
ARTIFICIAL INTELLIGENCE (AI) DUE DILIGENCE IN MERGERS AND ACQUISITIONS: THE MISSING LEGAL FRAMEWORK IN INDIA

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ABSTRACT

Artificial intelligence (AI) is reshaping how due diligence gets done in mergers and acquisitions (M&A) by allowing companies to process large amounts of legal, regulatory, operational, and financial information quickly. Techniques based on AI, including machine learning, intelligent document analysis, natural language processing (NLP), and predictive analytics, help to make the process faster, cheaper, and safer from a legal point of view. Nevertheless, the increasing role of AI can bring new legal issues concerning accountability of algorithms, data privacy, cybersecurity, intellectual property rights, and corporate governance.

In India, although the M&A operations process is defined by such documents as *the Companies Act of 2013*, *the Competition Act of 2002*, *SEBI Regulations*, *the Foreign Exchange Management Act of 1999 (FEMA)* as well as *the Data Protection Act of 2023*, there isn't any legislation that regulates the use of AI during due diligence. As a result, issues remain concerning accountability for the mistakes made by AI, levels of algorithm transparency, the use of confidential data, and the issues of directors' reliance on them.

The paper sheds light on the inadequacy of the existing Indian legal framework for mergers and acquisitions due diligence while highlighting the gap caused due to the absence rule of business for AI-enabled due diligence applications. To resolve any complexities arising from the subject matter, the paper conducts a comparative study of other regulatory frameworks available globally, especially covering the EU Artificial Intelligence Act. Through cases and judicial precedents, the research elaborates on the implementation of AI-enabled due diligence while recommending the establishment of a comprehensive legal framework for promoting transparency, algorithm auditing, human involvement, data governance, cyber security standards, and accountability in law. The paper further argues that India needs to timely set up necessary regulatory framework to meet the needs of the growing technology.

I. INTRODUCTION

Mergers and acquisitions (M&A) are one of the most prominent methods used by organizations to grow their operations, obtain strategic assets, create market power, extend their portfolio, and get competitive advantages. The success of M&A processes is highly dependent on the quality of the due diligence process that is conducted by the acquiring party. Due diligence assists the acquiring party in discovering financial and legal obligations, financial performance, compliance with rules, contracts fulfilment, intellectual property rights, employment and taxation risks, and any lawsuits that exist prior to the closing of the acquisition. The due diligence process is very long and complicated, and it requires involvement of a lot of specialists, including lawyers, accountants, financial experts, and others.

Nevertheless, this situation has changed dramatically with the introduction of new technologies in business activities. The recent development of AI technologies such as machine learning, natural language processing, optical character recognition, and predictive analytics has enabled automated processing of vast amounts of information, which greatly speeds up the process.

In an ever-evolving global marketplace, top-tier law firms, financial institutions, and consulting companies are turning to AI based tools for due diligence to ensure speedy transactions. The advantages offered by AI technology extend beyond reducing costs; with these tools, the analysis of documents is carried out with improved regularity, which allows legal practitioners to devote their time to strategic rather than routine matters. AI technologies have thus become a crucial tool for conducting successful business transactions today.

However, it should be noted that even with the rapid progress of new technologies, the use of AI assisted due diligence brings along various legal and ethical issues. Most AI tools depend on sensitive and confidential data of organizations, including commercial and trade secrets, as well as confidential personal data regarding personnel and consumers, and intellectual property data. The matter of processing such data causes issues of privacy, confidentiality, and cybersecurity, and raises concerns regarding algorithmic bias, transparency, and accountability.

In the last decade, there has been a huge rush of mergers and acquisitions in India. This boom is especially noticeable in the technology, fintech, pharma, renewable energy, healthcare and digital service sectors. At the same time, Indian companies have been actively using AI in a

number of spheres, including law, finance and compliance. However, despite the fast-moving nature of technology, the legal framework surrounding M&A is still based on traditional legal concepts. Acts such as *the Companies Act, 2013*,¹ *the Competition Act, 2002*,² *the IT Act, 2000*³ and *the Digital Personal Data Protection Act, 2023*⁴ deal with various aspects of corporate transactions but do not mention anything about the legal outcomes related to the use of AI in due diligence.

The absence of regulatory standard creates a lot of regulatory uncertainty. One of the most alarming issues is the fact that there are no requirements for transparency of algorithms, independent verification of AI powered due diligence reports, compulsory human oversight, disclosure of AI usage during the transaction, and certification of AI tools used in corporate investigations. Thus, corporate boards tend to use advanced technologies while having no legal guarantees concerning the reliability or legality of these technologies.

International developments show a different direction. The European Union has introduced the EU Artificial Intelligence Act which presents a comprehensive risk-based regulatory scheme to oversee the usage of AI systems across various areas from the corporate industry to its compliance functions.⁵ Similar to this, international institutions like *the Organisation for Economic Co-operation and Development (OECD)* and the G20 have laid down principles emphasizing transparency, accountability, human intervention, equity, and explainability in the governance of AI.⁶ The aforementioned frameworks under discussion may serve as beneficial references for all the countries intending to impose regulations on the usage of AI in commerce.⁷

This research work claims that the current regulations effective in India are insufficient to address unique problems emerging from the use of AI in the course of M&A transactions. Despite the presence of current laws that grant partial protection in the area of privacy laws, competition laws, cybersecurity, corporate governance, etc., no complete and coherent

¹ Companies Act, No. 18 of 2013.

² Competition Act, No. 12 of 2003.

³ Information Technology Act, No. 21 of 2000.

⁴ Digital Personal Data Protection Act, No. 22 of 2023.

⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 1689).

⁶ OECD, Recommendation of the Council on Artificial Intelligence, OECD/LEGAL/0449 (May 22, 2019).

⁷ Organisation for Economic Co-operation and Development, *Artificial Intelligence in Business and Finance* (2024).

regulatory framework has been established to cover issues related to AI. In this respect, this study proposes a fully-fledged legal framework comprising statutory regulation aimed at the governance of AI.

Research Questions

The research aims to explore the following inquiries:

1. In what ways has Artificial Intelligence changed the due diligence process of mergers and acquisitions?
2. Is the Indian legal system sufficient to control the practice of AI due diligence in M&A transactions?
3. What are the legal consequences of using AI-driven corporate due diligence in matters of privacy, confidentiality, cybersecurity, liability, and corporate governance?
4. What is the attitude of international jurisdictions toward the regulation of AI in corporate transactions?

II. EVOLUTION OF DUE DILIGENCE IN MERGERS AND ACQUISITIONS

Due diligence has always been part of the mergers and acquisitions paradigm. It entails the investigation of a target firm's financial performance, status in terms of laws, operations, technologies, its commercial condition and environmental problems that may arise during the merger process. It has inspired the idea of identifying risks that could affect the value of the stock thus determining structure of the deal and other aspects of the negotiations like the warranty process.

In legal terms, the process included the inspections of all relevant records like legal files, agreements, licenses, and taxes. During the closing of a deal, the lawyers responsible for due diligence often worked with finance experts, tax advisors, and market analysts. While it was effective, the strategy of conducting due diligence was often criticized for its inefficiency due to taking a lot of time, being expensive in terms of investments and requiring a lot of physical resources.

Technology has changed the way in which due diligence is carried out. Today, many companies

deal with different types of digital documentation, including emails, electronic documents, licenses for software, reports on security measures taken to protect data in cyberspace, and information about compliance with environmental standards. Thus, it becomes extremely complicated to conduct due diligence manually, especially in international business transactions which require compliance with various regulations and laws. Accordingly, now consultants, law firms, and companies are using AI-based solutions to minimize the complexity of the due diligence process.

As of now, AI based due diligence tools are powered by Natural Language Processing (NLP) which allows analyzing contracts, Machine Learning (ML) algorithms that make it possible to find discrepancies in transactions, Optical Character Recognition (OCR) technology for conversion of printed documents to digital format, and predictive analytics designated for evaluating legal hazards. These technologies help cut costs related to document analysis, while the quality of the contract interpretation increases.

Therefore, the use of AI has changed due diligence from reactive document verification to predictive risk management. Contrary to only identifying pending liabilities, AI systems can now predict possible litigation, evaluate regulatory risk, and determine business risk through historical analyses. This change has improved efficiency in transactions but has also raised new legal problems regarding algorithm reliability, accountability, explainability, confidentiality, and legal regulation.

III. ARTIFICIAL INTELLIGENCE IN M&A DUE DILIGENCE

Artificial Intelligence refers to computer systems that can perform tasks that would normally require human intelligence. In the context of M&A deals, AI is primarily used for tasks such as document review, contract analysis, regulatory compliance checks, financial modelling, IP analysis, and cybersecurity auditing.

What differentiates AI from other technologies is that AI can keep learning thanks to new datasets. For example, machine learning algorithms recognize standard clauses in contracts, assess their legal risks, find historical precedents, and mark issues that need human involvement. In practice, while executing the M&A deal, AI can identify clauses related to change of control, termination, exclusivity, force majeure, arbitration, and indemnity, while this task would take several weeks if it were done by a person.

Similarly, compliance technology based on AI checks the company's behaviour against applicable regulations and detects any infractions in the areas of competition law, securities law, environmental law, labour law, taxation law, anti-corruption law, and data protection law.

The use of AI in the conduct of due diligence has important implications for intellectual property and cybersecurity. AI systems may analyze patents, trademarks, copyrights, licenses, software dependencies, trade secrets, and ownership documents, allowing the identification of inconsistencies, licensing issues, and potential violations that could be critical for the valuation of the target company. AI could also be used to assess cybersecurity risks, historical breaches, exposure to ransomware, encryption procedures, and compliance with information security.

At the same time, however, the use of AI also involves risks. Due diligence systems may process confidential business information, personal information, trade secrets, and confidential documents which raises privacy, data protection, intellectual property, and contractual liability issues. In addition, the absence of accountability in regard to AI-generated outputs raises certain concerns regarding accountability because wrong conclusions can affect the decision-making process related to the transaction. Therefore, the implementation of AI based due diligence is going to require a proper legal framework to ensure sufficient transparency, accountability, and data protection.

IV. EXISTING INDIAN LEGAL FRAMEWORK GOVERNING AI-ASSISTED DUE DILIGENCE

At present, India has no particular law that governs the statutory use of Artificial Intelligence in relation to business transactions. Instead, AI-enabled due diligence operates under a complicated legal regime consisting of various statutes that are in place again for other sectors of corporate governance, competition law, data protection, e-governance, securities law, and contract law. Although these laws definitely impact the use of AI in M&A transactions, it cannot be said that there is at least one that covers all applicable risks resulting from employing algorithms in decisions.

A. The Companies Act, 2013

The Companies Act, 2013 is one of the major laws that apply to mergers and acquisitions in India. More specifically, it contains *Sections 230 to 240*, which stipulate the general process of

compromise, arrangement, merger, and amalgamation. Even though these provisions provide a process for businesses performing restructuring, the act does not say anything about AI enabled due diligence at all.

However, sections of the Act provide an indirect understanding of the responsibility of directors. According to *Section 166*, directors are obliged to act by exercising care, skill, and prudence and making decisions in a reasonable way that is beneficial to the company. If a director uses AI-generated due diligence reports, Queries come up about whether reliance is good enough for fulfilling the duty of care as prescribed in law. This might be particularly the case if dire consequences are not found and directors are therefore accused of negligence.

Likewise, *Section 134* requires that directors ensure reporting for finances and corporate governance. If reports generated with the help of artificial intelligence that prove to be misleading are contained in transaction documents, making it impossible to apply law due to lack of guidance as to responsibilities for AI.⁸

B. The Competition Act, 2002

It deals with a merger that overshoots the stipulated economic criteria and gives authority to the Competition Commission of India (CCI) to prevent acquisitions that can negatively impact competition. As mergers are being monitored, parties involved do extensive research on markets ensuring competition by analyzing market concentration, pricing strategies, consumer preferences, supply chains, and market power. AI is starting to aid tremendously in predicting market trends. However, the algorithms can introduce biases that can stem from insufficient data or lack of transparency. Therefore, if government agencies depend on AI's assessments of the market without disclosing assumptions regarding the algorithm's work, the process can be called into question.

Also, merging companies can collect confidential commercial information about competitors through AI systems. The use of such information might raise some legal issues in the context of antitrust legislation, so it raises the danger of algorithmic collusion, information exchange, and anticompetitive practices.

⁸ ibid

C. Digital Personal Data Protection Act, 2023

In India, the *DPDP Act* stands out as the most important law governing the area of AI-assisted due diligence. In this regard, due diligence often involves review of employee records, customer databases, information on vendors, payroll records, personal medical details, financial information, as well as communication records. All that can be classified as personal data by the Act.

When dealing with the information in question, AI systems must comply with legal obligations related to the processing of data, use limitations, data minimization, accuracy and reasonable level of security. The use of such information raises a number of complicated questions concerning consent, legitimacy and cross-border transfer.

It is worth noting the major drawbacks of the *DPDP Act* is that it controls the issue of personal data instead of dealing with AI. Thus, the DPDP cannot create explainability requirements for AI systems, as well as provisions for human control and monitoring.

D. Information Technology Act, 2000

This act is in alignment with the DPDP principles as it acknowledges electronic documents and sets forth requirements regarding cyber security and unwarranted access. In AI enabled due diligence, massive amounts of confidential data move from one Digital data room to another and cloud-based platform. Hence, AI solutions should comply with standards of cyber security, since they deal with such data.

Legislations penalizing unauthorized access, data theft, identity theft and computer crime are particularly important in light of the usage of sensitive commercial data in AI technologies. Still, the Act is not responsive to the modern AI technologies and does not say anything about algorithmic accountability, automated legal reasoning and liability for AI produced commercial advice.

Thus, even though the Information Technology Act provides some details regarding cyber security, it is still insufficient to address complicated legal risks emerging from AI based M&A transactions.

E. SEBI Regulatory Framework

When it comes to publicly traded companies, mergers and acquisitions are governed by the regulations of the Securities and Exchange Board of India. The regulations concerning disclosure and compliance have been laid out in *the SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015*.⁹ In cases of mergers and acquisitions involving the technology sector, the information must include that of proprietary technology, algorithms, data sets, and legal proceedings.

The challenge for investors further lies in the fact that AI related assets and liabilities are not always perceived as such. For instance, proprietary algorithms could be key assets, but the training data could have some restrictions on its use. Artificial intelligence could also expose a company's vulnerabilities and risks that are not necessarily reported in the financial statements.

At present, there are no specific frameworks provided for evaluating the risks or the value of AI based technology. This allows transaction advisors great leeway while dealing with the process of mergers and acquisitions. However, the lacking framework could cause confusion and misunderstandings when it comes to managing disclosures.

F. Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act of 1999 (FEMA),¹⁰ together with its governing regulations, set the ground rules for cross-border acquisition deals involving Indian companies. For example, in an AI acquisition case, a party may have to comply with FEMA while resolving data-related problems, for instance, information about Indian customers, employees, and financial status, or even proprietary technology in case the Indian data is transferred to foreign acquirers or foreign AI technology service providers.

This is particularly relevant in cases of acquisition of technology. For example, if the acquirer shares the target's virtual data room with some foreign AI company for automated data processing, their move may appear extremely useful with regard to litigation matters, however, it may cause additional challenges that arise in relation to contracts, privacy, confidentiality, cybersecurity, and cross-border data transfer.

⁹ *SEBI (Listing Obligations and Disclosure Requirements) Regulations of 2015*.

¹⁰ *The Foreign Exchange Management Act, No. 42 of 1999*.

That is why AI based due diligence should not be considered solely as legal-technology aspects, it has to be an integral part of the overall regulatory approach dealing with cross-border transactions.

G. Copyright and Intellectual Property Law

Intellectual property is one of the most crucial forms of asset during technology-based M&A transactions. The legal value of the target's intellectual properties can be determined through *the Copyright Act of 1957, the Patents Act of 1970, the Trade Marks Act of 1999*, and contractual safeguards pertaining to secret information.

Artificial Intelligence leads to emergence of two different problems. The first problem is that AI may be used to analyze the intellectual property portfolio of the target. An AI system is capable of detecting patent expiration dates, licensing, disputes, dependencies and discrepancies of ownership records. The second problem is that AI may itself be the asset that is acquired. This raises questions about:

- who owns the training datasets;
- the origin of the training data;
- licences given by third parties;
- dependencies on open sources;
- who owns the output generated with the help of AI;
- claims of violation;
- the applicability of patent laws concerning the innovation;
- the terms of agreement regarding how the model can be used; and
- the trade secrets.

In *Tata Consultancy Services v. State of Andhra Pradesh*, the Supreme Court illustrated the importance of computer software as a form of property with commercial value. The Court

determined that computer software may be classified as “goods” for the purposes of applicable sales-tax laws. Despite the fact that the case predates present-day generative AI, it is still relevant for the M&A sphere as it confirms that software can be seen as valuable on legal and commercial levels. The software due diligence in A.I. area has to be defined by examining not only the existence of software or algorithm, but also their ownership, data that serves as inputs for the software development, licenses under the software operates, and status of the software use.¹¹

V. COMPARATIVE REGULATORY FRAMEWORK

A. European Union

The advances made by the European Union in establishing a relevant legal structure for AI development through *Regulation (EU) 2024/1689* or the *EU Artificial Intelligence Act* are remarkable compared with the Indian scenario.¹² The EU AI Act employs the risk-based regulatory model, making it distinctive in that not all AI systems need to be treated in the same manner. The Act requires a set of obligations to be imposed based on the type of risk attached to the use of AI. The following three aspects are especially important in connection with M&A:

1. The categorization of risks;
2. The accountability and transparency; and
3. The possibility of overseeing the activities of AI.

The EU approach provides one of the key lessons for Indian law: regulating AI does not require banning it altogether. It is possible to create a differentiation between the uses of AI that fall into the category of low-risk applications and those that are dangerous. In the context of M&A transactions, one could introduce the idea of “large-scale AI systems” where AI systems would be responsible for making key decisions regarding the company’s operations.¹³

¹¹ *Tata Consultancy Services Ltd. v. State of Andhra Pradesh*, (2005) 1 S.C.C. 308.

¹² *Regulation (EU) 2024/1689*, supra note 5.

¹³ *Regulation (EU) 2024/1689* of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence.

B. United States

Currently, there is no encompassing federal artificial intelligence legislation in the United States, similar to the regulations applied under the EU AI Act. AI policies are being shaped through federal agencies, existing rules in different economic sectors, individual state legislation, binding contracts, securities and consumer protection law, as well as lawsuits.

In terms of the M&A process, the American case points to the significance of the rules related to corporate fiduciary duties. It underscores the need for proper supervision even when technology is used as the basis for decision-making.

The lesson for India is notable. The forthcoming regulation of AI systems should be responsible not only for the functioning of technology vendors but must also determine the obligations of corporate management, acquirers, advisers, and AI users.

VI. CASE STUDIES

A. Microsoft's Acquisition of Nuance Communications: AI Becomes the Central Asset

A notable instance of acquisition activity is Microsoft's acquisition of Nuance Communications. The tech giant announced its wish to acquire Nuance Communication in April 2021 worth about \$19.7 billion, which included some debts. The importance of Nuance Communication lies in the fact that it has developed technologies based on artificial intelligence that enhance voice recognition and medical services.¹⁴

After the acquisition was announced, the relevant authorities considered the transaction. In December 2021, the European Commission gave its unconditional approval of the acquisition as it claimed that the acquisition does not create significant reduction in competition in the relevant markets. The Microsoft-Nuance deal shows that the M&A process is changing.

In traditional acquisitions, AI is only a method that allows the buyer to conduct due diligence. However, in this case, AI has become a key component of the target's strategic value. This

¹⁴ Microsoft Corp., *Microsoft to Acquire Nuance, Creating a New Era of Healthcare AI* (Apr. 12, 2021); European Commission, *Mergers: Commission Approves Acquisition of Nuance by Microsoft*, Press Release IP/21/7067 (Dec. 21, 2021)

implies that due diligence process becomes more complicated.

A buyer must verify:

- the origin of training data;
- the ownership of the algorithms;
- the patent portfolio;
- the software licenses;
- the compliance with healthcare reporting;
- the level of cybersecurity;

The health care aspect is very important because AI systems utilized in healthcare are capable of processing highly sensitive data. Therefore, the due diligence process involved with AI must go beyond the standard compliance approach in order to determine whether the AI of the target company can be used legally after acquisition.

B. IBM-Red Hat: Open Source and Intellectual Property Risks

In July 2019, IBM completed its acquisition of Red Hat for about \$34 billion. IBM has defined the deal as a strategic move that enables it to strengthen its hybrid cloud business while preserving Red Hat's open-source approach. While the acquisition was primarily a cloud and open-source technology acquisition rather than an AI acquisition, it presents a vital precedent for AI due diligence since modern AI ecosystems are based on open-source software.¹⁵ When a corporation buys an AI company, it may learn that its technology stack includes:

- open-source machine learning libraries;
- third-party APIs;
- cloud platforms;

¹⁵ IBM, *IBM Completes Acquisition of Red Hat* (July 9, 2019)

- permissive or copyleft licenses;
- datasets developed by someone else;
- model weights downloaded from other apps; and
- third-party instruments to develop AI.

Just because the AI company owns an advanced model does not mean that it has unrestrained authority to access the whole working model. The IBM–Red Hat case shows how important it is to conduct software supply chain due diligence. When conducting AI due diligence, it is necessary to identify all the important software dependencies and classify the licenses of each of them according to the legal restrictions associated with redistribution, modification, commercialisation, and derivative works.

C. Tata Digital-Big Basket: Digital-Market and Data Inquiry

In April 2021, Tata Digital's acquisition of up to 64.3% of Supermarket Grocery Supplies Pvt. Ltd. and sole control over Innovative Retail Concepts Pvt. Ltd., which ran the Big Basket platform, was approved by the Competition Commission of India. This transaction is crucial as businesses in the digital commerce industry gain considerable importance from data pertaining to the customers, using the visit behaviour, information regarding logistics, and the price mechanism.¹⁶

The traditional definition of due diligence requires the examination of contracts and records pertaining to the business and its operations; likewise, AI-enhanced due diligence requires investigating:

- customer data architecture;
- data collection practices;
- consent;
- recommendation algorithms;

¹⁶ Competition Commission of India, *Tata Digital Ltd. / Supermarket Grocery Supplies Pvt. Ltd. & Innovative Retail Concepts Pvt. Ltd.*, Combination Reg. No. C-2021/04/834 (Apr. 28, 2021); *Tatas Deal to Buy Up to 64.3 Per Cent Stake in BigBasket Gets CCI Approval*, Indian Express (Apr. 29, 2021).

- advertising platform;
- customer profiling;
- algorithm-based pricing;
- data sharing; and
- systems to safeguard data.

In the case of Tata Digital and Big Basket, it becomes evident that data due diligence is vital in a digital merger and acquisition case. The CCI review highlights that the value of platforms is influenced by network effects and other factors.

VII. WHY INDIA NEEDS AI-SPECIFIC DUE DILIGENCE STANDARDS?

The previous examination shows that though India's current M&A regime covers different facets of a technology-driven transaction, it does not address the relationship between AI and due diligence as separate legal phenomena. Therefore, this regulatory gap cannot simply be defined in connection with the absence of a distinguished "AI Act" (Legal Framework) applicable to corporate transactions. The more essential problem is that there is no legal framework for assessing, using, monitoring, and relying on AI in connection with M&A transactions.

This distinction is critical. There are at least two ways in which AI can enter into M&A transactions. First of all, the acquiring party can employ AI as a tool for conducting due diligence. Secondly, the target company may either possess or develop AI systems that makes it subject to due diligence itself. The legal risks that arise in each case may be similar but are not the same. In case of the situation in which AI is merely a tool for conducting due diligence, the main concerns include confidentiality, accuracy, cybersecurity, processing of personal data, reliability of algorithms, and liability issues.

VIII. PROPOSED AI DUE DILIGENCE FRAMEWORK FOR INDIA (RECOMMENDATIONS)

In case of transactions involving significant AI systems, AI-based business model, or large-scale data processing using personal and sensitive commercial data, India has to take up development of AI Due Diligence Framework. The proposed framework should consist of a

combination of AI related law, technology, contracts and governance technologies integrated with current M&A process.

In accordance with purpose of the framework, the following technical elements are to be used:

1. Classification of AI-enabled platforms depending on risk level:

Level I- Low risk administrative AI that needs only basic and standard disclosures.

Level II- Commercial decision support AI requiring additional legal and technical assessment.

Level III- AI directly affecting customers, employees and undertakings or regulated entities which needs an independent audit of AI systems.

Level IV- AI regarded as one of the main assets of the business or having major impact on human rights.

2. Mandatory AI Due Diligence Report:

For the systems with a higher risk profile, the target must provide details related to ownership, the training dataset, and the sources of information, as well as issues related to the handling of data, cyber-safety, ownership of technology, reliance on open-source products, performance limitations of the algorithm, regulatory actions, and integration processes post-acquisition.

3. The Role of Human Supervision:

Artificial Intelligence means help but not replace human judgement when making major M&A decisions. The process involves:

AI analysis → Human verification → Legal review → Final verdict.

4. Third Party Algorithmic Assessment:

Important AI technologies have to be subjected to third-party review of accuracy, reliability, biases, explainability, quality of information used, protection against data drift and anti-intrusion mechanisms at the same time maintaining confidentiality of the source code.

5. Data Sources:

The Data Source Certificate should be used to determine the origin, ownership, licensing, approvals and other lawful reasons for the training dataset along with issues of geographical location, limitations, and disputes related to the training dataset.

6. Representations and warranties specific to AI:

It is essential for SPAs relating to significant AI assets to include certain warranties that pertain to the ownership of AI, the legitimacy of the training data utilized, adherence to laws regarding privacy, occurrences of cybersecurity breaches, claims of intellectual property, dependence on third parties, system defects, and restrictions.

7. Indemnification and escrow specifically for AI:

Companies should be entitled to distribute the risks related to AI between the parties via specific indemnifications, escrow arrangements, liability limits, extended longevity periods, and warranty insurance, especially where data, intellectual property, privacy, or cybersecurity have not been disclosed.

8. Juridical accountability:

Directors have to make sure that the vital AI-related risks were properly assessed, competent legal counsel was sought, results produced by AI were consulted with directors, and potential risks in the fields of privacy, cybersecurity, regulations, and legal issues were acknowledged. This additional obligation is imposed upon directors with regard to *Act No. 166 of the Companies Act, 2013*.

9. Coordination among Multiple Regulators:

The structure should be implemented within current regulations in India. MCA can deal with corporate information, competition issues by CCI, disclosures from listed companies by SEBI, and sector-specific AI regulations by sector regulators like RBI and IRDAI.

10. Safeguards for Responsible AI Usage:

The companies should be provided a certain degree of immunity from the responsibility for

unforeseen errors caused by AI if they prove that reasonable care has been taken, systems employed are legitimate, cybersecurity measures are sufficient, there is human supervision, independent verification, proper documentation is performed, and the requirements of data protection legislation are complied with.

IX. CONCLUSION

As a final thought, it is evident that artificial intelligence plays a pivotal role when it comes to M&A in terms of fast, data-rich, and predictive due diligence. Nevertheless, technological advances have introduced new challenges such as accuracy issues, accountability, breach of privacy, violation of intellectual property laws, cyber threats, and non-compliance with regulations. Although several laws in India deal with these obstacles, there are no specific regulations covering AI due diligence in mergers and acquisitions. The examples analyzed have demonstrated that AI is becoming both a significant source of corporate value and transactional risks. Hence, AI should be treated as a separate field of M&A due diligence excluding financial, legal, and tax areas. The AI Due Diligence Framework is aimed at developing risk types, human interventions, algorithmic audits, and AI specific guarantees. The framework is intended to strike a balance between mankind and risk considerations because if there is too much regulation, businesses will refuse to use AI technologies in mergers and acquisitions in India.