled. They explain the intuition behind the Court's reaction, that a decision built on invented law is no real adjudication, without extending nullity to every mistaken citation.

### **8.3 The collision with finality and res judicata**

The doctrine of res judicata in Section 11 of the Code of Civil Procedure, 1908 requires a matter to have been heard and finally decided by a court competent to try it. If tainted orders are truly void, they do not found res judicata, and any party may attack them collaterally at any time. That would unsettle the finality on which commerce, property and personal liberty depend. In criminal matters the point is sharper. Finality of an acquittal is protected by constitutional guarantees against double jeopardy, and the courts' powers to alter a signed judgment are limited, so a rule that revives concluded proceedings must be handled with great care.

A blanket zero-tolerance rule also gives disproportionate weight to peripheral material. A long judgment may cite an irrelevant, non-existent case in a passing footnote while its operative reasoning rests on genuine and sufficient authority. Setting that decision aside in its entirety wastes the parties' time and resources, and rewards a party who wishes to defeat an otherwise sound ruling.

### **8.4 A materiality test and a remedial toolkit**

The paper proposes that the label "no decision in the eyes of the law" be reserved for orders in which fabricated authority was material, in the sense that the reasoning would not stand without

it, and that it be accompanied by a structured set of remedies.

1. **Materiality and severability.** The reviewing court asks whether the operative reasoning depends on the fabricated authority. If it does not, the decision may stand, with an order for correction and a finding recorded for the disciplinary and administrative processes.
2. **Direct challenge, not collateral attack.** The defect should be raised through appeal, review, revision or the constitutional jurisdiction of the High Courts, within the ordinary limits of time, with condonation where the party could not have discovered it earlier. In criminal matters the corresponding inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and revisional powers are the appropriate vehicle.
3. **Remand over quashing.** Where the defect is material, the preferred remedy is remand for fresh decision on genuine law, which protects the parties' rights on the merits. Outright annulment should be reserved for cases where remand would serve no purpose.
4. **Protection of third parties.** Where rights of bona fide third parties have intervened, such as completed transfers or implemented assessments, the court should mold relief to avoid injustice.
5. **Costs and referral.** The party or advocate who supplied the fabricated authority should bear the costs of the wasted proceedings, and the matter should be referred under the protocol in Section 3.4.

### 8.5 Why this matters beyond doctrine

The Court's strong language performs an expressive function. It signals that fabricated law is intolerable and puts every decision-maker on notice. The paper does not contend that the signal is wrong. It argues that the signal can be preserved while the remedy becomes more precise, so that the legitimacy gained by firmness is not lost through instability. A rule that nullifies correctly where the defect is real, and corrects where it is not, serves the integrity of adjudication better than one that nullifies indiscriminately.

## 9. Recommendations and conclusion

### 9.1 Recommendations

The paper's proposals follow from the single principle of a non-delegable verification duty and are directed at the bodies that can act on them.

| S.no | Recommendation                                                                                                                                               | Addressed to                                          | Section  |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|----------|
| 1    | Add a technology-neutral rule on verification, supervision, candour and confidentiality to the duties-to-the-court chapter of the Bar Council of India Rules | Bar Council of India                                  | 3.3      |
| 2    | Adopt a four-tier culpability ladder, with listed factors, to separate lapses from misconduct and to scale sanctions                                         | Bar Council of India, State Bar Councils              | 4.4      |
| 3    | Require courts that find fabricated or misdescribed authority to record the finding and refer it to the State Bar Council                                    | Supreme Court, High Courts (practice directions)      | 3.4      |
| 4    | Introduce a verification certificate for signing advocates in place of a blanket AI-use disclosure rule                                                      | Supreme Court, High Courts (rules)                    | 6.4      |
| 5    | Require a short statement in judgments where generative AI was used for a substantive purpose                                                                | Supreme Court, High Courts                            | 6.5      |
| 6    | Establish a graded judicial accountability ladder starting with correction and training and escalating with culpability                                      | Supreme Court, High Courts (administrative side)      | 5.4      |
| 7    | Prepare a national model AI policy for the district judiciary, with a point-of-reliance verification rule, for adoption by each High Court                   | e-Committee, High Courts                              | 7.4, 7.5 |
| 8    | Reserve the "no decision in the eyes of the law" label for material contamination and prefer remand, with costs and referral                                 | Courts in exercise of appellate and revisional powers | 8.4      |

The proposed accountability framework should distinguish between consequences for advocates and remedies concerning judicial orders. For advocates, the response may include corrective measures, costs where legally justified, or disciplinary proceedings in accordance with the applicable law. For judicial orders, the primary inquiry should be whether reliance on the fabricated or misrepresented authority materially affected the reasoning or outcome and what corrective remedy is appropriate. Personal judicial accountability must remain a separate inquiry governed by the applicable constitutional and institutional mechanisms. Thus, the framework should maintain a common commitment to verification while ensuring that the

consequences of a breach remain proportionate, role-specific and consistent with the safeguards of the legal system.

## 9.2 Limitations and future research

This study is primarily doctrinal in nature and relies on an analysis of statutory provisions, judicial pronouncements, professional conduct rules, judicial policies, and relevant comparative materials. Except where noted, the authorities cited have been checked against primary sources.

The rapidly evolving nature of generative artificial intelligence presents certain limitations. Judicial approaches, professional standards, and institutional policies concerning the use of AI-generated legal content may continue to develop, requiring periodic reassessment of the conclusions drawn in this paper. Further, the study does not employ empirical methods, such as interviews with members of the judiciary or the legal profession, or an examination of the actual frequency of AI-generated errors in Indian legal proceedings. Accordingly, the proposed framework is normative and doctrinal, intended to provide a principled basis for accountability rather than to quantify the prevalence of such errors in practice.

Future work should test the culpability ladder against actual disciplinary outcomes once the Bar Council of India's committee reports, and should study empirically how trial courts handle unverifiable citations. Questions of liability for the vendors of AI research tools, of the effect of AI on evidence and expert testimony, and of bias in algorithmic decision support lie outside this paper's scope.

## 9.3 Conclusion

The Supreme Court has been right to react firmly to fabricated law. But firmness is not a framework, and the law currently asks advocates to meet a standard that has not been defined, asks judges to meet a standard that no-body is assigned to enforce, and treats the consequences for decisions with a blunt instrument. A durable framework requires three things. It should state the duty plainly, which is to verify what you place before or rely on in a court. It should scale responsibility to culpability, so that the careless are corrected and the reckless and deceptive are sanctioned. And it should choose remedies that protect the integrity of adjudication without sacrificing the finality that makes adjudication worth having. The tools for each already exist in the Advocates Act, the constitutional provisions on the judiciary, the courts' rule-making powers and the doctrines of review and remand. What remains is to assemble them deliberately before the next case forces improvisation.

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- <sup>1</sup>(2026 INSC 668)
- <sup>2</sup>2026 INSC 947
- <sup>3</sup>SLP (Civil) No. 7575 of 2026
- <sup>4</sup>Civil Appeal Nos. 1461 to 1468 of 1974
- <sup>5</sup>1998 (4) SCC 409
- <sup>6</sup>AIR 1979 SUPREME COURT 1022
- <sup>7</sup>AIR 2005 SUPREME COURT 3180
- <sup>8</sup>Pooja Ramesh Singh v. Jammu and Kashmir Bank Ltd. & Anr (2026 INSC 668)
- <sup>9</sup>1991 SCR (3) 189
- <sup>10</sup>*16-point code of judicial ethics adopted by the Full Court of the Supreme Court of India on May 7, 1997, and later ratified at the Chief Justices' Conference in 1999.*
- <sup>11</sup>2015 AIR SCW 391
- <sup>12</sup>*Endorsed by the United Nations Economic and Social Council (ECOSOC) in Resolution 2006/23*
- <sup>13</sup>1993 SCR (1) 296
- <sup>14</sup>2007 AIR SCW 2251
- <sup>15</sup>Mata v. Avianca, Inc. (678 F. Supp. 3d 443)
- <sup>16</sup>[2025] EWHC 1383 (Admin)
- <sup>17</sup>*Artificial intelligence at the bench: Legal and ethical challenges of informing—or misinforming—judicial decision-making through generative AI by David Uriel Socol de la Osa and Nydia Remolina*
- <sup>18</sup>Clause 4.6 of the Kerala Policy, High Court of Kerala, Official Memorandum No. HCKL/7490/2025-DI-3-HC (19 July 2025), enclosing the Policy Regarding Use of Artificial Intelligence (AI) Tools in District Judiciary.
- <sup>19</sup>High Court of Kerala, Official Memorandum No. HCKL/7490/2025-DI-3-HC (19 July 2025), enclosing the Policy Regarding Use of Artificial Intelligence (AI) Tools in District Judiciary.
- <sup>20</sup>cl. 2.1, 2.3
- <sup>21</sup>cl. 2.2, 3.3
- <sup>22</sup>cl. 4.6
- <sup>23</sup>cl. 3.4, 4.2
- <sup>24</sup>cl. 4.3
- <sup>25</sup>cl. 4.4
- <sup>26</sup>cl. 4.8
- <sup>27</sup>cl. 4.10
- <sup>28</sup>cl. 5
- <sup>29</sup>1955 SCR 117
- <sup>30</sup>1994 SCC (1) 1
- <sup>31</sup>AIR 2002 SC 177
- <sup>32</sup>SLP (Civil) No.20428 of 2007