



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 6 AND ISSUE 3 OF 2026

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 3 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-3-of-2026/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

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## SYNTHETIC LAW AND STRICT LIABILITY: RECLASSIFYING AI JUDICIAL HALLUCINATIONS AS PROFESSIONAL MISCONDUCT

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**BEST CITATION** – RIMJHIM BIYANI, SYNTHETIC LAW AND STRICT LIABILITY: RECLASSIFYING AI JUDICIAL HALLUCINATIONS AS PROFESSIONAL MISCONDUCT, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (3) OF 2026, PG. 06-11, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

The swift assimilation of Generative Artificial Intelligence (AI) into the Indian legal ecosystem has precipitated a fundamental crisis of evidentiary authenticity, significantly altering the epistemological basis of the adversarial system. In recent times, the global judicial system has witnessed a phenomenal increase in the incidence of *ghost precedents* – fictitious citations of law hallucinated by probabilistic algorithms and presented to courts as established, sovereign law. This research critically evaluates the necessary jurisprudential shift against unverified algorithmic reliance, catalysed by the Delhi High Court's landmark ruling in *Christian Louboutin Sas v. M/s Shoe Boutique*<sup>1</sup>. Operating in tandem with global cautionary tales such as the *Mata v. Avianca* sanctions in the United States<sup>2</sup>, the Indian judiciary is presently confronted with the urgent need to transition from a permissive, error-tolerance framework to a regime of strict, misconduct-based liability.

Situating this paradigm shift within the contemporary statutory framework of the Bharatiya Sakshya Adhinyam, 2023<sup>3</sup>, and the ethical mandates of Section 35 of the Advocates Act, 1961<sup>4</sup>, this paper systematically deconstructs the defense of automatic reliance and technological ignorance. Furthermore, the study examines the constitutional imperatives of algorithmic accountability, arguing that the deployment of unverified digital outputs in adjudicatory processes violates a litigant's Article 21<sup>5</sup> right to a reasoned order and fundamentally breaches the principles of natural justice. Ultimately, this paper posits that the formalization of a *sui generis* Duty of Verification – enforced via mandatory human-in-the-loop audits and binding technological affidavits under the Bharatiya Nagarik Suraksha Sanhita (BNSS) – is an absolute necessity.<sup>6</sup> It concludes that the delegation of core legal reasoning to AI without rigorous human oversight constitutes a catastrophic breach of the fiduciary bond between the Bar and the Bench.

GRASP - EDUCATE - EVOLVE

<sup>1</sup> *Christian Louboutin Sas v. M/s Shoe Boutique*, 2023 SCC OnLine Del 1704.

<sup>2</sup> *Mata v. Avianca, Inc.*, No. 22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

<sup>3</sup> Bharatiya Sakshya Adhinyam, 2023, No. 47, Acts of Parliament, 2023 (India).

<sup>4</sup> Advocates Act, 1961, No. 25, Acts of Parliament, 1961, § 35 (India).

<sup>5</sup> INDIA CONST. art. 21.

<sup>6</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).

## PART I: THE FOUNDATION OF ALGORITHMIC CULPABILITY

### I. THE EPISTEMOLOGICAL CRISIS IN THE AGE OF JUDICIAL AUTOMATION

The year 2026 is an inflection point in the evolution of Indian jurisprudence that is characterized by an existential tension between the pursuit of technological efficiency and the imperative of maintaining the sanctity of the judicial record. It is in this context that the Indian legal system has grappled with an institutional pendency crisis over the course of several decades<sup>7</sup>. Consequently, the rapid democratization of large language models was initially hailed as a computational salvation. Both lawyers and judicial officers sought to leverage these models in the pursuit of efficiency. However, this unbridled pursuit has inadvertently birthed an existential crisis of truth in the adjudicatory process.

The Indian legal profession has clearly transitioned from theoretical debate about the utility of AI to the very practical and urgent question of how to allocate blame for the inevitable epistemic failure of AI systems. The Indian legal system has traditionally enjoyed a benevolent doctrine of bona fide error<sup>8</sup>, wherein an attorney's miscitation, whether the result of inadequate research or typographical error, was traditionally viewed as a procedural infirmity subject to correction by way of costs orders or the filing of corrective affidavits. The use of algorithmic generation has clearly made this traditional analysis obsolete. The filing of digitally generated fiction is not merely an error in cognitive judgment but an affirmative act of digital deception that taints the sovereign record. The attorney's role has clearly changed from primary researcher to critical auditor and requires a radical re-evaluation of professional negligence and repositioning the failure to

verify within the strict domain of professional misconduct.

### II. THE PROBABILISTIC FALLACY AND THE MYTH OF THE BLACK BOX

To gauge the degree of culpability that a practitioner might face in relation to their reliance on generative tools, it is imperative that the technocratic exemption provided by the concept of an algorithmic black box is explored. Legal professionals have repeatedly attempted to absolve themselves of responsibility by asserting an inability to anticipate or comprehend the inner workings of artificial intelligence. However, in asserting such an exemption, legal professionals demonstrate an inability to grasp the basic principles of operation of Large Language Models. They do not have legal consciousness; nor do they conduct deterministic searches within an authenticated body of legislation. Instead, these models rely on probabilistic operations that rely on stochastic token prediction in line with the statistical distribution of their training set.<sup>9</sup> However, in being requested to create legal argument or find judicial support for an implausible argument, the algorithm prioritizes linguistic fluency over factual accuracy.

Ultimately, the probabilistic nature of these models results in the creation of ghost precedents. This is defined by the creation of false citations that mirror the rhythm, lexicon, and structural organization of real Indian judgments in an unsettlingly accurate manner. This includes the creation of false petitioner names, false case years, and the addition of statistically likely volume numbers from recognized reporters such as the Supreme Court Cases (SCC).<sup>10</sup> However, the greatest danger that these fabrications pose is that they might bypass initial, routine review by an overburdened judiciary. However, in incorporating such citations into legal argument, the advocate undermines the

<sup>7</sup> See Supreme Court of India, *e-Courts Project Phase III: Vision Document* (2023), [https://ecourts.gov.in/ecourts\\_home/static/manuals/Vision%20Document%20Phase%20III.pdf](https://ecourts.gov.in/ecourts_home/static/manuals/Vision%20Document%20Phase%20III.pdf)

<sup>8</sup> See generally Black's Law Dictionary (11th ed. 2019) (defining *bona fide* as "made in good faith; without fraud or deceit").

<sup>9</sup> See, e.g., Emily M. Bender et al., *On the Dangers of Stochastic Parrots: Can Language Models Be Too Big?*, Proc. 2021 ACM Conf. on Fairness, Accountability, and Transparency 610 (2021).

<sup>10</sup> See generally Supreme Court Cases (SCC), Eastern Book Company.

practice of law in favour of the proliferation of synthetic falsehoods. This is an affront to the integrity of the judicial process that calls for a response that is more severe than standard disciplinary action.

### III. STATUTORY REALIGNMENT UNDER THE NEW CRIMINAL AND EVIDENTIARY REGIME

The current drama of algorithmic misconduct is situated within the overarching context of India's most sweeping legal reform in contemporary times. The evolution towards the Bharatiya Sakshya Adhinyam (BSA), 2023, provides the immediately applicable legal landscape in which this contest of jurisprudence is playing out. Section 63 of the BSA painstakingly outlines the parameters of the admissibility of electronic records.<sup>11</sup> While this section of the BSA was ostensibly intended to apply to external digital evidence such as communications and financial records, in the courts of 2026, this evidentiary standard is increasingly being applied to the legal brief itself. If the legal brief is fundamentally premised on fabricated citations, the entire document becomes tainted. In presenting a fabricated precedent, the advocate in effect presents the court with secondary evidence of a sovereign law that never existed.

This evidentiary emergency thus calls for a simultaneous reinterpretation of the norms set out in the Advocates Act, 1961. In the past, Section 35 of the Act, which pertains to the punishment of advocates for any kind of professional or other misconduct, was invoked for moral turpitude, financial misappropriation, or the physical intimidation of witnesses. Nevertheless, the Bar Council of India's Rules on Professional Standards mandate that all advocates must conduct themselves with dignity and must demonstrate the highest fiduciary respect for the court.<sup>12</sup> In the modern digital world, the Bar Council is moving towards a standard that holds the legal practitioner

culpable for a kind of algorithmic negligence. The standard that a legal practitioner must demonstrate in the year 2026 necessarily includes the completion of a mandatory human verification process. To deliberately avoid the kind of intellectual due diligence that such a process represents is to deliberately abandon the duty of candour. To advance a falsehood generated by a machine as a kind of judicial truth is no longer viewed as a technological mistake but is formally acknowledged as a kind of ethical abdication that constitutes a form of fraud upon the adjudicatory process.

### PART II: DOCTRINAL ANALYSIS OF ALGORITHMIC CULPABILITY

#### IV. THE FACTUAL AND PROCEDURAL MATRIX OF LOUBOUTIN AND AVIANCA

The precarious stability of the global judicial record was subject to an unprecedented and unforeseen test in 2023, resulting in landmark rulings that exposed the intrinsic fragility of algorithmic legal research. The origin of the transformation in the jurisprudence can be traced back to the United States District Court for the Southern District of New York in the landmark case of *Mata v. Avianca Inc.*<sup>13</sup> In *Avianca*, the plaintiff's counsel utilized the generative AI tool ChatGPT to draft their brief, resulting in the detrimental inclusion of digital hallucinations into the federal judicial record. Specifically, counsel relied on the tool to insert non-existent precedents, thereby introducing secondary evidence of sovereign law that never existed. Simultaneously, the Indian judicial system faced its own epistemological challenge. During the complex trademark dispute in *Christian Louboutin*<sup>14</sup>, counsel used factual and legal responses generated by ChatGPT as their definitive argumentative basis. The High Court of Delhi, however, immediately rejected this reliance, spotting the systemic risk long before the federal courts in New York took

<sup>11</sup> Bharatiya Sakshya Adhinyam, 2023, § 63.

<sup>12</sup> Bar Council of India Rules, Part VI, Ch. II (Standards of Professional Conduct and Etiquette).

<sup>13</sup> *Mata v. Avianca, Inc.*, No. 22-cv-1461, 2023 WL 4114965, at \*4 (S.D.N.Y. June 22, 2023) (sanctioning attorneys for submitting fictitious legal precedents hallucinated by ChatGPT)

<sup>14</sup> *Christian Louboutin Sas v. M/s Shoe Boutique*, 2023 SCC OnLine Del 1704, at ¶ 14 (noting that generative AI cannot substitute human intelligence or formal legal reasoning).

remedial action. This was based on the fact that the AI tool is based on probabilistic token generation and not deterministic reasoning. This means that the tool is not capable of replacing human intelligence.

#### V. THE JUDICIAL PIVOT: FROM TECHNOLOGICAL NAIVETY TO STRICT LIABILITY

The permissive atmosphere in which the early adoption of generative AI technology was received was brought to an abrupt end by the decisive judicial pronouncements that mark a paradigm shift in adjudicatory practice. The global judicial consensus, as reflected in the sanctions imposed in the *Avianca* and *Louboutin* cases, has unequivocally repudiated the notion of technological ignorance. Courts have firmly established that reliance on AI-generated judicial determinations is not a mere procedural infirmity, but a severe act of professional misconduct. This marks a significant doctrinal shift, affirming that the legitimacy of the adjudicatory process is inextricably linked to human intellectual effort. Consequently, the defense of 'automatic reliance' on probabilistic AI outputs has been thoroughly dismantled.

Further, although the Supreme Court of India has sweeping discretionary powers as an appellate court under Article 136 of the Constitution to correct gross miscarriages of justice<sup>15</sup>, the emerging jurisprudential consensus is proactive in preventing such miscarriages at the outset. The prevailing legal standard now dictates that introducing synthetic fictions into the sovereign record subverts the institutional integrity of the judiciary, proving that the intellectual labor of legal reasoning can never be outsourced to a machine.<sup>16</sup>

#### VI. RECONCEPTUALIZING THE DUTY OF CANDOR AND PROFESSIONAL STANDARDS

The jurisprudential implications of such landmark decisions are of substantial

consequence, which has recalibrated the duty of care applicable to a broad cohort of practicing advocates under the Advocates Act of 1961. The Bar Council of India's Rules of Professional Standards have always stipulated a stringent Duty of Candour vis-à-vis the judiciary, requiring the advocate to display absolute intellectual honesty. However, in the wake of the disclosures regarding AI-induced hallucinations, this long-standing duty has undergone a transition to a markedly stringent Duty of Verification.

Advocates are no longer at liberty to rely upon the opaqueness of algorithmic black-box systems. Where an advocate submits a pleading or written submission incorporating AI-assisted research findings, the advocate shall display absolute and strict liability vis-à-vis the ontological correctness of such citations. The submission of an AI-induced hallucinated precedent shall be legally tantamount to a deliberate attempt at misdirection of the court. The duty of care applicable to the legal profession has therefore ascended from the realm of basic research to the realm of rigorous factual authentication. The legal profession must therefore recognize that, while AI tools may increase the mechanical efficiency of legal draftsmanship, the duty of care regarding epistemological truth remains an exclusively human responsibility.

#### PART III: CONSTITUTIONAL IMPERATIVES AND THE REGULATORY HORIZON

#### VII. THE CONSTITUTIONAL PARADOX: ARTICLE 21 AND THE RIGHT TO HUMAN ADJUDICATION

Such jurisprudential discussion on the phenomenon of algorithmic hallucinations transcends the domain of professional ethics to touch the very heart of Indian constitutionalism. It is in the context of Article 21 of the Constitution of India, wherein the right to life and liberty is protected by the constitution, except in the manner provided by the procedure established by law.<sup>17</sup> One of the basic principles of

<sup>15</sup> INDIA CONST. art. 136.

<sup>16</sup> See generally *Christian Louboutin*, 2023 SCC OnLine Del 1704 (emphasizing the necessity of strict human oversight and holding that legal reasoning cannot be outsourced to algorithms).

<sup>17</sup> See, e.g., *Sumil Batra v. Delhi Admin.*, (1978) 4 SCC 494 (holding that arbitrary and unreasoned executive or judicial actions violate Article 21).

procedural fairness is that the litigant is entitled to a reasoned decision. If a judicial officer or legal practitioner subcontracts the basic legal reasoning behind a decision or submission to a language model, the output is by definition not reasoned. It is not informed by discretion, equity, or empathy but is purely informed by mathematical token prediction. Thus, the reliance on the hallucinated precedent to decide the viability of the claim or dismissal of the claim is a serious violation of the principles of natural justice.<sup>18</sup>

The constitutional right of the citizen is not merely to get a quick decision, as is argued by proponents of judicial automation to address the crisis of pending cases in Indian courts. It is to subject oneself to the rigorous application of human judgment. Thus, the Right to Human Adjudication is an implied constitutional right that is within the purview of Article 21. It ensures that the sovereign power of the state is not delegated to an opaque mechanism. Allowing such decision-making by an artificial intelligence mechanism reduces the litigant from being an individual with rights to being just another data point in the queue of an algorithmic processing system.

#### VIII. DESIGNING A REGULATORY FRAMEWORK FOR ALGORITHMIC ACCOUNTABILITY

To address the systemic risks exposed by these landmark constitutional court judgments, the Indian legal framework must urgently adopt a comprehensive regulatory mechanism. The current state of affairs, where technological adoption is moving faster than ethical regulation, is clearly unsustainable. In this regard, the apex regulatory body, the Bar Council of India, in association with the Ministry of Law and Justice, must adopt a robust framework for Algorithmic Accountability. The bedrock for such a framework must be the mandatory issuance of a Digital Verification Certificate along with all pleadings, written submissions, and orders. This must be a binding affidavit under the Bharatiya Nagarik Suraksha

Sanhita (BNSS), wherein the party must swear under penalty of perjury that all relevant authorities, statutes, and judicial precedents relied upon must be manually verifiable against deterministic legal databases such as SCC Online or Manupatra.<sup>19</sup>

Furthermore, the Supreme Court must incorporate a nuanced framework for Proportional Liability in its forthcoming set of regulatory guidelines. While the inclusion of a hallucinated case name in an obiter dictum should legitimately result in the imposition of substantial financial costs upon the errant party, the deliberate inclusion of synthetic precedents to determine the ratio decidendi must constitute a serious offense of gross misconduct under Section 35 of the Advocates Act, 1961. In the case of judicial officers, such a violation must result in an immediate departmental inquiry against the erring judge by the relevant High Court, as it signifies a complete abdication of the sovereign's adjudicatory power.

#### IX. CONCLUSION: THE RESURGENCE OF THE HUMAN-IN-THE-LOOP DOCTRINE

The epistemic crisis faced by both global and Indian judiciaries in 2023 is a historical lesson in the unregulated integration of generative AI in the administration of justice. The transition from the initial period of unregulated enthusiasm for algorithmic assistance in the administration of justice to the decisive judicial backlash in the form of the landmark decisions in *Mata v. Avianca* and *Christian Louboutin Sas v. M/s Shoe Boutique* is a turning point in the history of jurisprudence in the modern era. These decisions, in their collective wisdom, dispel the myth of algorithmic infallibility and establish that the submission of hallucinated jurisprudence and the failure to authenticate algorithmic results is professional misconduct of a punitive nature, rather than a technological failure.

<sup>18</sup> See *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262.

<sup>19</sup> See SCC OnLine, <https://www.sconline.com> (last visited Mar. 10, 2026); Manupatra, <https://www.manupatrafast.com> (last visited Mar. 10, 2026).

This is a paradigm shift in the jurisprudence of the modern era, and it is founded upon the fundamental principle that must forever inform the legal profession: the automation of legal research is not the automation of legal reasoning. The formalization of the Duty of Verification is no longer an antiquated relic of the analog era; it is the only constitutional and ethical principle in the modern information environment. In the context of the Bharatiya Sakshya Adhinyam, 2023, and the ethical obligations imposed by the Advocates Act, 1961, this duty requires that legal professionals refrain from using algorithmic black boxes to avoid the rigorous intellectual effort required by the adversarial system. As the very fabric of legal practice is forever changed by the all-pervasive influence of AI technology, it is imperative that the legal profession reassert its dedication to these fundamental values of truth, candour, and intellectual discipline. The last bastion of defense against deception by algorithmic means, and consequently, the infringement of a litigant's right to a reasoned and fair determination of their case, will continue to be found in neither the relative superiority of any particular algorithm nor in any extrinsic mechanism of validation, but in the unwavering and critical dedication of the human practitioner.

As may be gleaned from the evolving mandate of the constitutional courts, in the administration of justice, the dictates of technological expediency are subjugated to procedural integrity.<sup>20</sup> Until such time when artificial intelligence systems are capable of providing determinate results and are legally culpable for their truthfulness, it is the human practitioner of the law who harnesses such technology who will continue to be the sole and unwavering guarantor of truth.

<sup>20</sup> See generally *Christian Louboutin Sas v. M/s Shoe Boutique*, 2023 SCC OnLine Del 1704.