AI Bias, Liability and Corporate Accountability: A Governance Perspective

Artificial Intelligence is now embedded in corporate governance, assisting in compliance reporting, agenda setting, and risk identification. For Company Secretaries, whose statutory role under the Companies Act, 2013 is to safeguard compliance and advise the board, the challenge lies in confronting outputs that appear authoritative yet may be unreliable. This article treats algorithmic bias as a governance problem with legal consequence. It considers potential liabilities under domestic law, reviews global regulatory approaches, and outlines a framework through which Company Secretaries can preserve accountability and ethical standards in an era of technological adoption.

Suryanshu Dutta
Legal Consultant, Adani Realty
Ahmedabad
suryanshu.dutta@gmail.com

Sakshi Shah
Independent Legal Practitioner
Ahmedabad
sakshiashah2001@gmail.com

INTRODUCTION

Artificial Intelligence has begun to embed itself within corporate governance. It is now employed in the preparation of compliance reports, in the filtering and prioritisation of information placed before boards, and in the generation of automated alerts that claim to identify risks for Directors and senior management. The adoption of such tools has created efficiencies, but it has also revealed a difficulty of serious scope: the presence of bias within algorithms. Once embedded in the data sets on which these systems are trained, or in the design choices of their developers, bias produces outcomes that are distorted, opaque, and resistant to correction. These are not incidental flaws in performance. They are capable of shaping deliberations in ways that pass without notice, altering the form and content of statutory disclosures, and drawing companies into direct conflict with regulators and, ultimately, with courts.

For Company Secretaries, the implications are immediate and profound. The office is defined by its responsibility to ensure compliance and to advise the board in the discharge of its duties under law. Automated systems now intrude into this domain by producing reports and conclusions that appear authoritative but may conceal significant risks. The profession has therefore shifted from recording and transmitting board decisions to supervising technological processes that can, if unchecked, subvert the very principles of accountability and fairness upon which the governance framework is constructed.

This article proceeds from the view that algorithmic bias cannot be reduced to a technical flaw awaiting engineering correction. It must be addressed as a governance issue in its own right, for it influences how statutory duties are performed and how regulatory obligations are met. The analysis will examine the circumstances in which liability may arise under Indian law, explore the directions taken by global regulation, and set out a framework by which Company Secretaries can meet their responsibilities in this altered terrain, thereby strengthening their role as the guardians of ethical and accountable corporate conduct.

UNDERSTANDING AI BIAS IN A GOVERNANCE CONTEXT

Bias in artificial intelligence can be most accurately described as a systematic distortion in outcomes. It emerges from the character of the data on which systems are trained and from the assumptions embedded in their design. Once deployed in the corporate sphere, such distortions translate into immediate consequences. Recruitment algorithms may undervalue women or marginalised groups, compliance tools may misclassify transactions, and risk-detection systems may fail to identify irregularities that human judgment would have caught. Each instance introduces skew into decisions that carry legal, regulatory, and reputational weight.

For Company Secretaries, this creates a professional dilemma. Their statutory duty under Section 205 of the Companies Act, 2013[1] is to ensure that compliance structures are sound and that boards receive reliable advice. Yet algorithmic outputs often present themselves as authoritative without exposing the reasoning behind them. If directors rely on such outputs when determining whether disclosures satisfy the Companies Act, 2013 or the SEBI (Listing Obligations and Disclosure Requirements Regulations)[2], an error within the system becomes an error in the company's record. Responsibility for that lapse does not dissipate into the software but remains within the chain of governance, attaching to those charged with safeguarding it.

Bias thus operates at two levels. At the data level, historical inequalities and omissions are reproduced in digital form and mistaken for neutrality. At the governance level, once these systems are embedded in compliance and board processes, their distortions influence decisions with statutory consequence. The Company Secretary occupies the intersection: unable to redesign the technology, yet obliged to anticipate its limitations, disclose its risks, and introduce safeguards that preserve the integrity of corporate records. In this sense, algorithmic bias cannot be left to engineers alone as it is also a governance problem of the first order. The task of the Company Secretary is not only to maintain statutory compliance but to ensure that the adoption of new technologies reinforces rather than undermines the principles of accountability on which corporate trust depends.

> Artificial intelligence, with its power to transform decision-making, cannot be introduced into governance processes without the close custodianship of those charged with protecting the integrity of corporate records and disclosures.

LIABILITY AND LEGAL ACCOUNTABILITY

The legal consequences of biased artificial intelligence are concrete, not speculative. Once embedded in compliance or reporting processes, algorithmic outputs become part of the corporate record. If those outputs are flawed, and the flaw leads to a breach of law or a misleading disclosure, liability attaches through ordinary channels of corporate accountability. Mediation through a machine does not shield the company or its officers from responsibility. In India, the Companies Act, 2013 provides the foundation. Section 166 imposes upon directors a duty of care, skill, and diligence, while Section 134(5)(f) requires certification that internal financial controls are effective. Where decisions are shaped by algorithmic systems, these duties expand to include oversight of their reliability and transparency. A board that accepts AI-generated disclosures without scrutiny risks breaching its statutory obligations, and the Company Secretary, recognised under Section 205(1)(b) as custodian of compliance, will be called to account for the safeguards applied. The SEBI (LODR) Regulations, 2015 reinforce this position. Regulations 4 and 30 mandate accurate and timely disclosure of material events. If AI-driven ESG metrics or compliance tools introduce distortion, the liability is corporate and personal, as SEBI has consistently held compliance officers and key managerial personnel responsible for lapses.[3] The Company Secretary must therefore interrogate the reliability of AI-assisted reports before they reach the board. The Digital Personal Data Protection Act, 2023[4] adds another dimension. Sections 8 and 9 demand lawful and accurate processing of personal data. Algorithms trained on incomplete or discriminatory data may not only produce unfair outcomes but also breach these statutory duties. Once again, the Company Secretary becomes the bridge between technical processes and legal accountability.

Globally, the trajectory is similar. The European Union's proposed AI Act treats recruitment, credit scoring, and compliance tools as "high-risk" and subjects them to strict transparency and oversight requirements.[5] The US Federal Trade Commission has warned that biased algorithms may constitute unfair or deceptive practices under federal law.[6] Singapore's Model AI Governance Framework[7] prescribes accountability and human involvement as essential safeguards. For the Indian Company Secretaries, the conclusion is plain. Liability for biased outcomes rest with the company and its officers who certify the results. Their task is to apply the same vigilance to AI-generated outputs as to any other compliance mechanism, recognising that failure to do so risks both statutory breach and erosion of trust in the governance system.

CORPORATE GOVERNANCE CHALLENGES

The introduction of artificial intelligence into corporate processes alters the traditional assumptions of governance. Boards are no longer deliberating upon materials prepared solely by human officers, rather, they are increasingly asked to rely on algorithmic summaries, predictive risk models, and AI-assisted disclosures. These outputs are not always intelligible in their reasoning, and where they are shaped by bias, they may distort decisions in ways that are invisible at the moment of reliance. The difficulty therefore is in answering how can fiduciary duties be discharged when the very materials upon which decisions rest may be flawed at source. The Companies Act, 2013 provides a statutory lens through which this question must be examined. Section 166(2) imposes on directors the duty to exercise due and reasonable care, skill, and diligence; Section 134(5)(f) obliges the board to confirm the adequacy of internal financial controls; Section 177(4) entrusts the audit committee with evaluating risk management systems. Each of these provisions presumes the integrity of the information supplied. If algorithmic tools are incorporated

1. *Companies Act, 2013, s 205.*
2. *SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*
3. *SEBI v Gaurav Varshney (2016) 14 SCC 430*
4. *Digital Personal Data Protection Act 2023, ss 8–9*
5. *Proposal for an Artificial Intelligence Act COM (2021) 206 final.*
6. *Federal Trade Commission, Aiming for truth, fairness, and equity in your company's use of AI (2021).*
7. *Infocomm Media Development Authority (Singapore), Model AI Governance Framework (2nd edn, 2020).*

into compliance or audit functions without scrutiny, the board risks breaching its statutory duties. The Company Secretary, under Section 205(1)(b), carries responsibility for ensuring compliance with the Companies Act, 2013 and secretarial standards. By virtue of Section 2(60), they are also designated as "officer in default." A disclosure tainted by AI bias, once certified, may therefore expose both the board and the Company Secretary to liability.

Judicial reasoning underscores this point. In Official Liquidator v P.A. Tendolkar[8], the Supreme Court held that directors must display vigilance proportionate to the circumstances and cannot evade liability by pleading reliance on others. The principle was reiterated in SEBI v Gaurav Varshney[9], where compliance officers were held personally accountable for lapses in disclosure. Furthermore, in N. Narayanan v Adjudicating Officer[10], the Court affirmed that compliance is a continuing obligation and that officers in charge cannot avoid responsibility by attributing errors to subordinate mechanisms. These authorities, though rendered in contexts predating AI, carry clear implications: reliance on opaque software cannot excuse breaches of duty, and governance professionals remain answerable for the integrity of the processes they certify.

The regulatory architecture also reinforces this conclusion. Regulation 4(2)(f)(i) of the LODR Regulations requires information to be accurate and adequate; Regulation 30 obliges timely disclosure of material events; Regulation 34 requires the largest listed companies to submit Business Responsibility and Sustainability Reports (BRSR).[11] In 2021 SEBI issued a circular mandating that the top one thousand listed entities furnish BRSR disclosures in their annual reports. If AI systems are employed to compile ESG data for such disclosures, and bias leads to distortion whether by overstating sustainability metrics or by overlooking material risks, the company may be in breach of LODR obligations. Liability in such instances is corporate, but it is also personal, attaching to compliance officers and to the Company Secretary who supervises the reporting process.

Data governance adds further complexity. Sections 8 and 9 of the Digital Personal Data Protection Act, 2023 impose duties of lawful and accurate processing of personal data. An algorithm trained on incomplete or discriminatory data may not only produce biased outputs but also contravene these statutory requirements. Here, the task is to ensure that corporate governance structures extend into this new terrain, so that reliance on AI is accompanied by safeguards against breaches of data law.

The Company Secretaries must ensure that reliance on algorithmic processes does not weaken the statutory duties of directors, the accuracy of disclosures, or the credibility of compliance mechanisms. Their role is to integrate these systems into a framework of validation, oversight, and disclosure that preserves accountability. Without such vigilance, the adoption of artificial intelligence risks not only statutory contravention but the erosion of trust upon which the legitimacy of corporate governance ultimately depends.

8. *Official Liquidator v P.A. Tendolkar (1973) 1 SCC 602.*
9. *SEBI v Gaurav Varshney (2016) 14 SCC 430*
10. *N. Narayanan v Adjudicating Officer, SEBI (2013) 12 SCC 152.*
11. *SEBI Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (10 May 2021).*

THE COMPANY SECRETARY AS CUSTODIAN OF ETHICAL AI ADOPTION

The responsibilities of Company Secretaries under Indian law have always extended beyond mechanical compliance. Section 205(1) of the Companies Act, 2013 explicitly charges them with ensuring that the company complies not only with the provisions of the Act but also with the rules made thereunder and with the broader obligations of corporate governance. This statutory framing places the Company Secretary at the point where technological adoption must be reconciled with legal and ethical accountability. Artificial intelligence, with its power to transform decision-making, cannot be introduced into governance processes without the close custodianship of those charged with protecting the integrity of corporate records and disclosures. The first element of this custodianship lies in the establishment of internal controls. Section 134(5)(f) requires directors to state in the board's responsibility report that internal financial controls are adequate and were operating effectively. While the duty is placed upon the board, it is the Company Secretary who ensures that board processes, audit committee reviews, and compliance certifications align with this obligation. If AI-driven compliance software is used to monitor related-party transactions under Section 188, or to flag insider trading risks under the SEBI (Prohibition of Insider Trading) Regulations 2015, the Company Secretary must verify that the system has been tested, its limitations disclosed, and its outputs reviewed by human oversight. An internal control framework that accepts algorithmic reports without such scrutiny would be difficult to defend under Indian jurisprudence, given the insistence of the courts that fiduciaries must act with care proportionate to the risks involved (*Official Liquidator v P.A. Tendolkar*).

Second, custodianship requires the design of policies that align AI use with the principles of fairness, transparency, and inclusivity. The Ministry of Electronics and Information Technology has, through its *Responsible AI for All* (2021) framework[12], emphasised the need for explainability and accountability in AI adoption. Company Secretaries, as advisors to the board, are in a position to translate such policy directions into board-level governance practices. This may include requiring that all AI systems used in compliance or reporting undergo external validation, mandating that algorithmic outputs are accompanied by human certification, and ensuring that audit committees periodically review the role of AI in corporate processes.

Finally, custodianship must be seen in terms of stakeholder trust. Investors, regulators, and the public place reliance upon the Company Secretary as a guarantor of governance integrity. If it is later revealed that disclosures or compliance certifications were based on biased algorithms without oversight, the credibility of the office itself will be undermined. This role is analogous to that articulated in *Union of India v Association of Unified Telecom Service Providers of India*[13], where the Court emphasised that fiduciaries in positions of trust must act with heightened vigilance where systemic risks are involved. Artificial intelligence, in its governance application, presents precisely such a systemic risk.

12. *Ministry of Electronics and Information Technology, Responsible AI for All: Approach Document for India (2021).*
13. *Union of India v Association of Unified Telecom Service Providers of India (2011) 10 SCC 543.*

The Company Secretary thus emerges as the custodian of ethical AI adoption: verifying that statutory obligations are met, ensuring that disclosures are free from algorithmic distortion, aligning board practices with national and international frameworks, and preserving stakeholder confidence in the corporate system. In discharging these tasks, the Secretary does not assume the role of technologist but rather that of governance guardian, ensuring that the adoption of artificial intelligence strengthens rather than erodes the foundations of corporate accountability.

TOWARDS A FRAMEWORK FOR CS-LED OVERSIGHT OF AI BIAS

A Company Secretary as custodian of governance should operate within a comprehensive and detailed framework. In the context of artificial intelligence, and particularly the problem of algorithmic bias, such a framework must rest on four interlocking elements: validation, oversight, disclosure, and accountability.

First, validation. Before an AI system is introduced into compliance or reporting processes, it must be subject to testing that confirms its reliability. Section 134(5)(f) of the Companies Act, 2013 obliges directors to certify that internal financial controls are adequate, and this duty cannot be fulfilled unless the tools have been validated. The Company Secretary, in advising the board, should insist upon documented validation protocols. These may include external audits of AI models, reviews of the data sets upon which they are trained, and certification that the system does not generate discriminatory outputs. International practice provides useful benchmarks. The European Union Artificial Intelligence Act requires conformity assessments for high-risk systems prior to deployment. Singapore's Model AI Governance Framework prescribes regular testing for accuracy and fairness. Adoption of similar validation measures within Indian companies, even absent statutory compulsion, reflects the professional prudence expected of governance officers.

Second, oversight. AI systems, once deployed, must not be left to operate without human supervision. Section 177 of the Companies Act, 2013 assigns audit committees the responsibility to evaluate risk management systems, and Section 205(1)(b) charges Company Secretaries with ensuring compliance with applicable laws. Oversight in this context requires that algorithmic outputs be reviewed by human officers before they are incorporated into board papers or statutory disclosures. This may involve requiring that every AI-generated compliance alert be cross-checked by the legal or finance team, or that predictive risk models be accompanied by explanations accessible to directors. The United States Federal Trade Commission has warned that failure to monitor AI tools constitutes an unfair practice under consumer protection law.[14] Indian Company Secretaries, by extension, must build into governance structures a regime of continuing oversight that prevents overreliance on machine outputs.

Third, disclosure. Transparency has long been a cornerstone of corporate governance. Under Regulation 4(2)(f)(i) of the LODR Regulations, listed entities must ensure that information provided is accurate and adequate. Where AI systems are used in generating ESG metrics or compliance reports, the Company Secretary should ensure that board disclosures record the fact of such use, together with an explanation of the system's limitations. SEBI's circular on Business Responsibility and Sustainability Reporting (2021) already signals the regulator's concern with the accuracy of ESG disclosures. A proactive disclosure of AI reliance would enhance stakeholder trust in the company's governance processes while simultaneously reducing the risk of regulatory sanctions.

Fourth, accountability. The liability for biased AI outputs ultimately rests with the company and its officers, not with the vendor or programmer. Section 2(60) of the Companies Act, 2013 designates Company Secretaries as officers in default in cases of contravention. Judicial precedent, including *SEBI v Gaurav Varshney*, makes clear that compliance officers cannot escape personal liability by pointing to defects in subordinate processes. Accordingly, Company Secretaries should recommend the adoption of internal accountability charters specifying who bears responsibility for monitoring AI systems, how incidents of bias are to be reported, and what remedial steps are to be taken. Such measures ensure that responsibility is not diffused but allocated clearly within the governance structure.

Together, these four elements should constitute a framework that allows artificial intelligence to be incorporated into corporate processes without undermining the principles of transparency and fairness. The framework does not require Company Secretaries to become technologists. It requires them to interpret statutory duties in light of new risks, to demand that systems be tested and reviewed, to ensure that disclosures are not misleading, and to preserve the chain of accountability that lies at the heart of corporate governance.

CONCLUSION

Artificial intelligence outputs influence board deliberations, shape compliance processes, and feed into corporate disclosures, and they often carry the risk of bias and opacity. For directors, this risk touches their statutory obligations under the Companies Act, 2013. For regulators, it undermines the reliability of disclosures required by the LODR Framework. For Company Secretaries, it reaches directly into the statutory responsibilities of their office, which is to preserve compliance and guide boards with accurate advice.

The central contention is that algorithmic bias constitutes a governance failure with legal consequence. Courts and regulators, both in India and abroad, have made clear that responsibility for technological processes cannot be displaced onto machines; it remains with the human officers who adopt and supervise them. In this setting, the Company Secretary must work within a framework of validation, oversight, disclosure, and accountability, ensuring that reliance on artificial intelligence does not compromise statutory or regulatory duties.

What emerges is a more demanding professional role. The Company Secretary is required to interpret the risks of technological adoption, to safeguard the integrity of records and disclosures, and to maintain accountability within governance structures. Technology may alter the means by which compliance is achieved, but the responsibility to ensure that it conforms to law and preserves trust in corporate governance remains unchanged.

14. *Federal Trade Commission, Aiming for truth, fairness, and equity in your company's use of AI (2021).*