



THE REGULATION OF ARTIFICIAL INTELLIGENCE IN BRAZIL: A
DESCRIPTION AND ANALYSIS OF BILL No. 2.338/2023 IN
COMPARATIVE PERSPECTIVE WITH INDIA

A REGULAÇÃO DA INTELIGÊNCIA ARTIFICIAL NO BRASIL:
DESCRIÇÃO E ANÁLISE DO PROJETO DE LEI Nº 2.338/2023 EM
PERSPECTIVA COMPARADA COM A ÍNDIA

ब्राज़ील में कृत्रिम बुद्धिमत्ता का विनियमन: भारत के साथ तुलनात्मक परिप्रेक्ष्य में
विधेयक संख्या 2.338/2023 का विवरण और विश्लेषण

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ABSTRACT

This article describes and analyses the principal legislative initiative for the regulation of artificial intelligence (AI) in Brazil, Bill No. 2.338/2023, situating it within the broader ecosystem of Brazilian AI bills and contrasting it with the regulatory approach adopted by India. The hypothesis, confirmed throughout the analysis, holds that Brazil has opted for a horizontal, risk-based and rights-centred model strongly influenced by the European Union's AI Act and articulated around a dedicated national architecture of regulation and governance, whereas India has chosen a principle-based, pro-innovation and techno-legal model that relies upon pre-existing legislation and sectoral regulators rather than upon a single statute. The two trajectories thus illustrate divergent regulatory philosophies within the Global South, each carrying distinct implications for the protection of fundamental rights, for innovation and for digital sovereignty. The methodology combines bibliographic, descriptive and deductive review; the descriptive-analytical segment maps the Brazilian legislative timeline up to mid-2026 and demonstrates that the comparison with India exposes at once the strengths of a binding framework and the costs it may impose, thereby offering subsidies for the refinement of the Brazilian model.



Keywords: artificial intelligence regulation; Bill No. 2.338/2023; risk-based regulation; India AI Governance Guidelines; fundamental rights.

RESUMO

Este artigo descreve e analisa a principal iniciativa legislativa de regulação da inteligência artificial (IA) no Brasil, o Projeto de Lei nº 2.338/2023, situando-o no ecossistema mais amplo dos projetos brasileiros e cotejando-o com a abordagem regulatória adotada pela Índia. A hipótese, confirmada ao longo da análise, afirma que o Brasil optou por um modelo horizontal, baseado em risco e centrado em direitos, fortemente influenciado pelo AI Act da União Europeia e articulado em torno de uma arquitetura nacional de regulação e governança, ao passo que a Índia escolheu um modelo baseado em princípios, pró-inovação e técnico-jurídico, que se apoia na legislação preexistente e em reguladores setoriais em vez de um estatuto único. As duas trajetórias ilustram, assim, filosofias regulatórias divergentes no Sul Global, com implicações distintas para a proteção de direitos fundamentais, para a inovação e para a soberania digital. A metodologia combina revisão bibliográfica, descritiva e dedutiva; o segmento descritivo-analítico mapeia a linha do tempo legislativa brasileira até meados de 2026 e demonstra que a comparação com a Índia expõe, a um só tempo, as forças de um arcabouço vinculante e os custos que ele pode impor, oferecendo, assim, subsídios para o aperfeiçoamento do modelo brasileiro.

Palavras-chave: regulação da inteligência artificial; Projeto de Lei nº 2.338/2023; regulação baseada em risco; Diretrizes de Governança de IA da Índia; direitos fundamentais.

सारांश

यह लेख ब्राज़ील में कृत्रिम बुद्धिमत्ता (एआई) के विनियमन की प्रमुख विधायी पहल — विधेयक संख्या 2.338/2023 — का वर्णन और विश्लेषण करता है, इसे ब्राज़ील एआई विधेयकों के व्यापक परिवेश में रखता है तथा भारत द्वारा अपनाए गए विनियामक दृष्टिकोण से इसकी तुलना करता है। पुष्ट परिकल्पना यह है कि ब्राज़ील ने यूरोपीय संघ के एआई अधिनियम से अत्यधिक प्रभावित, एक समर्पित राष्ट्रीय शासन संरचना के इर्द-गिर्द संगठित, क्षेत्रीय, जोखिम-आधारित और अधिकार-केंद्रित मॉडल को चुना है, जबकि भारत ने एकल कानून के बजाय पूर्व-विद्यमान विधान और क्षेत्रीय नियामकों पर निर्भर एक सिद्धांत-आधारित, नवाचार-समर्थक और तकनीकी-विधिक मॉडल को अपनाया है। परिणामस्वरूप, ये दोनों मार्ग वैश्विक दक्षिण के भीतर भिन्न विनियामक दर्शनों को दर्शाते हैं, जिनमें से प्रत्येक के मौलिक अधिकारों की सुरक्षा, नवाचार और डिजिटल संप्रभुता के लिए अलग-अलग निहितार्थ हैं। कार्यप्रणाली ग्रंथसूची-आधारित, वर्णनात्मक और निगमनात्मक समीक्षा का संयोजन है। वर्णनात्मक-विश्लेषणात्मक खंड 2026 के मध्य तक ब्राज़ील की विधायी समयरेखा का मानचित्रण करता है और दर्शाता है कि भारत के साथ तुलना एक साथ एक बाध्यकारी ढाँचे की शक्तियों तथा उसके द्वारा संभावित रूप से आरोपित लागतों को उजागर करती है, जिससे ब्राज़ील मॉडल के परिष्करण हेतु अवदान प्रस्तुत होते हैं।

मुख्य शब्द: कृत्रिम बुद्धिमत्ता विनियमन; विधेयक संख्या 2.338/2023; जोखिम-आधारित विनियमन; भारत एआई शासन दिशानिर्देश; मौलिक अधिकार।





1 INTRODUCTION

The accelerating diffusion of artificial intelligence (AI) across public administration, the justice system, the financial sector, healthcare and ordinary consumer relations has converted the design of an adequate legal framework into one of the most pressing questions of contemporary law. As distinct jurisdictions converge upon the diagnosis that AI demands governance, they diverge sharply as to the instruments through which governance ought to be exercised, ranging from binding horizontal statutes to principle-based guidance anchored in pre-existing law, a divergence that the comparative literature has begun to map with increasing precision (ZOU et al., 2025; OECD, 2024). Brazil and India, two large, populous and digitally ambitious countries of the Global South, illustrate this divergence with singular clarity: while both invoke inclusion, development and digital sovereignty as guiding values, each has embarked upon a markedly different regulatory route (BRASIL, 2025c; INDIA, 2025a).

The research question that orients the study may be synthesised as follows: considering that AI systems increasingly mediate decisions affecting fundamental rights, what regulatory model is Brazil constructing through its principal legislative initiative, Bill No. 2.338/2023, and what does the comparison with India reveal about the merits and the limits of that choice for both countries?

The hypothesis, confirmed throughout the analysis, may be expressed thus: Brazil has adopted a horizontal, risk-based and rights-centred model inspired by the European Union's AI Act and structured around a dedicated national system of regulation and governance, whereas India has opted for a principle-based, pro-innovation and techno-legal model that leverages pre-existing statutes and sectoral regulators instead of enacting a single AI law (BRASIL, 2023; INDIA, 2025a). The Brazilian option tends to maximise legal certainty and the explicit protection of rights, at the potential cost of compliance burdens and implementation difficulties; the Indian option tends to maximise agility and innovation, at the potential cost of a less explicit and more diffuse protection of rights.

Methodologically, the study results from the combination of bibliographic, descriptive and deductive review. It rests upon primary legal sources, bills, statutes and official governmental documents, complemented by technical and academic literature, and reasons deductively from the comparison of regulatory architectures to



the identification of subsidies for the Brazilian model. Since the enquiry is, in its decisive segment, one of comparative law, the method requires explicitation. The approach adopted is functionalist in the sense consolidated by Zweigert and Kötz, for whom the comparison of legal orders proceeds not from the formal identity of institutes but from the identity of the problem that distinct orders are called upon to resolve (ZWEIGERT; KÖTZ, 1998). The *tertium comparationis* of the present study is accordingly formulated as a question rather than as an institute: by what normative technique does each order seek to prevent artificial intelligence systems from producing adverse effects upon fundamental rights, and upon what institutional capacity does that technique depend for its effectiveness? Formulated thus, the comparison escapes the sterility of the confrontation between a statute and a set of guidelines, which are incommensurable as instruments, and situates itself upon the plane of the regulatory function actually performed.

The choice of India as term of comparison likewise demands justification, since the category of the Global South, invoked with some frequency and defined with rather less, does not by itself establish comparability. What renders the two orders comparable, for present purposes, is a conjunction of structural traits: continental demographic scale; a state-built digital public infrastructure of national reach; a recently constituted regime of personal data protection; a productive sector dependent upon models developed abroad; and, consequently, the condition of jurisdictions that risk receiving, rather than producing, the international standards of governance of the technology. It is against this shared background of asymmetry that the divergence of regulatory options acquires analytical significance, for it demonstrates that the position of relative dependence does not determine a single normative response. The full confrontation with the European, North-American and Chinese models, in which the terms of comparison are producers rather than recipients of standards, is reserved for separate work (NEVES, 2026).

The general objective is to describe and analyse Bill No. 2.338/2023 as the central axis of AI regulation in Brazil and to contrast it with the Indian model. The specific objectives may be enumerated as follows: to describe the content and the normative architecture of Bill No. 2.338/2023; to reconstruct the Brazilian legislative timeline up to mid-2026; to survey and analyse the ecosystem of correlated Brazilian bills; and to compare the Brazilian and Indian regulatory approaches, extracting lessons for the refinement of the former.





In terms of structure, and in accordance with the editorial scope of this contribution, the article comprises this introduction and a development articulated in four movements: the description of the principal bill, the legislative timeline, the survey and analysis of the Brazilian bills, and the comparative analysis with India. The full confrontation with the European, North-American and Chinese models is reserved for separate work (NEVES, 2026), so that the present text concentrates upon the descriptive and analytical examination of the Brazilian initiative in dialogue with the Indian experience.

The study justifies itself in so far as it addresses fulcral questions concerning the development and the ethics of AI, the standardisation of its uses and the safeguarding of human and fundamental rights, at the precise moment when Brazil approaches the final stages of a legislative process initiated more than five years ago and when India has just unveiled its own governance framework, a conjuncture that renders the comparison at once timely and analytically productive.

2 BILL No. 2.338/2023: CONTENT AND NORMATIVE ARCHITECTURE

Bill No. 2.338/2023, authored by Senator Rodrigo Pacheco and matured by a Commission of Jurists convened by the Federal Senate, constitutes the principal Brazilian initiative for a national framework on the development, fostering and ethical and responsible use of AI grounded in the centrality of the human person (BRASIL, 2023). Its normative architecture is openly inspired by the European model, organising obligations according to the level of risk that a given system poses to fundamental rights (BRASIL, 2023; EUROPEAN UNION, 2024).

At the apex of the structure stands the category of excessive or unacceptable risk, whose systems are simply prohibited; the examples most frequently cited are autonomous weapons capable of selecting and engaging targets without meaningful human intervention and systems destined to produce or disseminate material representing the sexual abuse or exploitation of children and adolescents, alongside the predictive assessment of personality traits to anticipate crime and indiscriminate social-scoring practices by the public power (BRASIL, 2023; CÂMARA DOS DEPUTADOS, 2026). Beneath it, high-risk systems, those operating in sensitive domains such as critical infrastructure, education, employment, essential services, the





administration of justice and democratic processes, are subjected to stricter duties of transparency, documentation, algorithmic-impact assessment, security and human oversight (BRASIL, 2023; CÂMARA DOS DEPUTADOS, 2025a). Low or moderate-risk systems remain governed by lighter obligations, principally of transparency toward the affected person.

The bill articulates, in addition, a catalogue of rights for persons affected by AI systems, among which figure the right to clear information about the interaction with such systems, the right to explanation and to human review of automated decisions, and the protection against discriminatory or otherwise unfavourable outcomes (BRASIL, 2023). This catalogue does not arise in a normative *vacuum*, and its constitutional anchorage deserves to be rendered explicit. Brazil constitutionalised the protection of personal data as an autonomous fundamental right by Constitutional Amendment No. 115, of 10 February 2022, which inserted item LXXIX into article 5 of the Constitution and, in the same movement, conferred upon the Union the material and legislative competence over the protection and treatment of personal data, by the addition of item XXVI to article 21 (BRASIL, 2022). The consequences exceed the symbolic: the right thus introduced integrates the catalogue of individual guarantees and operates, therefore, as a material limit to constitutional reform, at the same time as it furnishes constitutional foundation to the regulatory position that the ANPD is called upon to occupy within the emerging architecture. Alongside it, the guarantee of due process of law, inscribed in article 5, LIV, and the prohibition of discrimination, deduced from articles 3, IV, and 5, caput, supply the parameters against which automated decisions affecting the legal sphere of the individual are to be measured (BRASIL, 1988). On the institutional plane, the Senate text foresees a National System for the Regulation and Governance of AI (SIA) charged with coordinating oversight, complemented by duties of governance, auditing and civil liability and by incentives to self-regulation through codes of good practice. Nor does the right to review of automated decisions constitute a creation *ex nihilo* of Bill No. 2.338/2023. Article 20 of the General Data Protection Law already assures the data subject the right to request the review of decisions taken solely upon the basis of automated processing that affect his or her interests, including those destined to define personal, professional, consumer or credit profiles (BRASIL, 2018). The confrontation of the two texts nevertheless reveals a displacement of considerable significance. The original wording of article 20 assured review by a natural person; that qualification no longer figures in





the wording given by Law No. 13.853/2019, so that the statute in force guarantees review without guaranteeing that it be human, a lacuna insistently denounced by Brazilian doctrine and reiterated in the litigation concerning platform deactivations. The provision, in the bill, of human oversight and of human review therefore does not duplicate the existing regime: it restores what the legislative process of 2019 had subtracted, and it is precisely in this restorative dimension, rather than in any presumed novelty, that its normative significance resides. The consolidated substitute approved by the Senate, it should be added, establishes administrative sanctions of considerable magnitude, a simple fine reaching fifty million reais, or two per cent of the gross revenue of the group or conglomerate, per infraction, doubled in case of recidivism, besides the suspension, whether partial or total and whether temporary or definitive, of the system's development, supply or operation (BRASIL, 2023; SENADO FEDERAL, 2024).

Before turning to the initiative defect identified in the Senate text, it is useful to render explicit the constitutional architecture of legislative initiative within which that objection is situated. Article 61, caput, of the Federal Constitution establishes, as the general rule governing ordinary and complementary legislation, a regime of concurrent initiative: any Deputy or Senator, any committee of the Chamber of Deputies, of the Federal Senate or of the National Congress, the President of the Republic, the Federal Supreme Court, the Superior Courts, the Prosecutor-General of the Republic and, through popular initiative, the citizens themselves, are constitutionally entitled to propose a bill (BRASIL, 1988; CÂMARA DOS DEPUTADOS, [s.d.]). It is this plurality of legitimated proponents, the ordinary regime of the Brazilian legislative process, that explains why Bill No. 2.338/2023 could validly originate in a parliamentary initiative, that of Senator Rodrigo Pacheco.

Article 61, paragraph 1, of the same Constitution carves out from this general rule an exception of considerable practical consequence. Whenever the matter, besides falling within the legislative competence of the Union, coincides with one of the subjects enumerated in that paragraph, among them the creation of public offices, functions or employment within the federal direct and autarchic administration and the organisation of the federal public administration, precisely the matters at stake in the episode examined below, the initiative to propose the corresponding bill belongs exclusively to the President of the Republic, to the exclusion of every other constitutionally legitimated actor (BRASIL, 1988). Brazilian constitutional jurisprudence



has extended the same reservation, by analogy, to the equivalent competences of state Governors and municipal Mayors over the administrative structures under their charge, underscoring that the rule protects an institutional prerogative of the Chief Executive rather than a merely formal requirement (BUSCADOR DIZER O DIREITO, [s.d.]).

It is precisely within this exceptional regime that the trajectory of the bill exhibits its most salient feature: the so-called *vício de iniciativa*, the initiative defect identified in the Senate version, a point that the present analysis treats with the constitutional precision the theme demands. By assigning competences to the National Data Protection Authority (ANPD), a federal autarchy integrated into the indirect administration, and by instituting governance structures within the federal administrative apparatus, the Senate text encroached upon matter reserved by article 61, paragraph 1, II, letter e, of the Federal Constitution to the private initiative of the President of the Republic, which confers upon the Chief Executive the exclusive prerogative of initiating legislation concerning the creation and the attributions of organs of the public administration, a reservation to be read in conjunction with article 84, VI, letter a, of the same text (BRASIL, 1988). What is at issue, therefore, is not a mere irregularity of drafting but a formal, subjective unconstitutionality, whose gravity the jurisprudence of the Federal Supreme Court has repeatedly underlined. To cure this defect, the Executive submitted, on 8 December 2025, a bill (Message No. 1.845/2025, which entered the Chamber of Deputies as Bill No. 6.237/2025) instituting the National System for the Development, Regulation and Governance of AI (SIA) and, within it, the Brazilian AI Council (CBIA), an inter-ministerial strategic body modelled upon the National Monetary Council, composed of up to five ministries and of the ANPD, the latter acting as harmonising and residual regulatory authority alongside the existing sectoral regulators (BRASIL, 2025c; 2025d; 2025e; CGI.BR, 2026). The governmental text, devoid of substantive rules on AI and destined to be attached to Bill No. 2.338/2023, thus confines itself to erecting the institutional architecture that the Senate version could not validly establish.

Decisive, in this respect, is the settled orientation of the Federal Supreme Court, according to which presidential sanction does not cure the defect of initiative. The Court abandoned the contrary understanding, crystallised in Súmula 5 under the Constitution of 1946, when it decided Representation 890, having reasoned that the vice of unconstitutionality is of public order and taints the norm *ab initio*, not being susceptible





of validation by the subsequent manifestation of will of the authority whose private initiative had been disregarded. The orientation was reaffirmed in ADI 2.867, in which it was held that the ulterior acquiescence of the Chief Executive, even where the usurped prerogative is his own, lacks the power to remedy the radical vice of unconstitutionality, and again in ADI 6.337, in which the Court invalidated a state constitutional provision that purported to authorise precisely such validation (BRASIL, 2003; 2020). Two consequences follow for the case at hand. The first is that the Senate could not have relied upon eventual sanction to legitimate the governance architecture it had designed. The second, less obvious, is that the intervention of the Executive was not a matter of political convenience or of institutional courtesy, but a condition of validity of the future statute, without which the whole institutional chapter of the framework would remain exposed to declaration of unconstitutionality in abstract review, with the consequent collapse of the very authority charged with applying it.

Worthy of registration, moreover, is the legislative technique thereby inaugurated, which the literature has thus far described rather than analysed. The Brazilian solution consisted neither in the withdrawal and refiling of the principal bill nor in the excision of the vitiated provisions, but in the parallel submission of an Executive bill destined to be attached to the pending proceeding, so that the institutional architecture comes to rest upon an initiative constitutionally competent to establish it while the substantive rules remain those of the parliamentary text. What is at stake is, accordingly, a curing of formal unconstitutionality *in itinere*, operated within the legislative process itself rather than through subsequent judicial review. The technique is efficient, in that it preserves the accumulated deliberative work of more than five years; it is not, however, immune to objection, since the approval of a single consolidated text may reopen the question of which initiative sustains which provision, and since the identification of the competent initiative with a specific normative content presupposes that joint deliberation does not dissolve the frontier between the two proposals. The point deserves attention from those who, in other jurisdictions, confront analogous tensions between the parliamentary impulse to regulate and the executive reserve over administrative organisation.





3 THE BRAZILIAN LEGISLATIVE TIMELINE (2019–2026)

The Brazilian debate on AI regulation did not begin with Bill No. 2.338/2023; that bill, rather, consolidated a decade of dispersed initiatives. The timeline reproduced below reconstructs the principal milestones up to mid-2026, on the basis of the official records of the Senate and of the Chamber of Deputies and of the specialised press (BRASIL, 2023; CÂMARA DOS DEPUTADOS, 2026).

Date	Legislative milestone
2019	Senate bills PL 5051/2019 and PL 5691/2019 (Sen. Styvenson Valentim) propose, respectively, principles for the use of AI and a National AI Policy.
2020	PL 21/2020 is introduced in the Chamber of Deputies, establishing foundations, principles and guidelines for AI; it is approved by the Chamber in 2021 and forwarded to the Senate.
2021	PL 872/2021 (Sen. Veneziano Vital do Rêgo) addresses the use of AI; on 6 April, Ordinance MCTI No. 4.617/2021 institutes the Brazilian Artificial Intelligence Strategy (EBIA), a non-binding, principle-based instrument.
2022	The Senate convenes a Commission of Jurists (CJSUBIA) to draft a substantive AI framework, whose report informs the subsequent bill.
12 May 2023	PL 2.338/2023, authored by Sen. Rodrigo Pacheco, begins processing in the Federal Senate, consolidating the earlier initiatives.
2024	Correlated bills PL 266/2024 and PL 2.775/2024 are introduced; on 10 December 2024 the Senate approves, in a symbolic and unanimous vote, the substitute text of PL 2.338/2023 (rapporteur Sen. Eduardo Gomes).
17 Mar. 2025	The bill is formally received by the Chamber of Deputies.
29 Apr. 2025	The bill is dispatched, under priority procedure, to a Special Committee.
20 May 2025	The Special Committee is installed; Dep. Luísa Canziani is elected president and Dep. Aguinaldo Ribeiro is designated rapporteur.
2025	Further correlated bills (PL 526/2025; PL 2.688/2025) are filed in the Chamber.
8 Dec. 2025	The Executive submits a bill (Message No. 1.845/2025) instituting the National System for the Development, Regulation and Governance of AI (SIA) and the Brazilian AI Council (CBIA), so as to cure the initiative defect of the Senate text; it is to be attached to PL 2.338/2023.





Dec. 2025	The plenary vote, expected before year-end, is postponed to February 2026 amid political and technical impasses.
24–25 Feb. 2026	Two new bills (PL 728/2026 on structuring principles and PL 762/2026 on high-impact systems) are filed and reignite the debate.
Mar.–Apr. 2026	Several bills are attached to the main proceeding (e.g. PL 6.479/2025), consolidating the legislative cluster.
28 May 2026	The President of the Chamber announces a June vote; the rapporteur’s report is expected by 9 June 2026, with deliberation in committee and plenary before the 18 July recess, after which an amended text would return to the Senate.

Source: prepared by the authors from the official records of the Federal Senate and of the Chamber of Deputies (BRASIL, 2023; CÂMARA DOS DEPUTADOS, 2025b; 2026; SENADO FEDERAL, 2024).

Two features of this trajectory deserve particular emphasis. The first is the convergence strategy pursued by the rapporteur, Deputy Aguinaldo Ribeiro, which aims at alignment with the Senate so as to minimise the back-and-forth between the two Houses that an amended text would necessarily trigger, since modifications introduced in the Chamber require a fresh Senate analysis before presidential sanction, as article 65, sole paragraph, of the Constitution determines (BRASIL, 1988; CÂMARA DOS DEPUTADOS, 2025b). The second is that the calendar itself operates as a regulatory variable: the displacement of the vote into 2026, an electoral year in Brazil, situates the deliberation within a congested and politically sensitive environment, a circumstance that is by no means normatively neutral and that, as is here sustained, bears upon the substantive contours of the final text.

A third feature, of decisive weight for the comparison undertaken below, has passed almost unnoticed in the specialised commentary. Brazil did not proceed directly from regulatory absence to the binding statute: it traversed, between 2021 and 2023, a phase of *soft law* materially analogous to the one India inaugurated in 2025. The Brazilian Artificial Intelligence Strategy, instituted by Ordinance MCTI No. 4.617, of 6 April 2021, and amended by Ordinance MCTI No. 4.979, of 13 July 2021, articulated ethical principles, thematic axes and strategic actions without establishing obligations, sanctions or enforcement authorities, entrusting implementation to governance instances internal to the ministerial structure (BRASIL, 2021). That the country subsequently converged upon the binding statute is a fact of no small analytical consequence, for it converts the contrast with India from a static difference of models





into a divergence of trajectories: what is compared is not merely what each order has chosen, but the point of each trajectory at which each order presently finds itself. The Brazilian experience suggests that the principle-based phase tends to be perceived, over time, as insufficient in the face of harms that materialise before the ethical exhortation reaches the conduct of the regulated actor.

4 THE ECOSYSTEM OF BRAZILIAN AI BILLS: SURVEY AND ANALYSIS

Beyond the principal bill, the Brazilian legislative landscape comprises a cluster of proposals that dispute, and increasingly combine, three theoretical paradigms: a risk-based model, classifying systems and uses according to the gravity of potential harm to fundamental rights, inspired by the European AI Act; a principles-and-rights model, centred upon transparency, non-discrimination, equity and data protection, more flexible but dependent upon robust enforcement; and an institutional and sectoral model, oriented toward national governance structures, regulatory sandboxes and complementary sector-specific rules, including adjustments to the General Data Protection Law (LGPD) so as to permit lawful uses of data for training (DATA PRIVACY BR, 2025; OECD, 2024).

Within this ecosystem, the foundational matrices are PL 21/2020, the principles-based initiative approved by the Chamber in 2021, and the earlier Senate bills of 2019 and 2021, which Bill No. 2.338/2023 absorbed and superseded (BRASIL, 2020). A second stratum addresses the interface between AI and data protection: PL 2.775/2024 seeks to amend the LGPD in order to define criteria for the use of personal data in the training and improvement of AI systems, a theme crucial to the reconciliation of data protection with innovation (BRASIL, 2024). A third stratum comprises the more recent comprehensive proposals, PL 526/2025 and PL 2.688/2025, each pursuing, with different emphases, the institutionalisation of transparency, governance, risk analysis and accountability (BRASIL, 2025a, 2025b).

The cluster expanded once again in early 2026. PL 728/2026 articulates structuring principles for AI development, while PL 762/2026 proposes a specific framework for high-impact or critical systems, requiring that such systems undergo an Artificial Intelligence Impact Assessment and amending the LGPD, the Brazilian Civil Rights Framework for the Internet and the Consumer Defence Code so as to impose





duties of certification, log retention and transparency, with the ANPD empowered to issue certifications and to define technical requirements (CÂMARA DOS DEPUTADOS, 2026). These proposals, attached to the main proceeding, reinforce the trend toward a risk-based architecture and confirm that the centre of gravity of the Brazilian debate remains the consolidation, rather than the dispersion, of a single national framework.

The technical literature, as the Center for Information Policy Leadership observes, has welcomed the adoption of a risk-based approach while signalling recurrent concerns: the calibration of the civil-liability regime, so as neither to overburden start-ups and researchers nor to deprive victims of redress; the powers and the technical independence of the coordinating authority; the minimum standards of auditing and explainability; the limits upon the use of personal data for training and its compatibility with the LGPD; and interoperability with international norms, so as to avert a normative fragmentation detrimental to trade and cooperation (CGI.BR, 2026; DATA PRIVACY BR, 2025; OECD, 2024). The Brazilian text, in attempting to conciliate the three paradigms, has the merit of combining a risk grid, a catalogue of principles and a national coordinating system; its principal challenge resides in translating formal obligations into effective and proportionate supervision.

Among the questions thus opened, that of the civil-liability regime deserves autonomous treatment, both because it constitutes the most disputed point of the Brazilian proceeding and because it is the one upon which the foreign reader most frequently requires elucidation. The Senate substitute articulates liability by reference to the level of risk of the system, reserving the objective modality, independent of fault, for high-risk and excessive-risk systems, and submitting the remaining hypotheses to a regime of presumed fault, without prejudice to the application of the Consumer Defence Code where a consumer relation is present and of the Civil Code in the residual hypotheses (BRASIL, 2023). The solution is coherent with the risk-based architecture, since it makes the intensity of the liability accompany the gravity of the potential harm; it nevertheless leaves unresolved two questions of considerable practical reach. The first concerns the distribution of liability along the value chain, where the supplier of a general-purpose model, the developer of the application and the deploying entity exercise very unequal degrees of control over the harmful outcome. The second concerns the burden of proof of the causal link in the face of systems whose internal operation the victim cannot reconstruct, a difficulty that the





duties of documentation and of algorithmic-impact assessment mitigate but do not eliminate. Upon the legislative treatment of these two questions depends whether the catalogue of rights described above will operate as an enforceable guarantee or as a programmatic declaration.

The concern with interoperability, in turn, cannot be reduced to the alignment with the European AI Act, since an international normative layer has been consolidating that binds Brazil and India by ties of distinct intensity. On the plane of *soft law*, the Recommendation on the Ethics of Artificial Intelligence, adopted on 23 November 2021 by the General Conference of UNESCO and subscribed by the totality of its Member States, among which both countries figure, established the first universal standard on the matter and furnishes a common vocabulary of principles, from human oversight to the prohibition of discriminatory outcomes, that reappears, with variations of formulation, in the Brazilian bill and in the Indian guidelines alike (UNESCO, 2021). On the plane of hard law, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, opened for signature in Vilnius on 5 September 2024, constitutes the first internationally binding treaty on the subject and, in view of its expressly open character, admits accession by States that are not members of the organisation (COUNCIL OF EUROPE, 2024). Neither Brazil nor India participated in its elaboration, and the question of eventual accession has not, thus far, occupied a relevant place in the domestic debate of either country; the omission is nonetheless significant, for the Convention offers precisely the interoperability that the technical literature demands, and the choice not to consider it leaves the definition of the international standard to the jurisdictions that did negotiate it.

5 FINAL CONSIDERATIONS: COMPARATIVE ANALYSIS BRAZIL AND INDIA

India offers an illuminating counterpoint to the Brazilian choice. On 5 November 2025 the Ministry of Electronics and Information Technology (MeitY) released the India AI Governance Guidelines under the IndiaAI Mission, the product of a drafting committee constituted in July 2025 (INDIA, 2025a; 2025c). Rather than enacting a single binding statute on the European pattern, India deliberately opted for a lightweight, adaptive and principle-based framework that leverages pre-existing laws



and intervenes with new rules only where strictly necessary, a posture that the framework itself condenses in the sutra of innovation over restraint and in the express option for a techno-legal approach that resorts to new rules only where the existing order proves insufficient (INDIA, 2025a; 2025c).

The Indian framework is organised around seven guiding principles, or *sutras*, trust as the foundation, people first, innovation over restraint, fairness and equity, accountability, understandability by design, and safety, resilience and sustainability, adapted, as the framework itself records, from the report of the Reserve Bank of India on the responsible and ethical enablement of artificial intelligence, released in August 2025 for the financial sector and rendered cross-sectoral by the drafting committee (INDIA, 2025a; 2025c). These principles are complemented by recommendations spanning six pillars of governance, infrastructure, capacity building, policy and regulation, risk mitigation, accountability and institutions, by an action plan articulated in short, medium and long-term measures, and by practical guidelines addressed to industry and to regulators (INDIA, 2025a; 2025c).

Several features distinguish the Indian approach. It relies upon existing statutes, notably the Digital Personal Data Protection Act of 2023 and the Information Technology Act of 2000, whose section 79 governs the liability of intermediaries, and upon sectoral regulators such as the Reserve Bank of India and the Securities and Exchange Board of India, rather than upon a dedicated AI authority (INDIA, 2023; 2025). This reliance upon the pre-existing legal order possesses a constitutional foundation that the technical commentary tends to presuppose without enunciating. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, decided on 24 August 2017 by a bench of nine justices, the Supreme Court of India held that privacy constitutes a fundamental right protected by articles 14, 19 and 21 of the Constitution, overruling the precedents to the contrary and expressly indicating the necessity of a statute on the protection of personal data (INDIA, 2017). The Digital Personal Data Protection Act of 2023 is, in this sense, the legislative fulfilment of a judicial mandate, and the Indian option for a framework anchored in pre-existing law rests upon the assumption that this legislation already furnishes the protective substratum that a dedicated statute on artificial intelligence would otherwise have to construct. The assumption deserves qualification. The Rules that operationalise the Act were notified only on 14 November 2025, nine days after the release of the guidelines themselves, and they establish a phased regime of compliance whose central obligations become demandable eighteen





months after publication, that is, in the course of 2027 (INDIA, 2025b). The framework of governance therefore invokes, as its foundation, a normative edifice that was, at the moment of its enunciation, still in the process of entering into force, a circumstance that attenuates the contrast with the Brazilian case, where the criticism of implementation deficit is formulated with greater insistence. It embeds legal requirements directly into system architecture, an ethos of compliance-by-design akin to the privacy-by-design logic of data-protection law, exemplified by privacy-enhancing technologies, content-authentication standards and data-empowerment mechanisms for training. It mobilises India's digital public infrastructure, the Aadhaar identity system, the unified payments interface and the DigiLocker repository, so as to deliver services across health, agriculture, education and welfare, with particular attention to low-income and rural communities. It favours voluntary commitments, self-certification, transparency reports and third-party audits, reinforced by incentives such as sandbox access and reputational recognition, before imposing strict obligations. And it frames risk classification around the social context, deepfakes targeting women, child safety, linguistic and caste-based bias, rather than around a generic risk grid, while contemplating the creation of national institutions, namely an AI Governance Group, a Technology and Policy Expert Committee and an AI Safety Institute (INDIA, 2025a; 2025c).

The contrast with Brazil is, in this light, instructive. Where Brazil constructs an *ex ante*, binding and horizontal regime, articulated around a single statute, a tiered risk grid, a dedicated governance system and substantial sanctions, India constructs an incentive-led, predominantly voluntary and principle-based regime, articulated around existing laws, sectoral regulators and compliance-by-design (BRASIL, 2023; INDIA, 2025a). Both jurisdictions belong to the Global South and invoke inclusion and digital sovereignty; their philosophies, nonetheless, diverge. The Brazilian model offers greater legal certainty and a more explicit protection of fundamental rights, yet exposes itself to high compliance costs and to the risk of formal obligations that prove difficult to implement, particularly for small enterprises and academic institutions in the absence of a technically equipped and adequately empowered authority. The Indian model offers agility and a vigorous stimulus to innovation, yet may underprotect rights and remains dependent upon the maturity of the pre-existing legal order and of the sectoral regulators upon which it relies.



The evaluation thus formulated, if it is to exceed the plane of assertion, requires a normative parameter, and Brazilian constitutional doctrine supplies one of notable precision. Fundamental rights do not exhaust themselves in prohibitions of intervention addressed to the State; they equally express duties of protection, from which it follows that the principle of proportionality operates in two directions, as prohibition of excess and as prohibition of insufficient protection, *Übermaßverbot* and *Untermaßverbot*, a formulation that the Federal Supreme Court expressly incorporated in the judgment of HC 104.410 (BRASIL, 2012). Applied to the object of this study, the double limit permits the two models to be appraised by a single criterion. A predominantly voluntary regime, which subordinates the protection of rights to the adhesion of the regulated actor and dispenses with an authority endowed with sanctioning powers, exposes itself to censure for insufficient protection where the risks in question affect goods of constitutional rank, and the censure gains force in proportion as the affected population is vulnerable and the harm difficult to reverse. A binding regime that imposes documentation, auditing and impact-assessment duties upon all actors indistinctly, without gradation according to size or capacity, exposes itself, symmetrically, to censure for excess, since it sacrifices free enterprise and scientific research beyond what the protective purpose requires. Neither censure is hypothetical, and it is between the two that the legislative solution must be situated.

It is at this point that the theory of responsive regulation offers the mediating category the debate lacks. Ayres and Braithwaite sustain that the opposition between deterrence and persuasion is false, and propose that regulatory instruments be arranged in a pyramid whose base is occupied by education, self-regulation and voluntary commitments, and whose successive strata escalate towards binding command and, at the apex, towards sanctions capable of excluding the actor from the market, the effectiveness of the base depending precisely upon the credibility of the apex (AYRES; BRAITHWAITE, 1992). Read through this lens, the two models cease to appear as antagonistic philosophies and reveal themselves as distinct segments of a single pyramid: India has invested in the base, with incentives, self-certification and sandbox access, without having yet constituted the apex that would render the base credible; Brazil has constructed the apex, with substantial fines and suspension of activities, without having yet articulated the base that would render the apex proportionate. The complementarity suggested at the end of this study is not, therefore, a rhetorical concession to symmetry, but the consequence of a determinate theoretical





framework, and it is upon that framework that the subsidies enunciated below are founded.

From this comparison emerge concrete subsidies for the refinement of the Brazilian framework. Without abandoning its risk-based and rights-centred core, Brazil could profitably incorporate elements of the Indian experience: the systematic use of regulatory sandboxes and graduated incentives to ease the transition of smaller actors into compliance; a context-sensitive calibration of risk, attentive to vulnerabilities specific to the Brazilian population; the logic of compliance-by-design and content authentication, anchored in technical standards interoperable with international norms; and the establishment of incident databases and of an AI-safety testing capability to support the work of the coordinating authority. Conversely, the Indian experience underscores the value of the binding mechanisms that Brazil already contemplates, since a purely voluntary regime may leave the protection of rights hostage to the goodwill of the regulated actors. The two models, far from being mutually exclusive, may thus be read as complementary repertoires from which a mature Brazilian framework can selectively draw.

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