

Artificial Intelligence (AI) in Corporate Governance: Transformative Trends and Legal Pathways in India

In a world of rapid technological change, the adoption of AI in corporate governance and compliance frameworks is changing the face of global business operations. India, with its rapidly growing technology environment combined with new regulatory initiatives, is leading the charge. This article explores the current state of AI in corporate governance, its implications for compliance and the regulatory developments shaping the AI future in India. Making its way through the legal considerations to practical applications this article delves into how AI is transforming decision making processes and while also stressing the importance of ethical AI implementation and regulatory equivalence, this article also provides a relevant perspective for companies facing their own compliance and regulatory challenges.



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INTRODUCTION

Recently, Google’s model LaMDA (Language Model for Dialogue Applications) made headlines by reportedly passing the Turing Test, convincing a Google engineer that it is not only intelligent but also conscious and sentient. This has sparked a renewed interest in the Turing Test and its implications. But what exactly is the Turing Test, and why is this achievement significant in the scientific community?

The Turing Test, originally called the “imitation game” by Alan Turing in 1950, is a measure of a machine’s ability to exhibit intelligent behavior indistinguishable from that of a human. In the test, a human evaluator engages in natural language conversations with both a human and a machine designed to generate human-like responses. The evaluator knows that one of the conversational partners is a machine but does not know which one. If the evaluator is unable to reliably distinguish the machine from the human, the machine is said to have passed the test, demonstrating a form of artificial intelligence.

The implications of machines capable of thinking and comprehending like humans are profound. There is growing concern that such advanced AI could eventually

replace humans in various jobs, including those traditionally considered safe from automation, such as Chartered Accountants, Lawyers, Company Secretaries, and Architects. The rationale is that an AI devoid of human error could perform these tasks with greater accuracy and efficiency. Moreover, if AI reaches a level of consciousness and sentience, it might even be able to appear in courts and plead on behalf of clients.

While this future may seem distant—perhaps a century away—the current capabilities and applications of AI are already transforming industries. In this article, we will explore the present state of AI, its implications for corporate governance and compliance, and its potential uses in India and around the world.

CURRENT LEGAL FRAMEWORK

In India, the regulatory landscape for artificial intelligence (AI) is evolving through a series of guidelines and initiatives rather than a dedicated legal framework. The country’s approach began with the launch of the national AI strategy, #AIFORALL, by Niti Aayog in 2018, focusing on inclusive AI development across critical sectors such as healthcare, education, and agriculture. The strategy emphasized the creation of high-quality datasets and the development of legislative frameworks for data protection and cybersecurity. Subsequent efforts include the Principles for Responsible AI drafted by NITI Aayog, which underscore principles like safety, inclusivity, transparency, and accountability in AI deployment.

Recent developments include the Digital Personal Data Protection Act, 2023, aimed at governing digital personal data processing and addressing privacy concerns related to AI platforms. Additionally, the Information Technology Rules (Intermediary Guidelines and Digital Media Ethics Code), 2021, regulate various entities including social media intermediaries and OTT platforms, updated to include provisions relevant to AI technologies. Despite lacking a comprehensive AI-specific law, India’s regulatory measures emphasize responsible AI deployment while balancing innovation and societal well-being.

ARTIFICIAL INTELLIGENCE IN CORPORATE GOVERNANCE

The Company, as a legal entity, operates under the management of its Board of Directors, a role defined by the procedures set forth in the Companies Act, 2013. The Board acts as trustees responsible for overseeing the Company's affairs, since the Company, being an artificial entity, cannot independently manage itself. Their primary duty is to ensure the Company's prosperity while safeguarding the interests of its shareholders. This encompasses strategic planning, legal compliance, financial oversight, and risk management, roles that are pivotal for the Company's governance and sustainability.

Advancements in artificial intelligence (AI) present opportunities for augmenting the Board's decision-making capabilities. Currently, AI systems can process vast amounts of complex data swiftly, enhancing the speed and quality of decision-making processes. Augmented AI, in particular, fosters collaboration between machines and humans, offering insights and recommendations that can surpass traditional decision-making methods. Real-world applications, such as VITAL assisting in investment decisions for venture capital firms, illustrate AI's potential to support corporate Boards effectively.

Here the questions arises that whether AI can replace the functions of Board of Directors in near future. However, under existing Indian law, the appointment of directors' mandates that the Directors appointed on the Board must be individuals. Section 149 of the Companies Act specifies that a Board must consist of individuals, which raises legal questions about whether AI can be recognized as a legal personality eligible to serve as a Director. Until such legal clarity emerges, AI cannot replace human directors on corporate Boards in India.

Regarding the delegation of decision-making rights to AI, Indian law does not explicitly address whether Directors can delegate decision rights to AI. The Companies Act provides Directors with the authority to delegate certain tasks, as exemplified in the case of *Bhagwati Prasad v. Shiroman Sugar Mills Ltd.*, where the articles of association allowed Directors to delegate powers. Model Articles of Association under the Act also support this delegation.

However, AI cannot be equated to a committee or member, which raises doubts about whether Boards can delegate decision-making directly to AI. Instead, AI can be utilized to assist directors in their decision-making processes without replacing their decision rights. This interpretation aligns with the purpose of delegation provisions, aimed at easing directors' responsibilities while maintaining their oversight and decision-making authority.

To explore the feasibility of AI assisting in decision-making, a broader interpretation of delegation provisions could be considered, recognizing AI as a tool for enhancing decision-making efficiency rather than a

AI could help organizations automate tasks, boost decision-making, and match up with compliance requirements. India is evolving its own governance and compliance landscape, and it aims to regulate AI, as well.

recipient of decision-making powers. This approach would uphold the intent of delegation provisions while harnessing AI's capabilities to support informed and effective Board decisions. Thus, while AI holds promise in enhancing decision-making processes, its role within corporate governance frameworks remains limited to supporting and augmenting human-directed activities.

ROLE OF AI IN RISK MANAGEMENT AND COMPLIANCE

In today's dynamic business environment, effective risk management and compliance strategies are crucial for safeguarding companies against potential pitfalls and ensuring adherence to legal and regulatory frameworks. Businesses face increasing pressure to anticipate and mitigate risks proactively, as any oversight can lead to costly legal consequences and reputational damage. By leveraging advanced technologies such as artificial intelligence (AI), organizations can enhance their capabilities beyond traditional risk assessments.

AI plays a transformative role in risk management by enabling real-time data analysis and predictive modeling. AI algorithms can analyze vast datasets swiftly, identifying patterns and anomalies that human analysts might miss. This capability allows businesses to detect emerging risks early, enabling timely interventions and proactive measures to mitigate potential threats. Moreover, AI-powered risk management systems can continuously monitor internal and external factors, providing ongoing insights into changing market conditions, regulatory updates, and operational vulnerabilities.

Similarly, AI contributes significantly to compliance efforts by automating compliance monitoring and reporting tasks. AI systems can scan and interpret complex regulatory requirements, ensuring that organizations stay current and compliant at all times. This not only reduces the burden of manual compliance checks but also minimizes the risk of human error, thereby enhancing accuracy and consistency in regulatory adherence. By integrating AI into their risk management and compliance frameworks, businesses can foster a culture of transparency and accountability, strengthening trust with customers, stakeholders, and regulatory bodies alike.

Ultimately, the proactive adoption of AI-driven solutions empowers businesses to navigate regulatory complexities more effectively while mitigating risks comprehensively. As AI technology continues to evolve, its application in risk management and compliance promises to redefine organizational resilience and operational excellence in an increasingly interconnected global economy.

CHALLENGES IN ADOPTION OF AI BY BUSINESS

The adoption of Artificial Intelligence (AI) has become increasingly prevalent across various business sectors, driven by its potential to automate tasks, enhance decision-making processes, gain competitive advantages, and deliver superior customer experiences. However, integrating AI into business operations is not without its challenges, which must be carefully navigated for successful implementation.

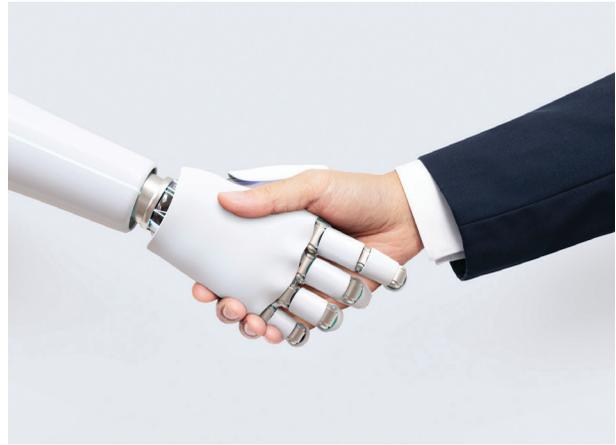
One of the primary challenges businesses face is the lack of expertise and skills necessary for effective AI adoption. Small and mid-sized enterprises, in particular, may struggle due to constraints such as limited budgets or access to specialized talent. Building and maintaining a proficient AI team requires substantial investment in training and recruitment, which can be prohibitive for many organizations.

Another significant hurdle is the availability and quality of data. AI systems rely heavily on data to generate insights and make informed decisions. Businesses may encounter obstacles if they lack sufficient or high-quality data necessary for training AI models effectively. Addressing data gaps and ensuring data integrity are crucial steps in leveraging AI for business operations.

Implementation costs also pose a barrier to AI adoption, especially for smaller businesses with constrained financial resources. The initial investment in AI technologies, infrastructure upgrades, and ongoing maintenance expenses can be substantial. This financial burden may deter organizations from pursuing AI initiatives despite recognizing the potential benefits.

Furthermore, deploying AI infrastructure requires robust technical infrastructure capable of supporting AI applications. This includes hardware, software, and networking capabilities that can handle the computational demands of AI algorithms. Building or upgrading such infrastructure can be time-consuming and costly, further complicating the adoption process.

Ethical and regulatory concerns represent another critical challenge. AI technologies raise issues related to data privacy, bias in decision-making algorithms, and transparency in AI-driven processes. Non-compliance with data protection regulations can result in legal consequences and damage business reputations. To address these concerns, businesses must stay informed



about evolving regulations, implement robust data protection measures, and engage legal and ethical experts to ensure responsible AI deployment.

In conclusion, while AI offers substantial opportunities for business growth and innovation, overcoming the challenges of expertise, data availability, implementation costs, infrastructure requirements, and regulatory compliance is essential for successful AI adoption. By proactively addressing these challenges, businesses can harness the full potential of AI technologies while mitigating risks and ensuring ethical practices in AI-driven operations.

FUTURE TRENDS AND DEVELOPMENTS IN AI

The future development and legal trends of AI in India that will be the result of shaping the acquisition of information technology, regulation, and societal influence are likely to become the main drivers of AI in the future.

- **Regulatory Framework Advances**

India will most likely come up with a more detailed regulatory framework for AI specifically. There are currently some correspondence and sector-specific rules, and a cohesive approach that incorporates the ethical AI principles, data privacy statutes, and requirement standards is on the horizon. This shipping guide will foster the innovative responsible AI deployment, while it also will make sure that the law is not neglected.

- **Ethical AI Standards**

The growing public and regulatory bodies concern about ethical questions that arise in AI implementation process will lead to the necessity of ethical AI in AI design and deployment. The epochs will involve, among other things, ethical AI standards and regulations set and triggered by works and ideas in other parts of the world such as the AI Act from the EU. These requirements will present solutions for problem areas like mitigating bias, revealing transparency in AI decision-making, and they will also ensure the AI systems operate only within the boundaries of ethical conduct.

- **AI in Governance and Public Services**

The Indian government is on the course of adopting artificial intelligence for use in governance and public services. One of the areas covered by this is the use of AI for the prediction of the possible outcomes of policy decisions, improvement of the administration and the providing of better citizen services. Programs therefore will home in on the AI to solve societal problems, such as healthcare delivery, agriculture management, and urban planning.

- **AI-driven Economic Growth**

The innovation and productivity across the industries that AI will enable are expected to galvanize the economy. The development of the artificial intelligence industry in the future may include an increase of investment in research and development of AI. That would in turn give rise to the start of the new companies in technology, infrastructure, and manufacturing. An idea could be an AI and robotics-powered smart city. Other possibilities also include the use of AI in Digital India and Make in India, together with the traffic lights system implementation. This might appear as something far from AI, but at least it is a step in that direction.

- **Skills Development and Workforce**

The major focus will be on preparing employees not only for the AI-related skills to be developed but also for the readiness to face the change that AI-driven technology will introduce in the workforce. To effectively utilize AI, educational reformers and administrators may adopt the inclusion of AI and data science into the curricular design, set up retraining courses for the labor force, and foster dialogues across disciplines among AI practitioners and ethicists.

- **International Collaboration and Standards**

India is likely to engage in international collaborations to set global standards for AI technologies. This involves participating in forums like the Global Partnership on AI (GPAI) and aligning with international norms to facilitate interoperability and ethical use of AI on a global scale.

COMPANY SECRETARIES AND ARTIFICIAL INTELLIGENCE

Due to advancements in AI technology and the governance ecosystem, the role of Company Secretaries is undergoing significant transformation. In the near future, their responsibilities and functions may evolve in this AI-driven era. Rather than feeling discouraged by AI's introduction into the corporate and legal sectors, Company Secretaries should view it as an opportunity for growth and adaptation.

Company Secretaries play a crucial role as Key Managerial Personnel in the corporate world, responsible for making strategic decisions, guiding Boards on governance practices,

and ensuring compliance with regulatory frameworks. AI's integration can streamline routine administrative tasks that traditionally occupy a substantial portion of a Company Secretary's workload. This automation allows Company Secretaries to concentrate on more complex and challenging responsibilities within their roles, ensuring the accuracy and integrity of critical documents and processes.

AI's capabilities extend to expediting research tasks, such as conducting extensive background checks on potential Directors across various platforms and automating the filing and distribution of documents like annual financial statements. Moreover, AI can assist in drafting and reviewing standard clauses in contracts and company policies with heightened accuracy, though complex legal interpretations still necessitate human oversight to mitigate liabilities.

While AI facilitates the automation of tasks like drafting meeting agendas and providing data during meetings, certain aspects of the Company Secretary's role remain distinctly human-driven. For instance, recording meeting minutes requires judgment in determining relevant details. Similarly, conducting director interviews and induction processes involves human elements that AI cannot replicate.

In essence, AI's integration into the Company Secretary's workflow offers efficiency gains and enhances compliance procedures. Embracing AI empowers Company Secretaries to focus on strategic initiatives and higher-value tasks, contributing to enhanced corporate governance and operational effectiveness in the AI-driven corporate landscape.

CONCLUSION

Bringing AI into India's corporate governance and compliance frameworks could make processes more efficient, spur innovation, and ensure adherence to regulatory regimes. AI could help organizations automate tasks, boost decision-making, and match up with compliance requirements. To take advantage of what AI can offer while navigating the legal framework in India, it will be crucial to be thoughtful, considerate, and practical about how AI is responsibly deployed. India is evolving its own governance and compliance landscape, and it aims to regulate AI, as well. To take advantage of AI's promise, India must also establish ethical standards for using AI sustainably in formal corporate settings. Any regulation of AI will need to be balanced against a desire to promote and respect human experience and decision-making.

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