

## LEGAL IMPLICATIONS OF DEEFAKE IN VARIOUS COUNTRIES WITH SPECIAL EMPHASIS TO INDIAN LAWS

*Aishwary Thapliyal<sup>1</sup>*

### ABSTRACT

This article deals with position and legal implications of the offence of deepfake in various world countries with the special emphasis made towards Indian laws. Like in US there are laws related to deepfake, China also has the laws related to deepfake which are one of the strictest laws related to deepfake, European Union has also has its specific laws but there is no specific law related to deepfake in India. India lacks behind in this context which is due to an old IT Act of year 2000.

**Keywords-** *deepfake, laws, strictest, IT Act, European Union, China, US*

### I. Introduction

Recently there was picture or video which was circulating on social media platform Instagram of Indian Actress Rashmika Mandana which highlighted the internet as it was found to be fake. Actress also confirmed through her social media handles that it was fake which was created through a deepfake technology and requested the Government to act on it. Many Indian Actors and Actress claimed that a legal action should be taken against it.

In world scenario if we talk about deepfake there is video where Barack Obama has used rude words against Donald Trump or Mark Zuckerberg brag about having total control of billions of people stolen data or the character Jon Snow's moving an apology for the dismal ending of Games of Thrones. These all incidents are example of deepfake. In September 2019 AI firm Deeprtrace found 15000 deepfake videos online in which 96% were pornographic and 99% were of faces from female celebrities. Danielle Citron, Professor of law at Boston University said that "Deepfake Technology is being weaponized against women." Through deepfake technology you can create entire fictional photo from scratch. Not only image but also audio

---

<sup>1</sup> Law Student, Law College Dehradun, Uttaranchal University

can be created through it. In 2018 US researchers conduct the study that how to spot deepfake, they discovered that they don't blink normally.<sup>2</sup>

Andrew Jenks, director of Media Provenance Project at Microsoft told IEEE that deepfake will have effect on 2024 Presidential Election of US and our goal is to mitigate its impact as much as possible. US Federal Communication have moved to made AI generated voice in robocalls illegal since when many voters of New Hampshire have received an AI generated fake audio of President Joe Biden to not to cast their vote in state's Democratic primary and to wait until general election which will held in November.<sup>3</sup>

Many high-profile cases of deepfakes and privacy infringement are highlighted over the Internet which have gained public attention, this case involves many public figures, the most recent example of this is sexually explicit AI generated image of Taylor Swift which was on X which attracted more than 45 million views, 24000 reposts and hundreds and thousands of likes and bookmarks for nearly 17 hours before being shut down. Despite being shut down; this image spread and was reposted across accounts and over many social platforms which caused a significant damage to her image<sup>4</sup>.

## **II. Position of US LAWS on Deepfake**

US is aiming to draft new laws which aims to protect against harmful deepfake content, and these laws are put forwarded by US Federal Trade Commission (FTC). The commission chairman clearly said that "Fraudsters are using AI tools to impersonate individual with eerie precision and at much wider scale. With voice cloning and other AI driven scams on the rise, protecting Americans from impersonator fraud is more critical than ever. He also said that "our proposed expansions to the final impersonation rule would do just that, strengthening the FTC's toolkit to address AI enabled scams impersonating individuals."<sup>5</sup>

---

<sup>2</sup> *What are deepfakes – and how can you spot them?* (2020) *The Guardian*. Available at: <https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them> (Accessed: 12 April 2024).

<sup>3</sup> Adee, S. (2024) *What are deepfakes and how are they created?*, *IEEE Spectrum*. Available at: <https://spectrum.ieee.org/what-is-deepfake> (Accessed: 12 April 2024).

<sup>4</sup> Jodka, S.H. (2024) *Manipulating reality: The intersection of Deepfakes and the law* | *reuters*. Available at: <https://www.reuters.com/legal/legalindustry/manipulating-reality-intersection-deepfakes-law-2024-02-01/> (Accessed: 12 April 2024).

<sup>5</sup> Torkington, S. (2024) *The US is drafting new laws to protect against AI-generated deepfakes*, *World Economic Forum*. Available at: <https://www.weforum.org/agenda/2024/02/ai-deepfakes-legislation-trust/> (Accessed: 12 April 2024).

In December 2020, US passed a Public Law 116-258-December 23, 2020, named **“IDENTIFYING OUTPUTS OF GENERATIVE ADVERSARIAL NETWORKS ACT”** which has an objective to direct the Director of the National Science Foundation to support research on the outputs that may be generated by generative adversarial networks, otherwise known as deepfakes, and other comparable techniques that may be developed in the future, and other purposes. This Act include 6 sections in total in it, in which **Section 1** deals with short title, **Section 2** deals with Findings, **Section 3** deals with NSF support of Research on Manipulated or Synthesised Content and Information Security, **Section 4** deals with NIST Support for Research and Standards on Generative Adversarial Networks, **Section 5** deals with Report on Feasibility of Public- Private Partnership to Detect Manipulated or Synthesized Content and **Section 6** is where Generative Adversarial Network is defined.<sup>6</sup>

In the State of Texas, Virginia, and California these states have criminalized deepfake porn<sup>7</sup>.

### **III. Position of Chinese laws on Deepfake**

Position of Chinese government on the issue of Deepfake in clearly determined that they have enacted named **Deep Synthesis Provision** which are termed to be the one of the world's strictest laws on deepfake<sup>8</sup>. This law prohibits the creation of deepfake without the consent of the user and it also require the conformation that it was AI created content. Currently China is the only country to impose strict ban on the use of deepfake<sup>9</sup>.

### **IV. Position of other Countries on Deepfake**

1. **Singapore** has **Protection from Online Falsehoods and Manipulation Act (POFMA)** whose object and function is to counter the false statement which is spreading over

---

<sup>6</sup> (2021) *Identifying outputs of generative Adversarial Networks Act, December 23, 2020*. S.I: s.n. (PUBLIC LAW 116–258—DEC. 23, 2020).

<sup>7</sup> Ibid

<sup>8</sup> Fitri, A. et al. (2023) *China to pass the world's most comprehensive law on deepfakes*, *Tech Monitor*. Available at: <https://techmonitor.ai/technology/emerging-technology/china-is-about-to-pass-the-worlds-most-comprehensive-law-on-deepfakes> (Accessed: 12 April 2024).

<sup>9</sup> Quirk, C. (no date) *The High Stakes of Deepfakes: The Growing Necessity of Federal Legislation to Regulate This Rapidly Evolving Technology*, *Princeton University*. Available at: <https://legaljournal.princeton.edu/the-high-stakes-of-deepfakes-the-growing-necessity-of-federal-legislation-to-regulate-this-rapidly-evolving-technology/> (Accessed: 12 April 2024).

the country through Internet. This Act would counter the deep fake attack in the form of videos etc. during the period of election period for election manipulation<sup>10</sup>.

2. “The **South- Korean government** is also planning to bring the Act like **Singapore** to fight against Deep-fake in the country<sup>11</sup>. The **object** of the proposed bill was to amend the Act on **Press Arbitration and Remedies** which would allow court to impose damages **five times higher than for producing false or fabricated reports “with intention or gross negligence”** which breach the plaintiff’s right. This bill also required the media outlet to which also included Internet Service Provider to issue correction of error report. But the country will not pass this proposed bill as it received backlash from the criticizers who called it as to prevent their free speech”<sup>12</sup>.
3. The **Government of UK** has taken various measures to take control of the deepfake. The Government of UK has funded various research projects to detect the deepfake technology. It has also initiated various communications and awareness campaigns among the people to spread the threat and consequences of deepfake and threat it possesses. However, the UK **does not yet have** any legislation related to it, but the Government of UK has announced that deepfake regulation would be included in its **Online Safety Bill**<sup>13</sup>.
4. The **EU** called for increased research for the detection of deepfake and its regulation which will help in differentiating between Artificially generated content. European deepfake policy and regulatory mainly includes- **AI regulatory Framework, General Data Protection Regulation, Copyright Regime, e-commerce Directive, Digital service Act, Audio Visual Media Directive, Code of Practice on Disinformation, Action plan on Disinformation, & Democracy action plan**. **EU** has also proposed various laws which require social media companies to remove deepfakes and other disinformation from their respective social media platform. **EU** in June 2022 introduced the **Code of Practice on Disinformation** to suppress the issue of deepfake by **imposing fine of up to 6% of global revenue for its violation**. This code was

---

<sup>10</sup> Hemrajani, A. (2023) *China’s new legislation on deepfakes: Should the rest of Asia follow suit?– The Diplomat*. Available at: <https://thediplomat.com/2023/03/chinas-new-legislation-on-deepfakes-should-the-rest-of-asia-follow-suit/> (Accessed: 12 April 2024).

<sup>11</sup> Ibid

<sup>12</sup> Lim, S. (2021) *South Korea puts proposed ‘fake news law’ on ice after backlash*, *The Drum*. Available at: <https://www.thedrum.com/news/2021/10/04/south-korea-puts-proposed-fake-news-law-ice-after-backlash> (Accessed: 12 April 2024).

<sup>13</sup> Lawson, A. (2024) *A look at global deepfake regulation approaches*, *Responsible AI*. Available at: <https://www.responsible.ai/a-look-at-global-deepfake-regulation-approaches/> (Accessed: 12 April 2024).

initially introduced in 2018 as voluntary self-regulatory instrument but now it is supported by *Digital Service Act* which came into force in November 2022 whose has the objective to increase the monitoring of digital platform to prevent them from their misuse. In proposed EU AI Act, the deepfake providers will be subjected to transparency and had to disclose their requirements<sup>14</sup>.

### **V. Position and Legal Implications of Deepfake in India**

If the Position and Legal Implication of Deepfake is seen in the context of India, there is no specific laws which directly deals with the Deepfake<sup>15</sup>. But if someone commits the offence of Deepfake he can be punished under other Indian Laws. The Legal Implications of Committing the offence of Deepfake in India are-

#### **1- Violation of Fundamental Right i.e., Right to Privacy and Right to Bodily Privacy mention Under Article 21 of The Indian Constitution-**

*Right to Privacy and Right to Bodily Privacy* has been mentioned under Article 21 of Indian Constitution. *Right to Privacy* has been *recognized* in the case of *Justice KS Puttaswamy (Retd.) vs Union of India*<sup>16</sup> and *Right to Bodily Privacy* was *also recognized* in the same case. If anyone creates the deepfake image or video or audio of any individual he is certainly entering the hemisphere of individual's dimension of privacy without his consent which is illegal and for this entrance he shall be punished by the law.

#### **2- Violation of Fundamental Right i.e., Right to live with dignity mentioned under Article 21 of The Indian Constitution-**

Under Article 21 of Indian Constitution *Right to live with dignity* is recognized. To live with dignity *individual's reputation* shall not be harmed in any way. If offence of deepfake in committed against him, his reputation will tarnish all over the society.

#### **3- Provisions of Information Technology Act, 2000-**

---

<sup>14</sup> Ibid

<sup>15</sup> Bhaumik, A. (2023) *Regulating deepfakes and Generative AI in India: Explained, The Hindu*. Available at: <https://www.thehindu.com/news/national/regulating-deepfakes-generative-ai-in-india-explained/article67591640.ece> (Accessed: 12 April 2024).

<sup>16</sup> *Justice KS Puttaswamy (Retd.) vs Union of India*, 2019 (1) SCC 1

The offender who has committed the offence of deepfake can also be punished under the provisions of IT Act, 2000. Provision which can deal with the offence of deepfake are-

- a- **Section 66C of IT Act**- “this section deals with the punishment of identity theft which states the whoever fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with the imprisonment of either description for a term which may extend to three years and shall also be liable for fine which may extend to rupees one lakh”.

The deepfake offence can be dealt under the term mentioned in section i.e., ***any other unique identification feature of any other person.***

- b- **Section 66D of IT Act**- “this section deals with the punishment for cheating by personation by using computer resources, which means that whoever by means of any communication device or computer resource cheats by personating shall be punished with the imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.”

This section can be used to punish the offender when ***audio*** is made through deepfake.

- c- **Section 66 E of IT Act**- “This section deals with the punishment for violation of privacy which states that whoever, ***intentionally or knowingly captures, publishes or transmits the image*** of a private area or any person ***without his or her consent*** under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees or with both.”

The offence of deepfake clearly fulfils the ***essential ingredients*** of this section as the offender commits the offence intentionally or knowingly having mens’ recaptures, published, or transmits the image of private area or image of any person without taking his or her consent.

- d- **Section 67 of IT Act**- “This section deals with the punishment for publishing or transmitting obscene material in an electronic form which states that whoever ***publishes or transmits or causes to be published or transmitted in the electronic form***, any material which is ***lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained***

*or embodied in it*, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

The deepfake content which is of lascivious in nature, or which appeals to the prurient interest or its effect to deprave and corrupt person who is reading it or seeing it or hearing, then the person whoever has published that shall be held liable under this section.

- e- **Section 67 A of IT Act**-“This section deals with the punishment for publishing or transmitting of material *containing sexually explicit act, etc.*, which states that Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on the first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with the fine which may extend to ten lakh rupees.”

This section can be used to punish the offender who has created deepfake of pornographic nature or of any other sexually explicit act.

#### 4- **Provisions of Indian Penal Code, 1860-**

- a- ***Section 499 of IPC***- “This section states about the offence of defamation which states that whoever by words either spoken or intended to be read, or by signs or by visible representations, make or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, to defame that person.”

This section can be used by victim of deepfake offence to sue the offender of the deepfake as he is committing the offence of deepfake against him has caused harm whether physically or mentally and he has also harmed the reputation of the victim in the society.

- b- **Section 500 of IPC**- “this section states about the punishment for defamation which states that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”
- c- **Section 501 of IPC**- “this section states about ***the Printing or engraving matter knowing to be defamatory*** which states that whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

This section can be used to punish the offender of deepfake as he clearly knows that printing of the deepfake content of the individual will defame the victim but then also he has committed the offence.

## **VI. Conclusion**

If we clearly analyse the position of the various laws of the countries regarding deepfake, we can clearly observe that China has the strictest laws regarding deepfake. In Indian context, we have IT Act 2000 though it contains provision through which we can handle the offence of deepfake, but they are not enough for us to deal with this offence. As we are in the era which is AI dominated so there should be a separate legislation to deal with offence related to AI or the present IT Act should be amended as our Indian Laws are old to deal with these offences. Our laws are currently not enough to deal with the deepfake problem. So, if we implement stringent AI Laws in the country, we shall be able to curb the offence of deepfake from our country.

**BIBLIOGRAPHY**

(2021) *Identifying outputs of generative Adversarial Networks Act, December 23, 2020*. S.1: s.n. (PUBLIC LAW 116–258—DEC. 23, 2020).

Adee, S. (2024) *What are deepfakes and how are they created?* *IEEE Spectrum*. Available at: <https://spectrum.ieee.org/what-is-deepfake> (Accessed: 12 April 2024).

Fitri, A. *et al.* (2023) *China to pass the world's most comprehensive law on deepfakes*, *Tech Monitor*. Available at: <https://techmonitor.ai/technology/emerging-technology/china-is-about-to-pass-the-worlds-most-comprehensive-law-on-deepfakes> (Accessed: 12 April 2024).

Hemrajani, A. (2023) *China's new legislation on deepfakes: Should the rest of Asia follow suit?*,– *The Diplomat*. Available at: <https://thediplomat.com/2023/03/chinas-new-legislation-on-deepfakes-should-the-rest-of-asia-follow-suit/> (Accessed: 12 April 2024).

Jodka, S.H. (2024) *Manipulating reality: The intersection of Deepfakes and the law* | *reuters*. Available at: <https://www.reuters.com/legal/legalindustry/manipulating-reality-intersection-deepfakes-law-2024-02-01/> (Accessed: 12 April 2024).

Lawson, A. (2024) *A look at global deepfake regulation approaches*, *Responsible AI*. Available at: <https://www.responsible.ai/a-look-at-global-deepfake-regulation-approaches/> (Accessed: 12 April 2024).

Lim, S. (2021) *South Korea puts proposed 'fake news law' on ice after backlash*, *The Drum*. Available at: <https://www.thedrum.com/news/2021/10/04/south-korea-puts-proposed-fake-news-law-ice-after-backlash> (Accessed: 12 April 2024).

Quirk, C. (no date) *The High Stakes of Deepfakes: The Growing Necessity of Federal Legislation to Regulate This Rapidly Evolving Technology*, *Princeton University*. Available at: <https://legaljournal.princeton.edu/the-high-stakes-of-deepfakes-the-growing-necessity-of-federal-legislation-to-regulate-this-rapidly-evolving-technology/> (Accessed: 12 April 2024).

Torkington, S. (2024) *The US is drafting new laws to protect against AI-generated deepfakes*, *World Economic Forum*. Available at: <https://www.weforum.org/agenda/2024/02/ai-deepfakes-legislation-trust/> (Accessed: 12 April 2024).

*What are deepfakes – and how can you spot them?* (2020) *The Guardian*. Available at: <https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them> (Accessed: 12 April 2024).