
AI-GENERATED EVIDENCE IN MATRIMONIAL DISPUTES: DEEPFAKE VIDEOS AS 'PROOF' OF INFIDELITY OR ABUSE

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ABSTRACT

Matrimonial disputes in India rely on an evidentiary framework built to answer where a digital record came from, not whether its content is true. Section 65B of the Indian Evidence Act, 1872, carried forward as Section 63 of the Bharatiya Sakshya Adhiniyam, 2023, requires only a certificate confirming the device and its proper functioning. This distinction has turned critical with the arrival of generative video and audio tools, since a deepfake can clear every certification requirement while showing an event that never happened. Family courts face particular exposure here, because claims of infidelity and abuse are already hard to establish through conventional evidence, and this difficulty gives a determined spouse strong reason to fabricate convincing footage. Incidents already reported from the United States and Poland show fabricated recordings submitted in custody and divorce matters, in one case leading to a no-contact order before forensic analysis proved the recording synthetic. A related danger, described in scholarship as the liar's dividend, lets a party confronted with genuine incriminating footage simply call it fake, pushing the burden of proof onto whichever side cannot afford forensic verification. This paper traces that gap between admissibility and truth, and argues that routine forensic scrutiny and judicial training are needed to close it.

Keywords: deepfake evidence; matrimonial disputes; electronic evidence admissibility; Section 65B, Indian Evidence Act; Bharatiya Sakshya Adhiniyam, 2023; digital forensics; liar's dividend; family courts; synthetic media; custody and divorce litigation.

Introduction

Matrimonial disputes have always depended on private facts proved through imperfect means: a witness's account, a photograph, a recorded telephone call. Rules of evidence were designed around this imperfection rather than to remove it entirely. The emergence of generative video and audio technology has now pushed these rules beyond what they were built to handle. A spouse seeking custody, maintenance, or a favourable divorce order can, at relatively low cost and without any real technical training, produce a convincing fabricated video depicting infidelity or abuse. Courts are now confronted with a situation the drafters of the relevant statutes never anticipated: evidence that satisfies every procedural requirement while being entirely false.

The Authentication Framework and Its Blind Spot

In India, the admissibility of electronic records is governed by Section 65B of the Indian Evidence Act, 1872, restated with only minor changes as Section 63 of the Bharatiya Sakshya Adhiniyam, 2023¹. Both provisions require a certificate identifying the device that produced the record and confirming that the device was functioning properly at the relevant time. The Supreme Court held this certificate to be mandatory in *Anvar P.V. v. P.K. Basheer*², and reaffirmed the same position in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*³.

This framework was designed to answer a single, narrow question: did the file originate from the device it claims to have come from? It was never meant to answer a more difficult question, namely whether the content of the file reflects something that actually took place. A deepfake video can be stored, transmitted and certified in exactly the same manner as a genuine recording, since the certificate speaks to custody and origin, not to the truth of what is shown. A litigant who secures the cooperation of a compliant, or simply careless, certifying authority can therefore introduce a wholly synthetic video that clears the statutory bar for admission without difficulty. Legal commentary examining this gap under the 1872 Act has pointed out that a well-made deepfake shows no visible sign of tampering at all, since nothing in it was altered it was generated from nothing⁴. Certificate requirements built to detect tampering have

¹Indian Evidence Act, 1872, § 65B, No. 1, Acts of Parliament, 1872 (India); Bharatiya Sakshya Adhiniyam, 2023, § 63, No. 47, Acts of Parliament, 2023 (India).

²*Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473 (India).

³*Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1 (India).

⁴See Geetika Sona & Yogesh Mahalingam, *Deepfakes and Due Process: Rethinking Authenticity of Social*

very little to offer against content that was never authentic in the first place.

Why Matrimonial Litigation Is the Weak Point

Family courts are exposed to this problem in a way that is specific to the nature of the disputes they handle. Allegations of infidelity or abuse are, by their very nature, difficult to establish through conventional documentary proof, and this difficulty is precisely what makes fabricated video evidence attractive to a determined litigant. Legal commentary from Indian practice has noted that matrimonial matters already show a higher incidence of fabricated evidence compared to other categories of civil litigation⁵, and identifies the underlying motives clearly enough: portraying the other parent as unfit in order to gain an advantage in custody proceedings, concealing or inflating income relevant to a maintenance claim, or simply damaging a spouse's reputation within family and social circles.

This pattern is not confined to India. A Texas-based family law attorney reported a marked increase in fabricated evidence produced using commonly available AI tools, including manipulated photographs and video surfacing in custody disputes⁶. Reporting from Poland describes a mother who submitted an AI-cloned voice recording to a court, purporting to show the father threatening to kill her and their young son⁷. A forensic phonoscopist later established that the recording was synthetic, and it was the mother, not the father, who ultimately faced criminal proceedings. In a separate, higher-value divorce, a wife submitted a short fabricated video suggesting that her husband had spent a night with another woman, created using consumer face-swapping software⁸. These are not hypothetical illustrations offered for academic discussion. They are incidents that have already occurred and are already working their way through courts.

The Liar's Dividend: When Real Evidence Gets Disbelieved

There is a second harm that runs in the opposite direction. Once judges and litigants come to

Media Evidence in India's New Digital Evidence Regime, 8 Int'l Acad. J. Soc. Sci. 8 (2026).

⁵Couples Weaponise AI to Cook Up Evidence in Matrimonial Disputes: SC, Trib. India (Jan. 21, 2026), <https://www.tribuneindia.com/news/aievidence/couples-weaponise-ai-to-cook-up-evidence-in-matrimonial-disputes-sc>.

⁶Nikolas Lanum, Getting Divorced? Artificial Intelligence Deepfakes Could Cost You in Court, Fox Bus. (Mar. 15, 2025, 5:00 AM), <https://www.foxbusiness.com/media/getting-divorced-artificial-intelligence-deepfakes-could-cost-you-court>.

⁷Deepfake in Divorce Cases – Real Incidents from 2025, Wichran (May 11, 2026), <https://www.wichran.pl/en/blog/deepfake-in-divorce-cases-2025/>.

⁸ Id

understand that video can be convincingly fabricated, a spouse confronted with genuine and damaging footage acquires a new line of defence, which is simply to deny the recording and claim it is synthetic. Legal scholarship has given this phenomenon the name "liar's dividend,"⁹ and it has already appeared in American family courts, including a Texas custody matter in which a father attempted to discredit an incriminating video by suggesting it might be a deepfake¹⁰. The court in that case declined to accept the claim in the absence of supporting proof, but the episode nonetheless reflects a broader structural shift. Authenticity itself has become contestable in every case, regardless of whether fabrication has actually occurred, and this alone increases the cost and delay involved in litigating even straightforward matters, since a bare allegation of manipulation may be sufficient to force a forensic inquiry.

Practical and Doctrinal Consequences

Three consequences follow from this state of affairs. The burden of proof, first, effectively shifts. Where a certified electronic record can no longer be presumed reliable on its face, the party opposing it is pushed toward the difficult task of disproving a negative, which reverses the ordinary evidentiary posture and has already been flagged, in Indian commentary on criminal trials, as unfair to the party lacking the resources to commission forensic analysis¹¹. This burden falls disproportionately on litigants of limited means, regardless of which side of a fabricated video they happen to be standing on.

Second, courts run the risk of overcorrecting into a general scepticism toward all video and audio evidence. If judges begin treating every recording as potentially synthetic, genuine evidence, including footage of abuse captured by a victim at real personal risk, may be discounted alongside material that is actually fabricated. Family law practitioners in the United States have already cautioned that submitting genuine recordings without accompanying metadata invites precisely this kind of dismissal¹².

Third, the certification regimes currently in force, whether under Section 65B of the Evidence Act or Section 63 of the Bharatiya Sakshya Adhiniyam, are concerned with the integrity of

⁹Robert Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 Calif. L. Rev. 1753, 1758 (2019).

¹⁰Deepfakes in Divorce: AI Evidence in Family Courts, Yang L. Offs. (Sept. 25, 2025), <https://yanglawoffices.com/deepfakes-divorce-ai-family-courts/>.

¹¹Aditi Zehra & Jyoti Yadav, *Regulation of Deepfakes, Identity Fraud and AI-Created Harms under New Penal Provisions*, 8 Int'l J. for Multidisciplinary Research., no. 2, 2026, at 1.

¹²Jared Perlo, *AI-Generated Evidence Is Showing Up in Court. Judges Say They're Not Ready.*, NBC News (Nov. 18, 2025, 5:00 AM EST), <https://www.nbcnews.com/tech/tech-news/ai-generated-evidence-deepfake-use-law-judges-object-rcna235976>.

storage and transmission and say nothing whatsoever about the process by which the underlying content was generated. The IT Rules, 2026¹³ extend traceability obligations to intermediaries hosting synthetically generated content, and this may assist courts in tracing the origin of an upload, but it does nothing to resolve the more basic evidentiary question of whether the event depicted ever occurred¹⁴.

Closing the Gap: Forensic Review and Judicial Training

A number of incremental measures are available short of fresh legislation. Family courts could, as a matter of practice rather than binding rule, decline to treat a Section 65B or Section 63 certificate as conclusive and instead require forensic examination of video evidence whenever its authenticity is genuinely disputed. Judicial training programmes already underway in some jurisdictions, intended to familiarise judges with the limits of what digital certification can actually prove, deserve to be adopted more widely¹⁵. Expert forensic testimony is costly, but it ought to be treated as a standard feature of contested matrimonial litigation involving disputed media, rather than reserved for the most extreme cases. None of these measures resolves the underlying difficulty. They only narrow the space within which a fabricated video can pass itself off as proof, without closing the deeper gap between a legal architecture built to answer questions of origin and a technology that has made the question of truth entirely separable from it.

Conclusion

The law of evidence rested, until fairly recently, on the reasonable assumption that a video showing an event taking place was strong proof that the event had, in fact, taken place. Generative AI has severed that assumption without disturbing any of the procedural machinery built on top of it. In matrimonial disputes, where allegations of infidelity and abuse carry immediate consequences for custody, maintenance and reputation, the gap between formal admissibility and substantive truth is not a matter of academic concern alone. It is already shaping outcomes in courts on more than one continent, and the certification regimes currently in place were never built with this problem in mind.

¹³Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, Gazette Notification G.S.R. 120(E) (Feb. 10, 2026) (India).

¹⁴See Id.

¹⁵Perlo, *supra* note 12 (describing the National Center for State Courts–Thomson Reuters Institute AI Policy Consortium and its judicial guidance materials on unacknowledged AI evidence).