

MORPHED AND AI-GENERATED INTIMATE IMAGES: CONSTITUTIONAL CHALLENGES TO BODILY DIGNITY UNDER THE INDIAN CRIMINAL FRAMEWORK

Haritima Singh¹; Arvind P. Bhanu²

¹ Research Scholar, Amity Law School, Noida, Uttar Pradesh

² Professor of Law and Research – Addl. Director/ Jt. Hol, Amity Law School, Noida, Uttar Pradesh

Email: haritima.singh@s.amity.edu, apbhanu@amity.edu.

ORCID iD: 0009-0008-5882-4201, 0000-0001-9392-3354

Abstract

The spread of morphed images and AI-generated deep fake intimate images has created a new breed of gendered harm that the Indian criminal order, based on a physical world of bodily capture and material obscenity, has become structurally ill-designed to cope with. The paper claims that non-consensual synthetic intimate imagery (NCSII) harms a constitutional interest Indian jurisprudence has identified with only relative specificity only recently: that of bodily dignity, understood as the confluence of bodily integrity, informational privacy, and decisional autonomy recognised in the case of *K.S. Puttaswamy v. Union of India*, which is a nine-judge bench. It contends that inherited scaffolding, obscenity-centred provisions mentioned in the Information Technology Act, 2000, the “modesty”-centred sexual offences carried forward almost verbatim into the Bharatiya Nyaya Sanhita, 2023, “and the notice-and-takedown architecture of intermediary regulation—misdescribes the wrong, conditions protection on a colonial vocabulary of female honour, and founders on the doctrinal puzzle that a synthetic image depicts no real body. The paper evaluates the constitutional tension between dignity and expression under Articles 19(1)(a) and 19(2), applies the four-pronged standard of proportionality, and examines the 2025 draft synthetic-information rules according to the doctrines of void-for-vagueness and overbreadth. Putting India into a comparatively fast-convergent comparative domain with that of the AI Act of the European Union, the Online Safety Act in the United Kingdom, the TAKE IT DOWN Act in the United States, the French and South Korean models of penal law suggests a dignity-based, consent-based, and gender-inclusive statutory crime supported by a platform-accountable regime. The argument’s normative core is that the constitutional lodestar must migrate from the protection of modesty to the protection of dignity.

Keywords: *bodily dignity; deepfakes; Article 21; informational privacy; Bharatiya Nyaya Sanhita; proportionality; non-consensual intimate imagery; intermediary liability.*

I. Introduction

A series of fake videos of prominent Indian women and sexually suggestive situations in the final months of 2023 went viral on social media within hours of their release, prompting a countrywide discussion on how a face could be effortlessly painted on a body that was not originally its own.³ The episodes were not aberrations but symptoms of a structural shift: generative artificial intelligence has collapsed the technical, financial, and temporal barriers that once made the convincing falsification of a person's sexual image a specialist undertaking. What used to take forensic expertise and access to a darkroom can now be accomplished with a smartphone, a publicly available image and a free application. The victim is almost always a woman; the harm is to what the Indian Constitution affirms, but the Indian criminal code has difficulty defining.

The damage caused by morphed and synthetically created intimate imagery cannot be reduced to the terms that have historically been provided by the law. It is not a principally a harm to reputation, though reputation suffers; not principally a harm to public morality, though obscenity statutes are routinely pressed into service; and not principally a harm to property or person in any conventional sense. It is, this paper argues, a harm to *bodily dignity*—the constitutionally cognisable interest each person holds in the integrity, representation, and authorship of their own embodied self. When a person's likeness is conscripted into a fabricated sexual act, the violation lies precisely in the expropriation of bodily identity: the self is made to appear to do what it never did, to be available in a way it never consented to be. That this body is, in the technical sense, “fake” does not diminish the injury; if anything, the victim's powerlessness to disprove a seamless fabrication intensifies it.

Indian constitutional law acquired the conceptual vocabulary to apprehend this injury only recently. In *K.S. Puttaswamy v. Union of India*, the nine-judge bench, located privacy within Article 21 which guarantees life and personal liberty and, crucially, grounded in human dignity, defining privacy as having bodily integrity, informational self-determination, and autonomy of making choices.⁴ The doctrinal apparatus is therefore present; what is absent is a criminal and regulatory framework adequate to the technology. The provisions on which prosecutors currently rely—obscenity and “publishing” offences under the Information Technology Act, 2000, and the inherited sexual offences now relocated within the Bharatiya Nyaya Sanhita, 2023—were drafted for an earlier paradigm and were, in significant part, transplanted from a colonial penal imagination preoccupied with female “modesty.”

“There are four assertions made in this paper. First, that morphed and AI-generated intimate imagery is a constitutionally distinct vice that is best viewed as an attack on bodily dignity instead of modesty, reputation, and public decency. Second, that the current criminal system, based on obscenity, consent-blind, and gender, is systematic in its mischaracterisation of that wrong and identifiable categories of victim and behaviour go unaddressed. Third, that the constitutional architecture supplies both the warrant for a robust dignitarian response and the discipline—through the proportionality and void-for-vagueness doctrines—that any such response must satisfy if it is to survive scrutiny under Article 19(1)(a). And fourth, that comparative experience, read against India's constitutional commitments, points toward a consent-based, dignity-centred, and gender-inclusive statutory offence coupled with a carefully bounded platform-accountability regime, rather than the broad intermediary-policing model that the 2025 draft rules appear to favour.

The structure follows this sequence. Part II maps the phenomenon and its taxonomy. Part III reconstructs bodily dignity as a constitutional value through the post-*Puttaswamy* jurisprudence. Part IV surveys the existing criminal and regulatory framework. Part V diagnoses its doctrinal fault lines. Part VI

³ Ministry of Electronics and Information Technology, *Explanatory Note to the Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2025* (22 October 2025).

⁴ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

subjects both the framework and its proposed reform to constitutional analysis. Part VII is based on comparative developments and Part VIII is a dignity-centred reform before the paper concludes. The analytical wager, all along, is that the continuity of a colonial criminal vocabulary - the palimpsest of the now numbering of the Sanhita - is neither a style-wonder nor a material complication of the cause of that interest which the Constitution now places in the foreground of personal freedom.

II. Morphed Images, Deepfakes, and the Architecture of Synthetic Sexual Violence

Analytical clarity requires a taxonomy, because the law's difficulties begin with its conflation of distinct artefacts. There are three forms that should be differentiated. The former has been the morphed image, a mixture of superimposing the face of the victim, which is typically gathered via social media, onto a sexual image of another body, using old-fashioned editing devices. The second one is the deepfake, an image or video that has been generated using machine-learning algorithms, historically generative adversarial networks, but now more often diffusion models, which creates a smooth and flowing fabrication where the victim does not do what they had not done previously. The third, and most recent, is the *fully synthetic intimate image*, generated from a text prompt or a single clothed photograph by a "nudification" application that infers and renders a body that has no real-world referent at all. These three sit on a continuum of technical sophistication but share a single defining feature: the depicted sexual conduct is false, while the depicted person is real and identifiable.

Analytically, it is helpful to use these forms to group them as a composite term non-consent synthetic intimate imagery (NCSII), and a subspecies of the larger type of abuse to which comparative scholarship refers as image-based sexual abuse. In an article, Clare McGlynn, Erika Rackley, and Ruth Houghton persuasively claimed that revenge porn conceals not only the spectrum of motives that stretch far beyond vengeance to sexual satisfaction, monetary gain, coercion, and entertainment but also a spectrum of behaviour, between hidden capture to a non-consensual spread to fabrication.⁵ Their reframing matters for Indian law because it relocates the wrong from the sensational and episodic to the structural, and because it severs the gravity of the harm from any question of the victim's prior conduct—a severance the "modesty" framing of Indian law conspicuously fails to achieve.

The structural significance of the synthetic turn was anticipated by Robert Chesney and Danielle Citron, who warned that the maturation of deepfake technology would generate a "liar's dividend" and would fall with particular severity upon women, whose fabricated sexual images would be weaponised to humiliate, silence, and discipline.⁶ Empirical accounts have borne out that the overwhelming majority of deepfake material in circulation is pornographic and non-consensual, and almost all of it targets women. The Indian regulatory record reflects the same pattern, taking adherence to the records of the Ministry of Electronics and Information Technology's the 2025 draft rules identify reputational damage, fraud, and the targeting of individuals as the mischief to be remedied.⁷ Civil-society analysts have also reported that synthetic image abuse is silencing women, gender minorities and journalists and is rotting the trust in the digital everyday.

⁸The phenomenology of the harm has several features the law must register. The injury is *instantaneous and irreversible in propagation*: once disseminated, an image is copied, mirrored, and re-uploaded across jurisdictions faster than any removal mechanism can operate, so that the victim is

⁵Clare McGlynn, Erika Rackley and Ruth Houghton, "Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse," *Feminist Legal Studies* 25, no.1 (2017): 25-46.

⁶Robert Chesney & Danielle Keats Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security," *California Law Review* 107 (2019): 1753-1820, at 1771-73.

⁷*Explanatory Note to the Draft Amendment Rules, 2025* (n 3).

⁸Internet Freedom Foundation, "Withdraw the Draft Synthetic Information IT Rules, 2025," 10 December 2025, <https://internetfreedom.in/withdraw-the-draft-synthetic-information-it-rules-2025/>.

condemned, in the Delhi High Court's memorable framing, to "incessantly scour the internet" for recurrences of their own violation.⁹ The injury is *dignitary before it is reputational*: the wrong is consummated when the body is fabricated and revealed, regardless of whether a third party perceives the image as authentic. And the injury is *autonomy-negating*: it appropriates the closest dimension of self-presentation and transforms it into a work by another. Such characteristics speed, dignity, autonomy, are exactly the characteristics that the obscenity-and-modesty paradigm cannot observe, since the latter demands to know whether the decency of the masses was offended, as opposed to whether or not an individual has been deprived of his image.

What began as the bespoke product of skilled forgers has become a commodity service: so-called "nudification" applications and deepfake-as-a-service platforms now generate intimate fabrications on demand, at negligible cost, from a single clothed photograph, and market themselves openly. Two additional characteristics of the contemporary landscape sharpen the constitutional stakes. The industrialisation of abuse is the first. What began as the bespoke product of skilled forgers has become a commodity service: so-called "nudification" applications and deepfake-as-a-service platforms now create intimate fakes on demand, at a minimal cost, with a single dressed photograph, and openly sell themselves. The barrier to entry has collapsed, and with it the implicit assumption—embedded in the voyeurism and capture offences—that producing a sexual image of another requires proximity, equipment, or skill. The second is the democratisation of victimhood. Early public attention fixed on celebrities, but the structural logic of the technology guarantees that its principal victims are ordinary women, schoolgirls, estranged partners, and professional women targeted to silence or extort them. The harm is no longer episodic and elite; it is ambient and quotidian, woven into the texture of digital life. A criminal framework that responds only to the spectacular, high-profile incident—as obscenity prosecutions historically have—will systematically under-serve the very class of victims the technology most endangers, and will mistake the visible tip of the phenomenon for its substance.

III. Bodily Dignity as a Constitutional Value: The Article 21 Foundation

The constitutional case against NCSII rests on a conception of bodily dignity that Indian jurisprudence has assembled incrementally and that *Puttaswamy* consolidated. The doctrinal genealogy is instructive. The early refusal in the case of *M.P. Sharma* and *Kharak Singh* to recognise the freestanding right to privacy¹⁰ gave way, after the case of *Maneka Gandhi* transformed Article 21 from against arbitrary procedure into a substantive font of fundamental freedoms,¹¹ to a steadily expanding catalogue of liberties read into the protection of "life and personal liberty."

"It was *Puttaswamy* that gave the catalogue its organising principle. Privacy, the Court held, is not a single right but a bundle—comprising, among other facets, the privacy of body, information and choice, all of which derive from and express human dignity.¹² Three facets of that holding bear directly on NCSII. First, *bodily privacy and integrity*: the recognition that a person's body, and its representation, are zones over which the individual exercises sovereign control, such that their non-consensual appropriation is a constitutional wrong and not merely a private grievance. Second, *informational privacy*, which the Court framed as the right to exercise control over the dissemination of personal information, including one's own image. Third, is *decisional autonomy*—the authority to make choices about one's intimate life free from external dictation. NCSII assaults all three simultaneously: it seizes the body's representation, disseminates personal information in the most intimate register, and overrides the victim's authorship of their own sexual self-presentation.

⁹*Mrs. X v. Union of India*, 2023 SCC OnLine Del 2361 (Del HC).

¹⁰*Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295 (India).

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

¹²*Puttaswamy* (n 4).

The dignitarian reading of these facets is not an interpretive embellishment but the load-bearing element of the post-*Puttaswamy* cases. In the case of *Navtej Singh Johar*, the Supreme Court skim Section 377 of the Indian Penal Code by reasoning that dignity entails the autonomy to determine one's intimate identity and that the State may not deploy criminal law to degrade that identity.¹³ In *Joseph Shine*, striking down the offence of adultery, the Court held that provisions treating of threatening a woman as a sexual property of her husband offends the dignity and autonomy the Constitution guarantees her as an equal person.¹⁴ In *Common Cause*, the Court derived from dignity a right to die with dignity, underscoring that dignity governs the whole arc of personal existence,¹⁵ and in *NALSA*, the right to self-identification of gender is important to dignity and to the equality guarantees of Articles 14, 15, and 21.¹⁶ Read together, these decisions establish a settled proposition: the Indian Constitution protects not merely the physical body but the person's authority over the meaning, exposure, and representation of that body.

From this jurisprudence a working constitutional concept can be distilled, which this paper calls *bodily dignity*: the interest each person holds in the integrity and authorship of their embodied self, including the power to determine whether, how, and to whom their body and its sexual representation are exposed. NCSII is, on this account, a paradigmatic violation of bodily dignity, because it severs the representation of the body from the will of its owner and reattaches it to the will of the fabricator. The synthetic character of the image is no answer. The constitutional interest is in the *authorship and control* of one's bodily representation, not in the evidentiary authenticity of any particular pixel; a fabricated nude that the world takes to be the victim violates her informational and bodily privacy as surely as a stolen photograph, and arguably more gravely, because she cannot even reclaim the truth of her own body against it".

Significantly, the dignitarian frame also corrects the gendered defect of the inherited law. Where "modesty" conditions protection on a culturally freighted and judicially elastic notion of feminine honour—and, by implication, on the victim's conformity to it—dignity attaches to personhood as such. It is owed equally to the woman whose conduct a court might once have thought immodest, to the man targeted by a fabricated image, and to the gender-diverse person whom the modesty provisions do not contemplate at all. Migration of modesty to dignity is thus not just rhetorical; it is the doctrinal mechanism whereby protection is universalised and de-moralised, which brings the criminal law into line with the equality and dignity commitments the Constitution already implements in other areas.

IV. The Existing Criminal and Regulatory Framework

A. The Information Technology Act, 2000

The principal statutory instrument is the IT Act, 2000, out of which four provisions are usually used, namely, Section 66E penalises the intentional capture, publication, or transmission of an image of the "private area" of a person without consent, in circumstances violating a reasonable expectation of privacy.¹⁷ Section 67 punishes the publication or transmission of obscene material in electronic form; Section 67A addresses material containing sexually explicit acts; and Section 67B criminalises child sexual abuse material.¹⁸ The earliest cybercrime conviction in India, in *State of Tamil Nadu v. Suhas Katti*, proceeded under Section 67 for the posting of obscene and defamatory messages about a woman, establishing the template by which online sexual abuse of women would be prosecuted as obscenity.¹⁹ The obscenity test itself

¹³*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

¹⁴*Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

¹⁵*Common Cause v. Union of India*, (2018) 5 SCC 1 (India).

¹⁶*National Legal Service Authority v. Union of India*, (2014) 5 SCC 438 (India).

¹⁷Information Technology Act, 2000, s. 66E (India).

¹⁸*Ibid.*

¹⁹*State of Tamil Nadu v. Suhas Katti*, C.C. No. 4680 of 2004 (Addl. CMM, Egmore).

migrated from the Hicklin standard adopted in *Ranjit D. Udeshi*²⁰ to the community-standards and “contemporary mores” approach embraced in *Aveek Sarkar v. State of West Bengal*.²¹

The intermediary-liability architecture is set by Section 79, which grants conditional safe harbour, and Section 69A, which empowers the blocking of content, as read with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The 2021 Rules impose due-diligence obligations, including the expeditious removal of specified categories of content—among them material that is “obscene” or that depicts a person in a sexual act—upon actual knowledge or notification, with an abbreviated timeline for content in the nature of NCII.²² The constitutional contours of this regime were set in *Shreya Singhal v. Union of India*, which struck down Section 66A for vagueness and overbreadth, read down the safe-harbour conditions to require actual knowledge through a court order or government notification, and upheld Section 69A subject to procedural safeguards.²³

B. The Bharatiya Nyaya Sanhita, 2023

The recodification of the general criminal law in the Bharatiya Nyaya Sanhita, 2023 (BNS), did not create a dedicated offence for synthetic intimate imagery; it re-enacted, with renumbering, the sexual offences of the Penal Code. Voyeurism, formerly Section 354C, is now Section 77; stalking, including its express “monitoring” of a woman’s use of the internet and electronic communication, is Section 78; and the offence of word, gesture, or act intended to insult the “modesty” of a woman is Section 79.²⁴ Sexual harassment is Section 75 and the disrobing offence Section 76; defamation, formerly Sections 499–500, is consolidated in Section 356.²⁵ Where fabrication is accompanied by deception or extortion, the cheating-by-personation and criminal-intimidation provisions—Sections 318 and 319 on cheating and impersonation, and Section 351 on criminal intimidation—may also be engaged.²⁶ The decisive structural point is that the BNS approaches the conduct through the same conceptual lenses as the Penal Code it replaced: modesty, obscenity, and reputation. The renumbering is, in the idiom of this thesis, a palimpsest—the colonial text scraped and overwritten, yet legible beneath the new clauses.

C. Data Protection and the 2025 Synthetic-Information Rules

Two further instruments complete the picture. The Digital Personal Data Protection Act, 2023, conceives the image as personal data, conferring rights of correction and erasure against data fiduciaries; but its consent-and-fiduciary architecture is poorly fitted to anonymous, malicious actors who are not fiduciaries in any meaningful sense, and its protections are civil and regulatory rather than punitive.²⁷ Most consequentially, on 22 October 2025 the Ministry of Electronics and Information Technology released draft amendments to the 2021 Rules introducing a defined category of “synthetically generated information,” mandatory and conspicuous labelling of such content—for visual material, a permanent label occupying at least one-tenth of the display area—embedded metadata identifiers, and traceability and due-diligence obligations on intermediaries and the tools that generate such content.²⁸ The draft thus shifts a significant share of accountability upstream, from passive hosts to the providers of generative tools—an approach

²⁰*Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881 (India).

²¹*Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257 (India).

²²Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(b) and r. 3(2)(b) (India).

²³*Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

²⁴Bharatiya Nyaya Sanhita, 2023, s. 77, s. 78, s. 79.

²⁵*Ibid.*

²⁶*Ibid.*

²⁷Digital Personal Data Protection Act, 2023 (India).

²⁸Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2025, proposed r. 2(1)(wa), r. 3(1A) and r. 3(3) (India).

that, whatever its merits, addresses synthetic media as an information-integrity problem rather than as a dignitary harm, and that has drawn sustained criticism for overbreadth, to which Part VI returns.

D. The Judicial Supplement: *Mrs. X and the Right to Be Forgotten*

In the relative silence of the statute, the High Courts have improvised. In *Mrs. X v. Union of India*, the Delhi High Court issued detailed directions to search engines, the police, and the Ministry, requiring proactive de-indexing and the prevention of resurfacing of NCII once reported, anchoring its reasoning expressly in the informational-privacy holding of *Puttaswamy* and the reasonable expectation of privacy underlying Section 66E.²⁹ In a parallel line, courts have recognised a “right to be forgotten” as a facet of informational privacy under Article 21, most recently in a 2026 Delhi High Court decision laying down a framework for the de-indexing and masking of personal information in judicial records,³⁰ though the Supreme Court has cautioned that the right cannot be asserted against public judicial records indiscriminately. This judicial scaffolding is doctrinally creative and protective in instinct, but it is a remedy of removal, not of culpability; it mitigates ongoing harm without naming the wrong as a crime against dignity, and it depends on the victim’s capacity to litigate.

V. Doctrinal Fault Lines

A. The Obscenity Misframing

The first and most fundamental defect is that the law apprehends NCSII chiefly through the prism of obscenity. Sections 67 and 67A of the IT Act, and the obscenity-derived contours of the BNS sexual offences, ask whether the material is lascivious, prurient, or apt to deprave—a public-decency inquiry directed at the character of the content and its effect on a notional viewer. But the wrong of NCSII is not that the image is indecent; it is that it is *non-consensual and identity-appropriating*. This misframing has perverse consequences. It centres the State’s interest in regulating sexual representation rather than the victim’s interest in bodily authorship, with the result that the victim becomes incidental to a prosecution nominally about public morality. It also produces the anomaly that a tasteful, non-explicit fabrication—a victim’s face placed in a sexualised but technically non-obscene composite—may escape Sections 67 and 67A altogether, even though the dignitary injury is complete. As Gautam Bhatia has argued in his study of free speech, Indian obscenity doctrine remains tethered to a moralised conception of harm that asks the wrong question of the wrong subject.³¹ A dignity-centred offence would ask, instead, whether a person’s sexual image has been created or shared without consent—a question to which the answer does not turn on the prurience of the result.

B. The Synthetic-Body Problem and the Architecture of Consent

The second fault line is the most doctrinally acute and is unique to the synthetic turn. The existing sexual-image offences presuppose a real depiction of a real body: Section 66E speaks of capturing the image of a “private area,” and voyeurism under Section 77 of the BNS contemplates the watching or capturing of a woman “engaging in a private act.”³² A deepfake or fully synthetic image captures nothing: there is no real private act, and the rendered body may be wholly invented. On a literal reading—and penal statutes are construed strictly—the conduct falls outside the *actus reus*, because nothing private was captured and no real nudity was exposed. The provisions were drafted for the voyeur with a hidden camera, not the fabricator with a diffusion model.

This exposes a deeper conceptual lacuna: the Indian framework has no coherent theory of *consent to bodily representation* detached from consent to physical contact or to the capture of a real image. Yet it is

²⁹*Mrs. X v. Union of India*. (n 9).

³⁰*Lakshvir Singh Yadav v. Union of India*, 2026 LiveLaw (Del).

³¹Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (New Delhi: Oxford University Press, 2016), ch 3.

³²Information Technology Act, 2000, s. 66E (n 15); Bharatiya Nyaya Sanhita, 2023, s. 77 (n 24).

precisely such a theory that the synthetic image demands. The injury of a deepfake is the unauthorised *attribution* of a sexual representation to a person—the false statement, in images, that this is their body so used. The relevant consent is therefore consent to the *creation and circulation of a sexual representation bearing one's identity*, whether or not any real body was photographed. Comparative scholarship and legislation have begun to converge on exactly this reconceptualisation; Danielle Citron and Mary Anne Franks, in their template for criminalising non-consensual pornography, frame the wrong around the absence of consent to disclosure rather than around obscenity or capture.³³ Indian law, by contrast, possesses no provision whose gravamen is the non-consensual attribution of a sexual representation, and must therefore force synthetic conduct into ill-fitting capture-and-obscenity moulds.

C. The Gendered Grammar of Modesty

The third defect is constitutional in its own right. The operative provisions are addressed, by their terms, to the “modesty” of a “woman.”³⁴ Three problems follow. First, “modesty” imports a culturally contingent and judicially malleable conception of feminine honour that has, historically, invited inquiry into the victim’s character and conduct—an inquiry the Constitution’s dignity jurisprudence repudiates. Second, the gender-specific framing leaves male and non-binary victims unprotected by the very provisions designed for image-based sexual abuse, an exclusion difficult to reconcile with Articles 14 and 15 once the harm is understood as dignitary rather than as an affront to female honour. Third, the modesty frame subtly relocates the wrong from the perpetrator’s violation to the victim’s sullied honour, reinforcing the stigma that compounds the original injury. Empirical and doctrinal studies of Indian practice have concluded that neither the defamation provisions nor the sexual-harassment provisions are adequately developed to capture the complexities of non-consensual image-based harassment online, or to furnish meaningful remedies to victims.³⁵

D. Intermediary Liability and the Limits of Takedown

The fourth fault line concerns remedy. The notice-and-takedown architecture, even as supplemented by *Mrs. X*, is reactive and asymmetric. It places the initiating burden on the victim, operates after dissemination has already occurred, and is defeated by the speed and replicability of digital propagation. Safe harbour, as read down in *Shreya Singhal*, attaches until actual knowledge, but actual knowledge typically arrives only after the harm has metastasised.³⁶ The 2025 draft rules attempt to move accountability upstream through labelling and traceability, but a label is no remedy for a victim whose fabricated image is, accurately and permanently, marked “AI-generated” “while it circulates; the harm of NCSII does not depend on the audience’s belief in its authenticity. Labelling answers an information-integrity concern; it does not answer a dignitary one.

E. Anonymity, Jurisdiction, and Proof

Lastly, even in areas where a provision exists, enforcement is faced with structural challenges: offenders are often anonymous or pseudonymous; the generative tools, host servers, and re-uploaders are usually outside Indian jurisdiction; and the evidentiary burden of authenticating, attributing, and dating synthetic media strains imposes both forensic capacity and electronic evidence rules. They are not unique to India, but they are exacerbated by the lack of a clear, technology-specific crime that would put investigation into focus and by the ongoing adherence to obscenity framings that put the investigation in the wrong direction at the outset. The cumulative effect of these five fault lines is that the Indian framework neither names the wrong correctly, nor reaches all of its victims, nor remedies it in time.

³³Danielle Keats Citron & Mary Anne Franks, “Criminalizing Revenge Porn,” *Wake Forest Law Review* 49 (2014): 345-391.

³⁴Bharatiya Nyaya Sanhita, 2023, s. 75–79 (n 23–24).

³⁵Digital Dichotomies: Navigating Non-Consensual Image-Based Harassment and Legal Challenges in India, *Information & Communications Technology Law* (2024).

³⁶*Shreya Singhal* (n 24).

VI. Constitutional Challenges: Dignity, Expression, and the Discipline of Proportionality

A. Dignity against Expression: Articles 19(1)(a) and 19(2)

Any criminal or regulatory response to NCSII operates at the intersection of two constitutional commitments: the bodily dignity defended in Part III and the freedom of speech and expression guaranteed by Article 19(1)(a). The first analytical task is to locate the response within the permissible-restriction clause of Article 19(2), which authorises reasonable restrictions on enumerated grounds including decency or morality and defamation. NCSII regulation is comfortably accommodated: a consent-based prohibition on the non-consensual creation and circulation of a person's sexual representation serves decency and the protection of reputation, and — more fundamentally — vindicates the Article 21 rights of the targeted person. The Supreme Court has recognised that fundamental rights may operate horizontally and may have to be harmonised inter se, so that the expression interest of the fabricator cannot be asserted in a vacuum against the dignity interest of the victim.³⁷ Importantly, fabricated sexual imagery holds the outer periphery of expressive value: it does not add anything to the marketplace of ideas, expresses a falsehood about a recognizable individual, and causes a specific dignitary damage. Its regulation thus implicates expression only somewhat, and the countervailing dignity interest is at its zenith.

B. The Proportionality Standard

Locating the restriction within Article 19(2) is necessary but not sufficient; it must also be proportionate. The Court's articulation of proportionality, drawn from *Modern Dental College* and refined in the *Puttaswamy* Aadhaar judgment, requires that a limiting measure (i) pursue a legitimate aim, (ii) be rationally connected to that aim, (iii) be necessary in the sense of being the least restrictive effective means, and (iv) strike a fair balance between the right and the public interest.³⁸ ³⁹The Court applied this standard to digital restrictions in *Anuradha Bhasin*, insisting that even legitimate restrictions on internet-mediated activity be the least intrusive available and be subject to procedural safeguards and review.⁴⁰ A consent-based NCSII offence passes each limb: protecting bodily dignity is a paramount aim; criminalising the non-consensual creation and circulation of sexual representations is rationally connected to it; a precisely defined offence is less restrictive than the blunt obscenity provisions or sweeping intermediary mandates; and the balance plainly favours the victim, given the negligible expressive value of the prohibited material. The proportionality analysis thus does double duty: it licenses a robust dignitarian offence while disciplining its breadth.

C. Vagueness, Overbreadth, and the 2025 Draft Rules

Proportionality's least-restrictive limb dovetails with the void-for-vagueness and overbreadth doctrines that *Shreya Singhal* deployed to strike Section 66A. Protected expression, including satire, art, journalism, political commentary, consensual adult media, will not be successful as a regulatory response that swamps lawful speech will chill illegal speech as well as granting unguided discretion. It is precisely based on this that the 2025 draft synthetic-information rules are vulnerable." Their definition of "synthetically generated information" is broad enough to encompass large areas of harmless and expressive AI-aided content; their labelling and traceability requirements subject all to the overhead of general monitoring; and their use of a safe-harbour-based takedown system may turn the rules into regime of moving pre-emptive removal.⁴¹ Civil-society commentators caution that, unless there are strong exemptions against legitimate expression, even criticism of government officials might be suppressed on

³⁷*Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1 (India).

³⁸*Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India)

³⁹*K.S. Puttaswamy v. Union of India* (Aadhaar), (2019) 1 SCC 1 (India).

⁴⁰*Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

⁴¹"India's New IT Rules on Deepfakes Threaten to Entrench Online Censorship," Tech Policy Press (7 November 2025).

the basis of being synthetic,⁴² and the Government itself has proposed in its AI-governance report that even the current law may already be ready to deal with malicious synthetic media, counselling calibrated and not sweeping intervention.⁴³ The moral is that the constitutional flaw in the inherited criminal law—that it does not identify the wrong—cannot be corrected by an excessively inclusive regulatory regime that contravened Article 19(1)(a) in a different direction. Accuracy is a constitutional imperative, not a drafting nicety.

D. Equality and the Gendered Distribution of Harm

One last constitutional aspect is equality. The male and female-related modesty stipulations are clumsy between Articles 14 and 15 with the secured interest redefined as dignity. It is not that protective measures based on disproportionate targeting of women are forbidden, but that the idea behind the offence should be that of dignity which is understood as universal and gendered patterns of harm to be countered through evidentiary, procedural and sentencing design, and not by a gendered definition of the class to be protected. A dignity-based, gender inclusive offence not only provides a protective concern to male and gender diverse victims but also eliminates the honour-laden vocabulary that has long since been used to license scrutiny of the character of the woman. It thus makes the criminal law consistent with the principle of anti-stereotyping that the Court has interpreted Articles 14 and 15 to involve and with the dignity jurisprudence of *Navtej*, *Joseph Shine*, and *NALSA*. In brief, the equality argument leads in the same direction as the dignity argument: that of away modesty and toward personhood.

VII. Comparative Perspectives

The Indian debate unfolds within a comparative field that has consolidated with remarkable speed, and that offers both models and cautions. The United States enacted the TAKE IT DOWN Act in May 2025, the first federal statute squarely addressing non-consensual intimate imagery; it criminalises the knowing publication of NCII—expressly including AI-generated “digital forgeries”—and obliges covered platforms to establish a notice mechanism and to remove reported content, and reasonable identical copies, within forty-eight hours.⁴⁴ “Two aspects stand out: the statute imposes responsibility on the publisher, not on the obscenity of the image, and it imposes criminal responsibility and a disciplined platform-removal obligation—just the two elements lacking in the Indian framework. Initial evaluations are chilling, but scientists note that the AI-generated NCII supply only increased up to 2025 even after federal criminalisation, which is a reminder that laws are needed, but not enough.”⁴⁵

The United Kingdom proceeded in two stages. In Online Safety Act 2023, it became a criminal offence to share, or attempt to share, intimate content, including deepfakes, without consent, and placed risk-assessment and mitigation obligations on platforms; a later reform criminalised the *creation* of non-consensual sexually explicit deepfakes, bridging the gap left when sharing was only proscribed.⁴⁶ The difference between sharing and creation is directly relevant to India, where the provisions (where they go to synthetic conduct at all) are geared towards publication. Synthetic media have been treated chiefly as a transparency issue by the European Union: Article 50 of the AI Act demands that generated or manipulated content by AI be disclosed and labelled, which is more akin in spirit to the Indian draft rules than a dignitary offence.⁴⁷ France took the criminal route, inserting Article 226-8-1 into its Penal Code in 2024 to punish the publication, by any means, of sexual content algorithmically reproducing a person’s image or

⁴²“India’s New IT Rules on Deepfakes Threaten to Entrench Online Censorship,” Tech Policy Press (7 November 2025).

⁴³Internet Freedom Foundation (n 8).

⁴⁴Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act, Pub L. No. 119-12(2025)(United States).

⁴⁵It’s Too Soon to Tell If the TAKE IT DOWN Act Is Working, Tech Policy Press (13 May 2026).

⁴⁶Deepfake Regulations: AI and Deepfake Laws of 2025, Regula (12 August 2025).

⁴⁷Regulation (EU) 2024/1689 (Artificial Intelligence Act), art. 50.

voice without consent.⁴⁸ South Korea, which confronted an acute deepfake crisis, has since 2020 criminalised harmful deepfakes with substantial custodial penalties, though its public-interest threshold renders its coverage of pornographic deepfakes less determinate than a dedicated NCII offence.⁴⁹

Three lessons emerge for India. To begin with, the most coherent regimes attribute responsibility to conduct, non-consensual creation or publication, not to obscenity, and many of them extend to creation as well as sharing. Second, the two concepts of criminal liability and platform duty work best together, with the first one articulating the severity of the wrong and the second one providing the appropriate result in a timely manner. Third, transparency obligation, though effective in the context of disinformation, cannot replace a dignitary offence; a labelled fabrication violates its subject. India can easily create a criminal exactness of the French and American tradition with a corresponding, narrow platform-accountability regime--and heeding cautionary experience that enforcement, not enactment, is the more difficult issue.

VIII. Toward a Dignity-Centred Reform

A reform programme based on the above analysis will be structured on one principle the criminal law must safeguard the sense of body by consent rather than modesty by obscenity. Four elements follow.

First, a dedicated, consent-based, gender-inclusive offence. India should enact a specific offence criminalising the creation, and separately the distribution or threatened distribution, of intimate imagery—whether captured, morphed, or wholly synthetic—depicting an identifiable person without that person’s consent. The gravamen should be the absence of consent to the creation or circulation of a sexual representation bearing the person’s identity, expressly framed to encompass fabricated and AI-generated material in which no real body was captured.” The offence should protect all persons regardless of gender, replacing the “modesty” vocabulary with the constitutional language of dignity and consent, and should be graded to reflect aggravating factors—commercial exploitation, targeting of minors, extortion, and dissemination at scale.

Second, a calibrated platform-accountability regime. A statutory notice-and-action duty, with the template of the TAKE IT DOWN Act and the guidance of *Mrs. X*, but within the protection of *Shreya Singhal*, would require specified intermediaries to take down reported NCSII promptly, and to ensure it does not appear again under the guise of hash-matching, without undermining the protection of journalism, art, satire, and consensual adult material. Importantly, this obligation must be specifically focused on NCSII, not taken into the category of the 2025 draft, “synthetic information”, “the breadth of which is precisely the cause of the vagueness and chilling effects that *Shreya Singhal* condemns.

Third, victim-centred remedy and procedure. The framework must ensure that there is only one, court-backed pathway to full de-indexing and takedown that does not involve the victim to police internet indefinitely; must allow anonymised proceedings to avoid secondary victimisation; and must be consistent with the erasure rights of the Digital Personal Data Protection Act to ensure that civil and criminal remedies complement each other. Sentencing and evidence rules need to be adjusted to the fact of anonymity and inter-country distribution, e.g. forensic authentication of synthetic media.

Fourth, faithfulness to proportionality. The four-pronged proportionality criterion must be satisfied: a dignitarian purpose that is legitimate, the least restrictive design, and a rational relationship and a fair balance of all components. It is not a limitation to be held but a training to be undertaken, for it is precisely the precision proportionality demands that distinguishes a constitutionally durable dignitarian offence from the blunt instruments—obscenity law on one side, sweeping intermediary mandates on the other—that have so far failed both the victim and the Constitution.

IX. Conclusion

⁴⁸Code pénal [Penal Code] art. 226-8-1 (France).

⁴⁹The TAKE IT DOWN Act: A Closer Look, Ronin Legal Consulting (29 October 2025).

The morphed photograph and the AI-generated intimate image present the Indian constitutional order with a problem its criminal law was not built to solve. The technology is new, but the deeper difficulty is old: a penal vocabulary inherited from a colonial preoccupation with female modesty and public decency, carried forward through the Indian Penal Code and re-enacted, renumbered but largely unreconceived, in the Bharatiya Nyaya Sanhita. That language begs the question, has decency been insulted, has his chastity been insulted? It does not pose the question made central by Puttaswamy--whether an individual has been deprived of the integrity and authorship of the embodied self that he is.

This paper has put forward that NCSII can be regarded as an attack on bodily dignity, the constitutional interest that is a synthesised off the bodily-integrity, informational-privacy, and decisional-autonomy aspects of Article 21. It has demonstrated that the current structure frames the wrong as obscenity, which struggles on the synthetic-body problem due to its lack of a theory of consent to bodily representation, and puts victims aside through its gendered grammar of modesty, and remedies the harm too late through a reactive takedown architecture. It has demonstrated that the constitutional materials supply both the warrant for a robust dignitarian response and, through proportionality and the vagueness doctrine, the discipline that response must observe—a discipline the over-inclusive 2025 draft synthetic-information rules appear poised to violate from the opposite direction. And it has drawn from comparative experience a workable template: a consent-based, gender-inclusive offence reaching creation as well as distribution, coupled with a narrowly tailored platform-accountability regime and victim-centred remedies.

The reformation which this analysis praises, is, in root, a constitutional translation--making the dignity jurisprudence of the Supreme Court, into a grammar of the criminal law. Its lodestar is one migration, out of the humility of modesty into the honour of dignity, out of the obscenity of the vulgarity into the consent of the noble, out of the honour of a party of sufferers into the person of every one, out of the honour of the noble into the hopelessness of the vulgar. Until that migration can be made, the palimpsest beneath the Sanhita will go on fixing who is safeguarded by the law, and how, and the constitutional pledge of bodily dignity will stand, to the victims of synthetic sexual violence, as a promise itself that is misjudged."

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