CORPORATE LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE AND DIGITAL CAPITALISM: ARTIFICIAL INTELLIGENCE AND CORPORATE DECISION-MAKING

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I. Introduction

The introduction of artificial intelligence has radically changed the structure of corporate governance. In industry after industry, corporations are deploying algorithmic systems to deliver information and help and, in many cases, to decide on their own that were once the exclusive provenance of human directors and officers. Such a change raises profound questions under the existing paradigms of corporate law: who is liable as a fiduciary when a machine makes a wrong strategic call? What does it mean for a board of directors to perform its duty of care when the underlying analysis is the result of a neural network and not the product of conscious human reasoning? These are no longer theoretical questions but live regulatory and doctrinal issues that Indian and global corporate law need to address urgently.

The Indian corporate legal framework is primarily based in the Companies Act 2013[1] and administered through SEBI's listing obligations regulations,[2] was written in a time that did not imagine algorithmic governance. The statutory duties of care, skill and diligence imposed on directors assume the exercise of human judgement. As AI systems are involved onto the decision-making machinery of corporations, a conceptual gap opens up between legal obligation and technological reality. This blog aims to bridge this gap, looking into fiduciary duties, data governance, market competition, and the intellectual property terrain of AI-driven corporate operations.

II. Fiduciary Duties in the Algorithmic Enterprise

The heart of corporate governance law is the fiduciary duty that directors owe to the company, and, mediately, to shareholders. Section 166 of the Companies Act, 2013 lays down the duty

[1]Companies Act 2013, § 166 (India).
[2]Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg. 17 (India).

of directors to act in good faith, to exercise independent judgement and to avoid conflicts of interest. The key question in the AI context is whether reliance on an algorithmic recommendation system is a discharge of independent judgement or, alternatively, an abdication of the director's non-delegable duty.

The dominant judicial view has been that directors cannot wholesale outsource their statutory functions to third parties. The duty of care under Indian law demands a minimum standard of prudent engagement with the decisions over which a director has oversight.[3] It is a fair argument that the standard of care has not been met when a board takes the output of an AI risk-assessment model without subjecting it to the rigours of critical scrutiny. If directors could show that they understood the model's methodology, validated the inputs and exercised conscious judgement in adopting or deviating from its recommendations, then the board's position would be different. The SEBI LODR Regulations impose further obligations on listed companies to maintain robust oversight structures,[4] and algorithmic decision-support systems have to be located within those structures not allowed to replace them.

Annual board reports required under section 134 of the Companies Act[5] must be consistent with the material facts of the company's governance processes. There is a powerful case that if AI is playing a major role in strategic or financial decisions, this should be disclosed as a material aspect of corporate operation, particularly under SEBI's mandate to promote informed investor decision-making.[6] Opacity surrounding the role of algorithmic systems is incompatible with the transparency obligations that are the foundation of listed-company governance.

III. Data Governance and the Corporate Data Fiduciary

AI systems are basically data-processing machines. The corporate deployment of AI necessarily raises questions of data collection, storage, processing and transfer. Legal obligations in this area in India have evolved rapidly. The Information Technology Act 2000 established early obligations around data protection for body corporates,[7] but the

[3] Companies Act 2013, §§ 149, 166 (India).
[4] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, reg. 17 (India).
[5] Companies Act 2013, § 134 (India).
[6] Securities and Exchange Board of India Act 1992, § 11 (India).
[7] Information Technology Act 2000, § 43A (India).

transformative development is the Digital Personal Data Protection Act 2023 (DPDP Act), which establishes a regime of accountability for 'significant data fiduciaries.'[8]

Under the DPDP Act, a data fiduciary (which will include most large corporations deploying AI) must ensure that personal data is processed only for lawful purposes; that data principals are informed, and that the accuracy and security of data is maintained.[9] These obligations directly impact AI systems that are trained on data from customers, employees or third parties. A company that deploys a credit-scoring algorithm, a recruitment AI, or a customer analytics platform will need to establish that its data processing meets the Act's consent and purpose limitation requirements.

European law provides a useful comparison. Under the General Data Protection Regulation (GDPR), Article 22 gives people the right not to be subject to a decision based solely on automated processing that significantly affect them.[10] The DPDP Act of India does not yet spell out an equivalent right in the same explicit terms but the obligation on the data fiduciary to maintain accuracy and the right of the data principal to seek correction and erasure together amount to a partial functional analogue. As AI-led corporate decisions become more consequential affecting lending, employment and access to services the pressure on Indian law to articulate a clear right against purely automated decision-making will be mounting.

IV. Competition Law and Algorithmic Market Power

The fact that AI capability is concentrated in the hands of a small number of large corporations has given rise to serious concerns in the context of competition law. The Competition Act 2002 prohibits the abuse of dominance and anticompetitive agreements.[11] Both provisions are newly relevant in the context of AI. Dominant firms that control proprietary datasets and advanced AI systems may exploit these advantages to exclude rivals, to engage in predatory pricing, or erect barriers to entry that are invisible to traditional competition analysis.

The Competition (Amendment) Act 2023 has introduced 'deal value' thresholds for merger

[8]Digital Personal Data Protection Act 2023, § 4 (India).
[9]Digital Personal Data Protection Act 2023, § 8 (India).
[10]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1, art. 22.
[11]Competition Act 2002, § 4 (India).

review,[12] representing legislative recognition that acquisitions of data-rich or technology-intensive businesses with high value may have significant competitive effects even when the target's asset base or turnover is modest. This is a direct response to the concern that AI-driven businesses that could create huge value from data and algorithms and not tangible assets could fall below traditional merger thresholds.

Another area of concern is algorithmic pricing. In cases where competing firms use similar AI pricing systems which independently arrive at the same price levels, standard cartel law requiring an agreement or concerted practice[13] faces difficulty establishing liability. The Supreme Court has held, in the competition context, the importance of looking at actual market effects rather than merely formal arrangements,[14] and the Competition Commission of India (CCI) is mandated to look behind form to substance in its investigations. Whether parallel algorithmic pricing is a 'concerted practice' in the statutory sense is an open and pressing doctrinal question.

V. Intellectual Property and the Ownership of AI Outputs

The rush to invest in AI by companies poses new intellectual property questions that the law is ill-equipped to answer. The Patents Act 1970 does not allow mathematical methods to be patented and computer programs per se,[15] a clause that's been interpreted to limit patent protection for many types of AI software. At the same time, AI systems that generate technical outputs, for example in pharmaceutical discovery, materials science, or engineering, may produce inventions that cannot readily be attributed to a human inventor as the statute requires.

For this purpose, the Copyright Act 1957 defines a 'author', in the case of a computer-generated work, to mean the person who caused the work to be created[16] which allows for a corporate ownership of AI-generated content. But in practical terms, there's no clear line between AI output that involves human input, and AI output that does not. The 'causation' needed to vest authorship in a corporate principal is thin where an AI system is operating with little human direction. These ambiguities create risk for corporations that treat AI outputs as fully protected

[12] Competition Act 2002, § 5, as amended by the Competition (Amendment) Act 2023 (India).
[13] Competition Act 2002, § 3 (India).
[14] Excel Crop Care Ltd. v. Competition Commission of India, (2017) 8 SCC 47 (India).
[15] Patents Act 1970, § 3(k) (India).
[16] Copyright Act 1957, § 2(d)(vi) (India).

intellectual property without careful analysis of the chain of human input and direction.

VI. Regulatory Accountability and Governance Frameworks

The issue of regulatory responsibility for AI-enabled corporate behaviour is made complex by the dispersed and multi-jurisdictional character of AI creation and usage. India's current approach is based on a constellation of sectoral regulators, SEBI for listed companies, the RBI for financial institutions, the CCI for competition matters, none of which has been specifically mandated to govern AI. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 impose obligations on significant social media intermediaries,[17] but these obligations are not tuned to the governance of AI in corporate decision-making more generally.

The audit committee of a listed company, constituted under section 177 of the Companies Act,[18] is the primary internal control system to monitor financial reporting and risk management. There is a strong case for an interpretive evolution, and ultimately statutory amendment, to bring AI systems that generate material information or decisions within the audit committee's oversight mandate. Similarly, the SEBI insider trading regulations,[19] which prohibit trading on non-public price-sensitive information must be interpreted to deal with situations in which AI systems consolidate and analyse information in ways that may result in an impermissible informational edge.

A larger take-away from comparative law is that effective corporate AI governance involves proactive, principle-based regulation instead of reactive, sector-specific patches. The composition requirements for boards under section 149 of the Companies Act[20] might be extended to require directors with proven technological competence, similar to the legal recognition of the importance of independent directors for structural accountability that emerged following Vishaka.[21]

VII. Conclusion

Indian Corporate Law is at an intersection. The acceleration of artificial intelligence's infusion

[17]Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r. 4 (India).
[18]Companies Act 2013, § 177 (India).
[19]Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015, reg. 3 (India).
[20]Companies Act 2013, § 149 (India).
[21]Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

into the core of corporate decision-making is occurring at a time when the legal framework for such decisions is still premised on human agency. The fiduciary duties of directors, the data duties of corporate fiduciaries, the competition law constraints on algorithmic market behaviour and the intellectual property framework for AI-generated outputs all demand either interpretive development or legislative intervention.

It is not just about transplanting foreign regulatory models, but about building a framework sensitive to India's corporate ecosystem, its data governance journey under the DPDP Act, and its constitutional commitments to accountability and fairness. What is clear is that the delay of this reckoning will produce ever-sharper dissonances between the formal legal order and the operational reality of the AI-driven enterprise. These are questions that Indian courts, regulators and the legislature must wrestle with urgently.