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AI GOVERNANCE AND CORPORATE LAW: LEGAL CHALLENGES FOR INDIAN BUSINESSES

~DUTTA CHANDRA VARSHINI

Introduction

Artificial intelligence (AI) has transitioned from a laboratory technology to an operational layer of Indian business. Enterprises now utilize AI in finance, health, logistics, e-commerce, and public-facing platforms. The growing use of AI in corporate decision-making is reshaping operations but raising complex ethical and legal challenges. As algorithms increasingly handle recruitment and finance risk assessment, concerns regarding fairness and accountability have become central to responsible business conduct. For Indian businesses, AI governance is emerging as a vital component of modern corporate governance and social responsibility¹².

AI Governance and Corporate Governance

AI governance refers to the rules, practices, and processes ensuring AI technologies are directed and controlled within an organization. It is inextricably linked to corporate governance has evolved significantly under the Companies Act, 2013, and SEBI regulations. Section 166 of the Companies Act, 2013, mandates that directors act in good faith to promote company objects and the best interests of stakeholders. Consequently, AI should no longer be viewed as a mere technical tool but as a component of governance that must be legally accepted and

¹ Yash Saxena, Maneesha Srivastava, AI Governance and Ethical Accountability in Indian Corporates: A new dimension of Corporate Governance, Volume 9 Issue 10, Page 108-116.

² Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

regulated. A failure to oversee AI-driven outcomes, such as algorithmic bias or data breaches, could arguably constitute a breach of a director's duty of care and due diligence³.

Legal Challenges for Indian Businesses

A. Data Privacy and the DPDP Act, 2023

The Digital Personal Data Protection (DPDP) Act, 2023, is the most critical binding statute affecting AI governance in India. AI models depend heavily on data training, often involving personal or sensitive information. The Act requires "Data Fiduciaries" to obtain explicit, verifiable consent and issue clear privacy notices. Section 8 of the Act specifically requires fiduciaries to ensure data completeness, accuracy, and consistency when the data is used to make decisions affecting the "Data Principal". Non-compliance can lead to significant financial penalties of up to ₹250 crore⁴.

B. Algorithmic Bias and Discrimination

AI systems often replicate and amplify social prejudices embedded in training data. In hiring, credit checks, or customer targeting, biased outcomes can harm individuals based on caste, religion, or gender categories with deep social significance in India. While the constitution of India guarantees equality under Article 14 and 15, these protections have not yet been explicitly extended by statute to address private algorithmic harms. This creates a "legal vacuum" regarding algorithmic discrimination in the private sector⁵.

C. Intellectual Property (IP) Concerns

Indian businesses face uncertainty regarding the authorship and protection of AI-generated content. In February 2024, the Government stated that the existing copyright and patent regimes are well-equipped to protect AI-generated works without the need for a separate IP right. However, commercial users must ensure that training data does not infringe on existing copyrights unless covered by "fair dealing" exceptions under Section 52 of the Copyright Act.

³ Yash Saxena, Maneesha Srivastava, AI Governance and Ethical Accountability in Indian Corporates: A new dimension of Corporate Governance, Volume 9 Issue 10, Page 108-116

⁴ Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

⁵ AIForAll, Approach Document For India: Part 2 – Operationalizing Principles For Responsible AI (August 2021)

D. Liability for AI-Driven Decisions

Attributing liability for harms caused by autonomous systems remains a complex legal challenge. Current legal framework struggle with the “black box” nature of deep learning, where decision-making logic is not transparent. Emerging approaches suggest “shared and layered liability models,” where responsibility is distributed proportionally among designers, designers, deployers, and data suppliers.

E. Cybersecurity and Regulatory Uncertainty

AI systems are vulnerable to unique threats like adversarial attacks, model inversion, and data poisoning. Furthermore, businesses must infer compliance duties from multiple sources, including platform regulations and sectoral directions, which increases transactional costs and legal uncertainty.⁶

Indian Legal Framework

Indian currently lacks a dedicated, omnibus AI law. Instead, governance is based on:

- DPDP ACT, 2023: Regulating digital personal data used by AI⁷.
- Information Technology Act, 2000: Governing platform conduct and intermediary liability.
- NITI Aayog’s Responsible AI initiatives: Proposing principles of safety, equality, and transparency⁸.
- MeitY Advisories: Recent directives lift the requirement for prior permission to deploy models but mandate labeling for synthetic content and safeguard against electoral misinformation⁹.

International Perspectives

India’s approach is often contrasted with the European Union’s EU AI Act, which follows a risk-based tiering system (from minimal to unacceptable risk). While the EU translate ethical guidelines into specific legal rules, India has largely relied on principle-based oversight and

⁶ Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

⁷ Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

⁸ Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

⁹ Pranjal Dwivedi, Revised AI Advisory: How AI Regulation Can Impact India (May 2024)

voluntary adherence to the OECD AI Principles. However, recent Indian policy shifts, such as the draft Regulations for Use of AI in Courts, 2026, indicate a move toward structured auditing and “Human-in-the-Loop” requirements similar to international standards¹⁰.

Recommendations

To mitigate legal risks, Indian businesses should adopt the following measures:

- **Mandatory Impact Assessments:** Conduct pre-deployment Technical and Ethical Impact Assessments to evaluate bias and security risks.
- **Human-in-the-Loop (HITL):** Ensure critical decisions affecting rights involve meaningful human review.
- **Audit Trails:** Maintain decision audit trails to reconstruct how AI decisions were made.
- **India-Specific Bias Testing:** Test models for caste, regional languages, and urban-rural disparities.
- **Data Deletion Protocols:** Design systems to support data removal requests from principals.
- **Governance Ownership:** Assign accountability for responsible AI to a specific member of the leadership team¹¹.

Conclusion

Proactive AI governance is a constitutional imperative for Indian businesses. As regulatory fragmentation eventually gives way to a more coherent architecture, companies that prioritize transparency and “ethics-by-design” will gain a competitive differentiator. Transitioning to a trust-based architecture is essential for legitimate and scalable AI-driven growth in India¹².

¹⁰ Dr. Subholaxmi Mukherjee, Algorithmic Bias and Discrimination: Legal Accountability of AI systems, Volume 13 Issue 4, Page 1-11 (Jul-Aug 2025)

¹¹ The Supreme Court of India’s General Public on Draft ‘Regulations for Use of Artificial Intelligence (AI) in Courts, 2026’

¹² Aarushi Gupta, Suman, Gaurav Srivastava, Simran Bharti, Regulation of Artificial Intelligence in India: Implications for Business Innovation and Risk Management, Volume 11 Issue 5, PAGE b366-b381. (May 2026)

