
THE GHOST IN THE MACHINE LIABILITY: CRIMINAL RESPONSIBILITY OF CREATORS FOR AI AVATAR MISCONDUCT UNDER THE NATIONAL CREATOR ECONOMY BILL, 2026 AND THE IT AMENDMENT RULES, 2026

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ABSTRACT

India's digital creator economy, worth about USD 20–25 billion, is a rapidly expanding sector. The recent assent of the National Creator Economy Bill, 2026 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 is a watershed moment for this sector. Despite recognizing digital creators as professionals and requiring labels for all synthetically generated information (SGI), these laws highlight a significant gap in the law. If an AI-generated digital twin or virtual influencer, acting under a creator's brand independently, defames, promotes a Ponzi scheme, or gives dangerous advice, who is criminally and civilly liable? The article investigates what is termed the 'Ghost in the Machine' liability problem namely, the gap between the autonomous and hallucinating outputs of AI avatars and the human creators, whose identity and brand equity still drives them. The article examines a scenario in which the AI avatar of a famous YouTuber offers patently false financial advice that causes millions in losses for investors, and seeks to understand who is legally responsible. Is it the coder who created the avatar, the creator who licensed their looks and voice or the platform that hosted and amplified the content? This paper examines the SGI labelling requirements under the IT Amendment Rules, 2026, the safe harbour regime under Section 79 of the IT Act, 2000, criminal provisions under the Bharatiya Nyaya Sanhita, 2023 and Section 66D of the IT Act, SEBI's financial promotion regime, and the Consumer Protection Act, 2019. Further, it interrogates the applicability of classical tort law doctrines like negligence, respondeat superior, and absolute liability under the M.C. Principle of Mehta: regarding AI-generated damages. The author of the article noted that while India's regulatory architecture has made great strides with its requirement for SGI labelling, it does not allocate liability with the precision mandated by the commercial and technological realities of AI-enabled creator personas.

Keywords: AI avatar, virtual influencer, digital twin, synthetically generated information, IT Amendment Rules, 2026, National Creator Economy Bill 2026, Section 66D, tort liability, financial defamation, AI hallucination

I. INTRODUCTION

The great philosopher Gilbert Ryle derided Cartesian dualism with the story of the ‘ghost in the machine.’ This refers to the error of treating the mind as a ghost-like spirit that inhabits the body. This ghost can act independently of the body (the machine)¹. The AI avatar poses a similarly serious challenge to Indian law in April 2026. Digital creators across India are increasingly employing AI-generated versions of themselves voice-cloned, visually rendered, emotionally responsive digital twins for the purpose of creating content, engaging with audiences, and endorsing products, frequently without live supervision. When such an avatar acts improperly, spreading false financial advice, or defamatory statements, the law is left facing a machine with no legal person and a human creator whose liability is far from clear.

The Rajya Sabha’s passage of the National Creator Economy Bill, 2026 on 14 April 2026, which formally recognised social media influencers, YouTubers, and digital artists as professionals within a legally defined framework² and the notification of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 (IT Amendment Rules, 2026) on 20 February 2026³, are the most consequential legislative interventions into India’s digital creator ecosystem. All synthetically generated information (SGI)⁴ needs to be labelled, and platforms⁵ must undertake proactive moderation of content as per IT Amendment Rules. The Creator Economy Bill confers professional status and welfare benefits on creators. The creator economy of the country of India is not something insignificant. A report by Boston Consulting Group estimates the country’s creator economy to be worth USD 20–25 billion. Moreover, the creators influence an estimated annual consumer spending of USD 350 billion.⁶ However, both public instruments are surprisingly silent on what

¹ Gilbert Ryle, *The Concept of Mind* (Hutchinson, 1949) 15–16 (coining ‘ghost in the machine’ to critique Cartesian dualism between mind and body; adopted metaphorically here to describe the liability chasm between an AI avatar’s autonomous outputs and the human creator nominally behind it).

² National Creator Economy Bill, 2026 (passed by Rajya Sabha on April 14, 2026), recognizing social media influencers, YouTubers, and digital artists as professionals with a formal legal framework, Creator Welfare Fund, and mandatory registration provisions. See Samachar4media, ‘Rajya Sabha Mein Pass Hua Creator Economy Bill 2026’ (April 14, 2026), available at <https://www.samachar4media.com>.

³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, Ministry of Electronics and Information Technology Notification, G.S.R. 120(E) (India), notified February 20, 2026 [hereinafter IT Amendment Rules, 2026].

⁴ IT Amendment Rules, 2026, Rule 2(1)(d) (defining ‘Synthetically Generated Information’ as any audio, visual, or audio-visual content created or substantially altered using AI/algorithmic systems that appears authentic to an ordinary observer).

⁵ IT Amendment Rules, 2026, Rule 3(1)(b)(ii) (requiring platforms to mandate user declarations and deploy technical tools to verify and label synthetic media). See also India Briefing, ‘Global Firms Face Legal Risks Under India’s 2026 AI Regulation’ (March 13, 2026), available at <https://www.india-briefing.com>.

⁶ Boston Consulting Group, ‘From Content to Commerce: Mapping India’s Creator Economy’ (May 2025), estimating India’s creator economy at USD 20–25 billion, with creators influencing over USD 350 billion in

could possibly be the most important question of our time: what happens when an AI avatar goes rogue? This piece seeks to answer that question through three perspectives. In Part II, the 'Ghost in the Machine' problem is established through a framework and technology.

The applicable legal framework is examined in Part III, where the IT Amendment Rules, 2026 are mapped against tort law and criminal law. Part IV applies the in-depth analysis framework to a case study of an AI YouTuber who provides fraudulent financial advice. The final section of the article proposes a matrix and seeks legislative changes.

II. THE GHOST IN THE MACHINE: AI AVATARS AND THE LIABILITY VACUUM

A. The Technology: How Digital Twins Operate

An AI avatar (or digital twin) in the context of the creator economy is a synthetic personality that is trained on the voice, image, behaviour and speech of an actual human creator. Using large language models (LLMs) and diffusion-based image synthesis, these avatars are capable of producing continuous streams of content, responding to audience queries in real-time, and endorsing products while duplicating the creator's personality with astonishing accuracy. All LLMs share a crucial tech attribute of 'hallucinating' which means generating confident, plausible-sounding but factually incorrect outputs. Probabilistic text prediction doesn't make hallucinations happen; rather, hallucinations exist because of it.⁷

The reasoning behind utilizing such avatars is commercially reasonable. A three-million-subscriber YouTuber can use an AI twin to create 50 pieces of content a day instead of five, to be present across time zones, as well as license their likeness to brands for sponsorships. The National Creator Economy Bill, 2026 implicitly validates this model by making creator identities formal and protectable. Nonetheless, the agency gap that arises when the avatar not the creator becomes the effective publisher is not something the Bill or the IT Amendment Rules, 2026 address.

B. The Liability Vacuum

So far, Indian law has dealt with damage caused by AI only through the lens of non-consensual deepfakes, which are synthetic content made by a third party without the consent of the subject.

annual consumer spending. See Outlook Business, 'IT Rules 2026: India's Creator Economy Shall Pay the Price for User Safety and Privacy' (February 12, 2026), available at <https://www.outlookbusiness.com>.

⁷ Lidsky & Daves, 'Inevitable Errors: Defamation by Hallucination in AI Reasoning Models' (2025) 3 Journal of Free Speech Law 477, 538 (proposing that defamatory AI hallucinations be treated as 'inevitable errors' and advancing a hybrid negligence-strict liability standard for AI developers).

The Delhi High Court judgments in *Anil Kapoor v. Simple Life India*⁸ and *Sadhguru v. Unidentified Websites*⁹ ruled that individuals have enforceable personality rights in their AI likeness which can justify ex parte injunctions against their use. Vineeta Singh's successful action against a deepfake endorsement video¹⁰ has firmly established this principle. Nevertheless, the third-party misappropriation of a persona was involved in all these instances. The Ghost in the Machine scenario puts a new spin on the problem. A creator has explicitly deployed their AI avatar, which then takes independently significant action that the creator did not specifically authorize or foresee. So far, this situation has not been tackled by any Indian court. The inquiry is not who has taken the wraith, but who will take the blame should the wraith take action.

III. THE LEGAL ARCHITECTURE: MAPPING THE REGULATORY LANDSCAPE

A. The Amendment Rules, 2026: Labeling Without Liability

India's IT Amendment Rules, 2026 are its boldest move yet on AI-generated content. The Rules stipulate that SGI is any synthetic content generated or substantially modified by AI that is perceived as authentic by the average user. SGI must be labelled prominently for at least ten percent of the time or the area. Significant Social Media Intermediaries (SSMIs) should obtain user declarations prior to publishing SGI and deploy continuous automated detection systems. Not removing an unlawful SGI within three hours puts you at the risk of losing safe harbour protection under Section 79 of the IT Act.¹¹

The rules are a tool facing intermediaries. These obligations are imposed on platforms, not creators. A creator who uses an AI avatar and mandatorily labels it as SGI is, under the 2026 Rules, compliant. According to the rules, it is unclear whether a labelled AI avatar can be held

⁸ *Anil Kapoor v. Simple Life India & Ors.*, CS(COMM) 652/2023 (Delhi High Court, September 20, 2023) (granting an ex parte injunction protecting the actor's personality rights against unauthorized AI avatars and deepfake content; the court held that an individual possesses an enforceable right to control their name, voice, image, and digital likeness).

⁹ *Sadhguru v. Unidentified Websites*, Interim Order (Delhi High Court, May 30, 2025) (granting a 'dynamic+' injunction compelling platforms to proactively remove AI-altered videos, audios, and images misappropriating the spiritual leader's persona). See Record of Law, 'Regulating AI and the Internet in India' (August 26, 2025), available at <https://recordoflaw.in>.

¹⁰ *Vineeta Singh v. Unknown*, CS(OS) (Delhi High Court, 2024) (granting injunction against a deepfake video falsely depicting the entrepreneur endorsing a health product, invoking privacy and defamation laws under the IT Act and *Bharatiya Nyaya Sanhita*).

¹¹ IT Amendment Rules, 2026, Rule 4(4)(a)–(c) (requiring SSMIs to deploy automated systems for blocking harmful synthetic content and implement continuous AI misuse detection systems tuned to Indian legal thresholds). See Live Law, 'Three Hours to Comply: India's New Rules for AI-Generated Content and Deepfakes' (February 21, 2026), available at <https://www.livelaw.in>.

civily or criminally liable or what the consequence will be if it causes harm. Harm may be defined as defamation, financial fraud, misleading health advice, etc. The labelling requirement is fundamentally a disclosure obligation, serving transparency purposes. It is not a device for risk allocation. In this context, the Indian framework lags behind that of the EU AI Act, which adopts a risk-based classification, requiring affirmative obligations to be imposed on deployers of AI systems. This includes high-risk categories in finance and public information.¹²

B. Criminal Law: Section 66D IT act and the BNS,2023

Section 66D of the IT Act, 2000 punishes cheating by personation using computer resources.¹³ In the context of deepfakes, this provision has been invoked by courts and prosecutors regarding third-party impersonators. The application of this on a creator's own AI avatar is more doctrinally complex. It is hard to think that artificial intelligence can personate or deceive because that would mean stealing another's identity. The maker who uses an avatar doesn't intend every output, and the commercial value of such systems rests on their ability to freely produce material. For hallucinated financial recommendation, defendant should either prove that creator designed the program to create such output; or by design, creator created a program with reckless disregard of a foreseeable risk of harmful autonomous outputs. The BNS treats the former as more manageable, which is consistent with the provisions on cheating in Section 318 and organized cybercrime in Section 111.¹⁴

The Digital Personal Data Protection Act, 2023 further adds a layer. Artificial Intelligence (AI) avatar processes or generates some output or recommendation based on the user's personal data, including their behaviour, which helps in personalizing the recommendations. Thus, the creator as a data fiduciary may be liable under the DPDPA if such processing is unauthorized or is harmful. It may be noted that for significant breach penalties include Rs. 250 crore.¹⁵

C. Tort Law: Negligence, Vicarious Liability, and Absolute Liability

There are three possible avenues to creator liability under tort law. Creator creating an AI avatar

¹² European Union Artificial Intelligence Act, Regulation (EU) 2024/1689 of the European Parliament and of the Council, OJ L 2024/1689 (entered into force August 1, 2024; key transparency obligations applicable from August 2, 2026), Arts. 50–52 (mandatory labeling for AI-generated content and real-person synthetic media).

¹³ Information Technology Act, 2000 (Act 21 of 2000), s 66D (punishing cheating by personation through computer resources with imprisonment up to three years and fine up to Rs. 1 lakh). See also Record of Law, 'AI and Deepfake: Legal Challenges' (February 11, 2026), available at <https://recordoflaw.in>.

¹⁴ Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s 356 (codifying criminal defamation); s 318 (cheating); s 111 (organized cybercrime). The BNS replaced the Indian Penal Code, 1860 with effect from July 1, 2024.

¹⁵ Digital Personal Data Protection Act, 2023 (Act 22 of 2023), s 8 (imposing data fiduciary obligations and consent requirements for biometric and avatar data processing), s 33 (penalties up to Rs. 250 crore for significant breaches).

or chatbot capable of making financial recommendations certainly owes a duty of care to the audience relying on those recommendations. The failure to perform that duty with the result of not putting enough guardrails or other disclaimers or human oversight mechanisms which cause unforeseeable financial damage satisfies negligence as per *Donoghue v. Stevenson* and Indian case law¹⁶. In the context of product liability, one may draw an analogy between the financial advice and an AI avatar. Under this logic, the AI avatar may be considered defective in design. The defect here is a failure to include safeguards against predictable harmful hallucination.¹⁷

Secondly, vicarious liability through doctrine of respondeat superior probably because the AI avatar works as the creator's commercial agent to earn advertising revenue, promotes products, builds the creator's brand, so that courts will treat the outputs of the AI avatar as the acts of an 'agent' for which the principal will be liable. According to the Indian courts, corporate entities will be liable for any misconduct of its employees. If this remains the law, then the creator could also be bound for avatar's commercial actions.

Most expansively, the principle of absolute liability which was established in *M.C. In the case of Mehta v. Union of India*, it was determined that when the enterprise is engaged in inherently dangerous activities which harm the public, it is absolutely liable for the damage caused even negligence or escape defences¹⁸. The implementation of an AI avatar in the provide of financial advice – where a single hallucinated suggestion can have catastrophic outcomes for large numbers of retail investors – is likely an analogous 'inherently dangerous' activity, especially if the avatar has millions of followers and no human-in-the-loop.

D. SEBI and Consumer Protection Regimes

An Artificial Intelligence avatar giving financial advice is a regulated profession. As per the regulations of the Securities and Exchange Board of India, no unregistered person shall act as

¹⁶ Virtuosity Legal, 'Accountability By Design: Shared Liability in AI Fraud Under Indian Cyber Law' (October 11, 2025), available at <https://virtuositylegal.com> (analyzing application of vicarious liability and respondeat superior doctrine to AI-generated fraud).

¹⁷ Influencers-Time, 'Legal Liabilities for Sentient-Acting AI in 2025' (February 17, 2026), available at <https://www.influencers-time.com> (noting that when an AI persona is packaged as a consumer-facing product and causes harm, product liability exposure increases, and that risk escalates significantly when the system provides financial advice without adequate disclaimers or escalation to qualified humans).

¹⁸ *Rylands v. Fletcher* (1868) LR 3 HL 330 (establishing strict liability for non-natural, ultra-hazardous use of land). Indian courts have applied the analogous principle of absolute liability in *M.C. Mehta v. Union of India*, AIR 1987 SC 1086, departing from the escape requirement and imposing liability without fault for inherently dangerous activities—a doctrine potentially applicable to high-risk autonomous AI systems deployed in financial contexts.

an investment adviser or associate investment adviser. Further, under the SEBI Act, 1992¹⁹, there are some regulations that require one to disclose the stock recommendations that are made as a part of the financial promotions. A creator whose AI avatar recommends specific stocks or investment products would be in violation of these regulations if the creator is not SEBI-registered for that purpose. Further, it will not matter whether the recommendation is made in the first place as a result of an autonomous act of the AI or not. According to the Consumer Protection Act, 2019, further remedies are misleading advertisements. Thus, misleading advertisement involving fraudulent financial claims through AI would attract a penalty up to Rs. 50 lakh for repeated offence. Moreover, the Central Consumer Protection Authority has the power to investigate against misleading advertisement.²⁰

IV. WHO PAYS? THE CASE OF THE AI FINANCIAL GURU

Let's look at the following situation to crystallize the liability issue. A popular finance creator on YouTube deploys an AI avatar trained on their three hundred hours of video content with four million subscribers. The avatar correctly known as an SGI per the IT Amendment Rules 2026 is empowered to issue daily financial commentary. One evening, when the creator is not around, the avatar having what technologists call a hallucination suggests a mid-cap stock as a 'guaranteed multi bagger' based on non-existent analyst reports. The video gets two million views overnight. Retail investors suffer losses of around Rs 85 crore before the video is flagged and taken down. The author has fallen asleep. The computer programmer is in a different city. After four hours, the content was removed by the platform. Who makes the payment?

The developer, or AI coder, could be liable for negligence if he/she fails to take precautions against the AI system generating financial advice, given this is a foreseeable high-risk outcome. In the US *Walters v. OpenAI* case, developers will be safe from liability as long as they provide adequate warnings in regard to AI outcomes²¹. Nonetheless, the Indian context is quite different. All of the three key instruments reflect an expectation of active risk aversion and

¹⁹ Securities and Exchange Board of India (Advertisement Code) Regulations and SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/22 (February 2023) (prohibiting unregistered investment advisers and requiring disclosure for financial promotions). See also Securities and Exchange Board of India Act, 1992 (Act 15 of 1992), s 12A (prohibition on fraudulent and unfair trade practices).

²⁰ Consumer Protection Act, 2019 (Act 35 of 2019), s 2(28) (defining 'misleading advertisement'); s 21 (Central Consumer Protection Authority powers); s 89 (penalties up to Rs. 10 lakh for misleading advertisements and up to Rs. 50 lakh for repeat violations).

²¹ *Walters v. OpenAI, LLC*, No. 23A04303-4 (Ga. Super. Ct., filed June 2023; summary judgment in favor of OpenAI granted May 19, 2025) (the court found insufficient proof of negligence or actual malice where the developer had issued adequate warnings about potential AI inaccuracies). See Columbia Undergraduate Law Review, 'Redefining Defamation: Establishing Proof of Fault for Libel and Slander in AI Hallucinations' (December 14, 2025), available at <https://www.culawreview.org>

mitigation from developers and systems used, rather than simply disclaiming of disclaimer based exemption and disaffiliation from responsibility.

The manufacturer encounters the most intricate risk of liability. The creator, as the deployer of the avatar, exercised control over the decision whether to authorize autonomous financial commentary. Specifically, the creator received commercial benefits from the output of the avatar and lent their name, voice and brand credibility to the statements of the AI. The designer failed to adopt human-in-the-loop review for financial content that arguably constitutes a breach under a theory of negligence. Accusations of negligent fraud can easily be established under BNS Section 318 because by 2026, it was clearly foreseeable that LLM hallucinations in financial contexts would create a risk of this nature. It is unlikely that SGI labelling compliance will offer a full defence: disclosure is not enough to negate harm. According to the new regulatory regime in India, generative AI models must be appropriately labelled, and if they are not, it may attract liability – but a labelled hallucination is still harmful hallucination.²²

As per the IT Amendment Rules 2026, the platform which fails to take down the content within the given time frame of 3 hours shall lose IT Act Section 79 safe harbour²³. As a result, it is made liable along with the creator and developer, creating a joint and several liability which the existing statute does not provide for. The government is apparently aware of this gap as evidenced by the fact that the draft Second Amendment Rules, 2026 (open for public consultation right now), seeks to bring individual influencers under the same regulatory regime as news publishers²⁴. Indicate that the government is aware of this issue but that the consultative process is not yet complete.

V. TOWARDS A TRIPARTITE LIABILITY MATRIX: PROPOSED REFORM

The preceding analysis demonstrates that India's present regulatory framework suffers from a structural misalignment with the business realities of AI avatars. The IT Amendment Rules, 2026 only attempt to address the symptoms of the problem (unlabelled synthetic content) and

²² Prashant Mali, 'AI Laws and Regulations in India as of 2026' (February 20, 2026), available at <https://www.prashantmali.com> (analyzing India's 'techno-legal mosaic' approach and calling for explicit liability allocation across developer, deployer, and user roles in the AI value chain).

²³ Section 79 of the Information Technology Act, 2000 provides safe harbour to intermediaries from third-party content liability, provided they exercise due diligence and remove unlawful content within prescribed timelines. Under IT Amendment Rules 2026, failure to remove SGI within three hours can result in loss of this protection. See India Briefing (n 4).

²⁴ Open The Magazine, 'India's New IT Rules 2026: How MeitY Plans to Regulate Influencers Like News Publishers' (April 2026), available at <https://openthemagazine.com> (discussing the proposed Second Amendment Rules, 2026 that would subject YouTubers and individual influencers to the three-tier oversight mechanism under Part III of the IT Rules, previously reserved for professional media organizations).

not the cause of it (the absence of any liability for harmful synthetic content). The National Creator Economy Bill establishes creators as professionals but does not provide them with professional liability to that effect. The current criminal and tort law devices like Section 66D, BNS provisions, negligence, and absolute liability could be applied in principle but not without doctrinal development to address autonomous AI agency.

The article proposes a tripartite liability matrix to allocate liability across the AI value chain in proportion to control, benefit, and foreseeability. Then, the developer is primarily Strictly liable for foreseeable high-risk outputs. These include financial advice, health recommendations, and more, where hallucination risks are documented and where deployment-specific safeguards are industry-standard. It is consistent with the product liability rationale discernible from the provisions of the Consumer Protection Act, 2019 and the mandatory requirements applicable to high-risk AI systems under the EU AI Act. You could phrase this as: In the second scenario, the creator would be liable under secondary negligence. This is, where they have allowed autonomous operation to take place in high-risk domains without human-in-the-loop supervision.

They have not set up content-category guardrails or continued the deployment despite knowledge of the harmful output. The creator's formal recognition as a professional under the National Creator Economy Bill, 2026 would support the imposition of the corresponding professional duty of care obligations. Thirdly, the platform shall bear tertiary liability, depending on the nature of the SSMI (which shall inter alia include its compliance with the IT Amendment Rules, 2026 takedown obligations of three hours for SGI as now mandated), with full liability attaching for non-compliance. The platform shall also bear proportionate liability for having inadequate proactive monitoring for SSMIs whose nature shall have a liability to carry out such proactive monitoring.

This matrix can be implemented through the proposed 'AI Avatar Clause' to be inserted in the framework of the upcoming Digital India Act and the Artificial Intelligence (Ethics and Accountability) Bill, 2025. A clause like that should: define 'AI avatar deployment' as a class of activity that will trigger disclosure, registration and liability obligations; mandate human-in-the-loop for any AI avatar in SEBI-regulated financial communication contexts; create a statutory cause of action for audience which suffers harm as a result of AI avatar hallucinations, with presumption of cause where the avatar makes specific financial recommendations which then turn out to be false (also called as securities fraud in law); and create a centralized Creator-AI Accountability Register with MeitY, which will create a link between creator identities and

their deployed AI systems for regulatory traceability.

VI. CONCLUSION

India's National Creator Economy Bill, 2026 and the IT Amendment Rules, 2026 aim to fill the regulatory gap in the flourishing digital creator ecosystem, making it the first of its kind in the world. Nevertheless, they leave quiet on the liability of creators for the misconduct of the AI avatar, thus leaving the most important question unanswered. Gilbert Ryle's ghost has been loaded into a large language model that it is now distributed across the platforms and in the possession of millions and permitted to speak on matters of financial life and death without any legal framework able to call it to account. The hallucinating AI financial guru scenario isn't a future risk; it's already happening. It's a clear and present danger in a country where creators have more than a trillion dollars of consumer spend influence, and where retail investor participation is taking off fast. India possesses the legislative instruments, comprising the IT Act, BNS, Consumer Protection Act, DPDPA, and SEBI regime, and nascent regulatory frameworks for building a consistent liability architecture. It is the doctrinal synthesis that takes these components and positions them within a matrix with three poles that match the commercial and technological realities of 2026. The nature of the challenge requires a legal answer. The Indian law should provide a remedy before irreversible damage is caused by the machine.