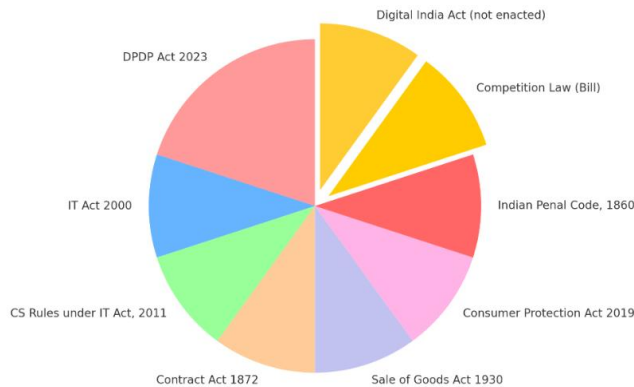
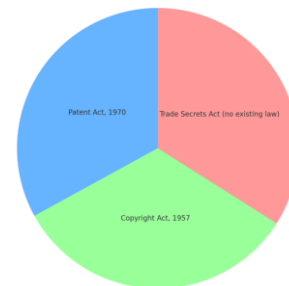


## Laws to consider for AI in India



## Ownership and Protection



## Artificial Intelligence (AI) is transforming industries, but how is it protected in India?

As AI continues to revolutionize technology and business, understanding the legal implications of developing, deploying, and using AI and protecting intellectual property is critical. Here's a quick overview of some key laws impacting AI innovation:

- **The Digital Personal Data Protection Act 2023** is a game-changer for AI systems handling personal data. If your AI tools collect, process, or generate personal data, strict consent, transparency, and security requirements apply. From rights regarding access, correction, or erasure to privacy with generative AI, this Act safeguards individual rights. The Act even extends the definition of a "person" to include **artificial jurisdic person**. **For the full article check out the link in comments.**
- **The IT Act of 2000** will continue to govern AI, particularly in cybersecurity and data protection. We await amendments to include AI & GenAI.
- **Patent Act, 1970:** Protects AI-driven inventions and innovations. But will it protect AI?
- **Copyright Act, 1957:** Protects AI-generated works in music, art, and literature. This is especially important as AI rapidly reshapes our world.

The upcoming **Digital India Act** will further shape AI and digital innovations in the future.

#AI #AIIndianLaws#ArtificialIntelligence #AIMS #ISO42001 #AI&DPDPAct #AI&PatentAct #AI&CopyrightAct #DataProtection #AI&DigitalIndiaAct

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## 1. Digital Personal Data Protection Act, 2023 (DPDPA)

### Where Does It Apply?

If your AI systems don't involve personal data, like weather forecasting or astronomy models, this law doesn't apply. However, in most cases, AI uses or generates personal data—often massive amounts for training and testing models. When AI systems go live, more personal data is collected and processed to make decisions about individuals. Even if it's just a prediction, it's still considered personal data.

- **Training Data:** Personal data used to teach the AI model.
- **Testing Data:** Personal data used to test the AI model.
- **Deployment:** Personal data used to make real-world decisions about individuals.<sup>1</sup>

**If your AI deals with personal data in any way, it falls under the scope of this law.**

### Who's Affected?

The law applies to anyone processing personal data with proper consent or for legitimate purposes. Importantly, the term "person" now includes artificial juridic persons like AI systems. Here's what that means:

- **Recommendation algorithms:** AI analyzes your behavior on platforms like Netflix or Amazon to make decisions about what content or products to suggest, shaping your viewing and shopping experience.
- **AI in Healthcare:** AI that analyzes medical records, images, and data to assist doctors in making decisions about diagnoses and personalized treatment plans, directly impacting patient health.
- **Self-driving cars:** These vehicles make decisions on the road without human input.

**Automated Processing:** Section 2(b) clarifies that "automated" means any digital process that works without manual intervention. That's broad enough to include a range of AI applications.

### Key Rights Under the Act

If your AI handles personal data, you'll need to adhere to strict rules around consent, transparency, and data security. Here's a summary of the rights under the Act:

- **Access:** Individuals can access their personal data, including who holds it and how it's processed.
- **Correction:** People can request updates, corrections, or even deletions of their personal data.
- **Grievances:** Individuals have the right to redressal in case of any violations.
- **Nomination:** People can nominate someone else to exercise these rights on their behalf.

### Privacy and Security



For those using generative AI (e.g., AI that creates content), there are added responsibilities. You must ensure your AI doesn't generate harmful or discriminatory content. Some key steps you can take include:

- **Access Control:** Limit who can view or use personal data.
- **Anonymization:** Remove identifying details from personal data to protect privacy.
- **Bias Monitoring:** Regularly check your AI systems for bias or discriminatory outputs.
- **Educate:** Inform people about their privacy rights when dealing with AI.

### **Legitimate Uses of Personal Data**

The Act defines certain situations where personal data can be used legally, such as:

- **Government Programs:** Personal data may be processed for government services or benefits.
- **Legal Obligations:** Processing data to comply with legal requirements or to share information with authorities.

### **What About Public Data?**

Not everything falls under the Act. For example, public data (like social media posts or prompts given to AI tools) isn't covered unless it violates other laws. However, when processing personal data, you must still comply with other disclosure requirements.

### **Transnational Data Flow**

The Act gives the government broad powers to restrict the flow of data across borders, especially during trade negotiations. For Fintech companies, existing regulations will take precedence over this law.

### **Fiduciaries vs. Processors**

Interestingly, the Act defines obligations for Data Fiduciaries (those controlling the data) but not for Data Processors (those handling it on behalf of others). This means any legal issues between these parties are governed by contracts, not by civil or public law.

### **Startups**

Good news for startups! Some key compliance requirements under the Act may be relaxed to encourage innovation

### **Other laws:**

**Information Technology Act, 2000 (IT Act)** The IT Act is the foundation of India's digital and cybersecurity framework, addressing issues like cybersecurity breaches, unauthorized access, and intermediary responsibilities/liabilities. While it doesn't directly mention AI, many AI applications fall under its scope, especially when it comes to data breaches or misuse of personal data. It also includes penalties for fraud, data manipulation, and unauthorized access to AI systems, ensuring that developers and users follow best security practices.



**Cybersecurity Rules under the IT Act** When AI systems process sensitive personal data—such as biometric or health information—the **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011** come into play. These rules outline how organizations must protect sensitive data when it's handled by AI systems.

**Indian Contract Act, 1872** This Act governs contracts involving AI services, such as licensing agreements or service-level contracts. As AI becomes more widely adopted, businesses need to draft contracts carefully to cover liability, performance, and intellectual property. Contracts must also address AI-related concerns like data privacy, accuracy, and system performance, particularly in scenarios with limited human oversight.

**Sale of Goods Act, 1930** When AI systems or software are classified as goods, they fall under the **Sale of Goods Act**. This means that warranties, conditions, and liabilities may apply if the AI product causes harm or doesn't perform as expected. Implied warranties and product liability provisions could be invoked for defective AI products.

**Consumer Protection Act, 2019** AI companies that offer consumer-facing products or services need to follow the **Consumer Protection Act**, which ensures consumer rights and prohibits unfair trade practices. The Act mandates transparency, especially when AI is used in decision-making processes that directly affect consumers, such as recommendations or pricing algorithms.

**Indian Penal Code, 1860 (IPC)** The IPC, India's main criminal law, applies to offenses involving AI systems. AI-enabled fraud, illegal manipulation of AI, or hacking into AI systems can result in criminal charges. Offenses committed using AI are treated under the IPC's existing framework, with penalties for unlawful activities.

**Competition Law and Digital Markets** AI-driven technologies are presenting new challenges to India's competition law. AI can enable anti-competitive behaviors like price collusion through algorithms, self-preferencing, and price discrimination. The **Competition Commission of India (CCI)** has already looked into these issues, particularly in the airline industry. The **Committee on Digital Competition Law (CDCL)** has proposed a **Digital Competition Act** to regulate large digital enterprises and prevent anti-competitive practices in the AI-driven economy.

**AI-Specific Regulations (Forthcoming)** India is yet to introduce specific AI legislation, but the **Digital India Act** is expected to provide a comprehensive regulatory framework for AI systems. This new law will likely cover high-risk AI applications like facial recognition, automated decision-making, and AI in critical infrastructure, with a focus on ensuring transparency, accountability, and ethical usage in both public and private sectors.

### **Ownership and Protection**

**Patent Act 1970:** Under the **Patents Act, 1970**, the issue of patenting AI innovations is not straightforward. While the algorithms driving AI cannot be patented, inventions or applications that use AI, such as AI-driven medical devices, may be eligible for patent protection. A major complication arises when an AI system creates inventions autonomously, without direct human involvement. The current law requires that a human be involved in the invention process, which creates challenges for patenting AI-generated innovations. In a recent report, the **Parliamentary Standing Committee** highlighted that this human inventor requirement is a barrier to patenting AI-related inventions. The Committee has called for a review of the law to address this issue. As things stand, it's unclear whether an AI



system or the algorithm that generates an invention can be recognized as the rightful owner of a patent under Indian law.<sup>ii</sup>

### **Copyright Act 1957**

The Copyright Act in India provides protection for literary works, including computer programs, which can cover AI algorithms. For copyright protection, the work must be original and show creativity beyond just skill or labor. While AI software can qualify for protection, AI-generated outputs face challenges since the law defines an "author" as a natural person. This makes it difficult for AI-generated content to meet the originality and authorship standards needed for copyright. As it stands, Indian law doesn't fully support copyright or patent claims for AI-generated works without human involvement, and legislative updates are needed to address these gaps.<sup>iii</sup>

### **Trade secrets protection**

AI applications rely on multiple datasets to train their models. Some of such data may be considered as 'trade secrets' and entitled to protection under common law as well as the Copyright Act.

While there is no dedicated law in India that grants protection for trade secrets, and this term lacks a formal definition, trade secrets are commonly understood as non-publicly available information that has commercial value, and for which the rights holder has taken reasonable steps to protect – such as formulae, patterns, compilations, programs, devices, methods, techniques or processes. Typically, such data is shared under a confidentiality agreement or is subject to confidentiality obligations. Examples of trade secrets include client lists, technical drawings, etc. Any use of trade secrets by a third party entitles the rights holder to remedies under the Copyright Act, contract laws, as well as under the common law applicable in India. It would therefore be important to consider a fact-specific assessment of the category of data that may qualify as a trade secret.<sup>iv</sup>

### **The Road Ahead for AI Regulation in India**

India's regulatory landscape for AI is currently a patchwork of existing laws covering data protection, consumer rights, intellectual property, and sectoral regulations. As AI technologies continue to evolve, India is expected to develop more specific and comprehensive regulations, particularly with the advent of the **Digital India Act**. For now, AI companies must navigate the legal environment by adhering to the provisions set forth in these various laws, ensuring that AI systems are compliant, transparent, and ethical.

### **Advisories**

The Ministry of Electronics and Information Technology ("**MeitY**") has issued advisories to '**intermediaries**' and '**platforms**' that develop and make available AI tools and/or technologies to Indian users, asking them to comply with additional requirements specific to AI tools, as part of the due diligence obligations imposed upon such 'intermediaries' under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules**"), framed under the Information Technology Act, 2000. While these advisories do not have a legislative backing, it appears that the private sector is working with the Government to address their concerns, to the extent feasible.



**Advisory on deep fakes:** On December 26, 2023, MeitY issued an advisory to all 'intermediaries' to address the growing concerns around the misinformation powered by AI deepfakes. This advisory urged social media platforms and other intermediaries to comply with the IT Rules, particularly regarding the identification and removal of prohibited content, including deepfakes that impersonate others or spread misleading information.<sup>v</sup>

**Advisory on the use of AI models/large language models ("LLMs")/generative AI/software or algorithms:** Subsequently, MeitY issued another advisory to 'intermediaries' and 'platforms', including 'significant and large platforms' on March 15, 2024 (an earlier version issued on March 1, 2024 was updated), recommending that they, *inter alia*:

(i) ensure compliance with content-related regulations prescribed under the IT Rules in relation to the use of AI models/LLMs/generative AI/software/algorithms; (ii) ensure that the use of AI models/LLMs/generative AI/software/algorithms, do not permit any bias or discrimination, or threaten the integrity of the electoral process;

(iii) label the possible inherent fallibility or unreliability of the output generated from the AI models and implement a consent mechanism that explicitly informs users of the fact that the content is derived from an AI tool/technology; and (iv) ensure that any synthetic creation, generation or modification of a text, audio, visual or audio-visual information, that can potentially result in creation of misinformation or deepfakes, is labelled or embedded with permanent unique metadata/an identifier, such that the computer source and the user of such content can be identified.

This advisory is the first formal guidance issued by the Government of India, relating to the use and allowance of AI models and tools including generative AI and LLMs in India.

## Sectoral initiatives

**Telecom sector:** Recognising the transformative potential of AI, the Telecom Regulatory Authority of India ("TRAI") issued recommendations in July 2023 to shape responsible adoption of AI within the telecom sector. TRAI emphasises the need for telecom service providers to invest in AI and ML-driven solutions for network optimisation, predictive maintenance and personalised services, thereby improving the efficiency and reliability of telecom infrastructure.<sup>vi</sup>

TRAI envisages use of AL and ML, *inter alia*, for:

- real-time network analysis and optimisation, which can help improve call quality and data speeds;
- predicting potential network issues and enabling preventive maintenance, thereby minimising service disruptions;
- offering personalised service based on individual user preferences and usage patterns;
- identifying and blocking spam calls and messages, thereby protecting users from unwanted communication and potential scams; and
- analysing communication patterns to identify and prevent fraudulent activities associated with spam and phishing attempts. These recommendations also emphasise the importance of adopting a conducive ecosystem for AI innovation by promoting collaboration between telecom operators, technology service providers and research institutions, to facilitate knowledge sharing and capacity building in development and support of AI/ML applications.



**Agriculture sector:** The Indian Government has recognised the application of AI and ML in the agriculture sector, particularly in areas of precision farming, agricultural drones and hopping systems, livestock monitoring, monitoring climate conditions, etc. Several Agri-Tech startups are developing AI-powered solutions for precision agriculture, supply chain management and market linkages. <sup>vii</sup>

**Healthcare sector:** The Indian Council of Medical Research has published guidelines that aim to tackle ethical concerns pertaining to the utilisation of AI in medical research and healthcare. These guidelines are directed at technology companies, healthcare practitioners and research organisations who seek to utilise health data for medical research and facilitate healthcare delivery using AI technology.

Additionally, the Government has also launched programs such as the National AI Portal for Healthcare, which serves as a central repository of AI-based healthcare applications, research and resources. This initiative facilitates knowledge-sharing and capacity building among healthcare providers, researchers and technology developers. Moreover, various Government-funded research institutions and academic centres are conducting research and development in AI-enabled healthcare technologies, focusing on areas such as medical imaging analysis, predictive analytics and telemedicine. <sup>viii</sup>

**Finance sector:** AI and ML can have multiple uses in the finance/fintech space, such as for customer due diligence, credit assessment, customer onboarding, underwriting and risk assessment, fraud mitigation and detection, etc. In a speech delivered on December 22, 2023, the Reserve Bank of India ("RBI") Deputy Governor, Shri Rajeshwar Rao, spoke about the potential of AI in the financial space, while also warning regulated entities such as banks and non-banking financial companies ("NBFCs") of the risks and concerns associated with it. RBI is also working on developing AI and ML systems that can help improve its regulatory oversight of banks and NBFCs. <sup>ix</sup>

## References

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