



RISE OF AI TOOLS IN CORPORATE DECISION MAKING: THE ACCOUNTABILITY AND TRANSPARENCY IMPERATIVE

By Meera Muraleedharan

Llm from School of Law, Christ (Deemed to be University), Bangalore

Abstract

The corporate decision-making environment has experienced an enormous transformation due to artificial intelligence (AI), as it has evolved from being an adjunct capability of an organisation's decision-making to now being a completely automated, independent decision-maker producing enforceable programs for a corporation. As a result of this drastic shift in the decision-making process, organisations have had to adapt and develop new models to manage and process these complex algorithms and their outcomes. These unprecedented levels of productivity and analysis created by AI also present an unparalleled legal dilemma that remains unresolved within the Indian corporate governance framework. This paper explores a critical issue at the intersection of technology and law: when autonomous systems create significant outcomes for multiple stakeholders, who is legally accountable and what is the level of transparency? This paper conducts an analysis of the Companies Act, 2013, along with a comparative examination of global best practice standards to illustrate how traditional mechanisms for corporate accountability based on fiduciary duties, disclosure obligations and human oversight are wholly inadequate when attempting to address algorithmic decision-making. This study also illustrates the existence of a structural accountability vacuum in Indian corporate law; wherein, AI continues to be opaque in its operations and, therefore,

beyond the existing frameworks for liability. Finally, by studying algorithmic failures and discrimination across the globe, this paper demonstrates that operational realities and legal liability converge within the AI space and proposes a complete governance framework that reconciles innovation and responsibility through enhanced corporate board literacy related to technology, algorithmic audits and required transparency. The research concludes that unless corporate law is reformed to meaningfully address algorithmic accountability, AI deployment will continue to erode the foundational trust and legitimacy upon which corporate institutions depend.

Keywords: Artificial Intelligence, Accountability, Corporate Governance, Decision Making, Transparency

1. Introduction

AI has evolved past its initial understanding, and taken its place as a key player in business, changing the structure of how businesses are making decisions that require binding contracts.¹ Today, when boards meet, they use algorithms to determine who to lend money to, who to hire, how to price their goods or services and how to assess changes in their industry, tasks that have traditionally required the human element of judgment and deliberation.² The integration of AI into business creates more than merely an efficiency challenge; it raises important questions about accountability at every level of an organization, given that it relates to the evolving years of legal development surrounding the concept of accountability in business.³

The growth of the Indian AI market from \$3.2 billion (USD) in 2020 to \$6.05 billion (USD) in 2024 and projections for it to be \$31.9 billion (USD) in 2031, a compound annual growth rate (CAGR) of more than

¹ Erik Brynjolfsson & Andrew McAfee, *The Second Machine Age* 80–92 (W.W. Norton & Co. 2014).

² Cary Coglianese, *Algorithmic Governance*, 3 Reg. & Governance 5 (2020).

³ John Armour & Jeffrey Gordon, *The Rise of Autonomous Business Systems*, 2020 Colum. Bus. L. Rev. 1, 8–14



40%.⁴ The deployment of AI into multiple industries, including finance, healthcare, logistics, and e-commerce, has been impactful for consumers and businesses that operate in these industries.⁵ However, the laws that regulate businesses in India, including the Companies Act, 2013 have not been amended to include provisions for algorithmic accountability and transparency for governance of self-determining systems.⁶

When the provisions of the Companies Act, 2013, are analysed, there is a disconnect with the actual objectives of the Act. Section 166 requires the directors to have a fiduciary responsibility to act in good faith and make independent judgments on behalf of the Company and its stakeholders.⁷ Section 134 requires the Directors to prepare director's responsibility statements and certification regarding their systems of internal control over financial reporting.⁸ Section 149 provides for the minimum composition of the Board of Directors. This is designed to provide for an adequate level of oversight to protect the interests of minority stockholders.⁹ In general, these provisions are based on the same assumptions regarding human agency, thought, and accountability. These assumptions are fundamentally flawed when decision-making power shifts from humans to autonomous systems.¹⁰

Regulatory interventions that have occurred more recently illustrate the degree to which there is a significant governance gap. The Reserve Bank of India has published the Framework for Responsible

and Ethical Enablement of Artificial Intelligence (FREE-AI) in August 2025. This was the first comprehensive piece of national guidance dealing with algorithm governance in financial systems.¹¹ The Securities and Exchange Board of India has published a five-point regulatory framework for responsible artificial intelligence in securities markets that goes into effect June 20, 2025.¹² While these sectoral initiatives are necessary to address specific domain risks, they act as isolated regulatory interventions and do not address the overarching inadequacy of the current corporate governance system.¹³

The purpose of this paper is to achieve three objectives that are interrelated. One objective is to examine the way in which artificial intelligence (AI) disrupts traditional pillars of accounting and transparency in corporations. Another objective is to evaluate whether existing laws and regulations in India are sufficient for addressing algorithmic decision-making. The third objective of the paper is to establish a system of integrated governance guidelines that combine the two earlier objectives by balancing new technology-driven advances with established principles of corporate responsibility.

2. AI-Tools in Decision Making

AI tools help companies with their operational and strategic decision-making processes. Companies are finding that utilizing artificial intelligence, including machine-learning algorithms, can help them improve

⁴ Competition Commission of India, *Market Study on Artificial Intelligence and Competition* 5 (Oct. 2025), <https://www.cci.gov.in/>

⁵ Id. at 8–12

⁶ Umakanth Varottil, *Corporate Governance in India: The Companies Act 2013 and Its Implementation*, NUS Law Working Paper (2020), <https://law.nus.edu.sg>

⁷ Companies Act, 2013, S. 166(1) (India)

⁸ Id. S. 134(5)

⁹ Id. S. 149

¹⁰ John Armour & Jeffrey Gordon, *AI, the Law, and Corporate Governance*, Oxford Legal Studies

Research Paper (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900570

¹¹ Reserve Bank of India, *Framework for Responsible and Ethical Enablement of AI (FREE-AI)* (Aug. 13, 2025), <https://dvararesearch.com/summary-of-the-rbi-free-ai-committee-report/>.

¹² Securities and Exchange Board of India, *Consultation Paper on Responsible Use of AI/ML in Securities Markets* (June 20, 2025), <https://www.sebi.gov.in/>

¹³ Supra note 4, at 18–25



decision-making across several dimensions¹⁴. Machine-learning technologies such as regression models, decision trees, ensemble models, and neural networks are at the core of a company's corporate AI infrastructure.¹⁵ By using machine learning to process large amounts of data (both historical and real-time), companies can develop predictive analytics that will allow them to forecast demand, assess credit risk, and optimize dynamic pricing.¹⁶ Companies are also using NLP (natural language processing) and sentiment analysis tools to parse unstructured corporate data (e.g., earnings call transcripts, MD&A disclosures, press releases, compliance documents) to analyze market activity, assess reputation and governance.¹⁷ Predetermined preference model-based recommendation systems (using collaborative filtering and neural networks) are also being used to improve product and marketing strategy and support relationships with customers.¹⁸ AI-enabled decision support systems (DSS) incorporate these technologies into cloud-based business intelligence platforms that facilitate real-time scenario modeling, multi-criteria decision-making, and optimizations related to resources.¹⁹ Lastly, diagnostic tools based on expert systems can perform concurrent hypothesis testing and provide organizations with actionable strategic guidance.²⁰ However, evidence has shown that organizations face considerable challenges when integrating AI into their corporate decision-making processes, including barriers related to data quality,

algorithmic transparency, and the potential for bias and fairness.²¹

3. The Disruption of Traditional Corporate Accountability and Transparency Foundations

3.1 The Traditional Structure of Corporate Accountability

All corporations owe their accountability to four principles of integrity.²² These include a board of directors that has the legal responsibility to consider the impact their actions may have on all directors, stockholders and any other persons with a vested interest in the corporation; all corporate conduct must be identified and made available to the public to allow for the appropriate degree of oversight by stakeholders; director liability should only be imposed on a defined class of board member(s) and corporation employee(s); and board members must provide meaningful supervision and guidance to corporate officers and employees with respect to material decisions.²³ The Companies Act, 2013, does not create new principles of corporate responsibility but establishes the specific fiduciary duties of a director.

Specifically, a director must act "in good faith to promote the objects of the corporation for the general benefit of its members and the best interests of the corporation, its employees, its shareholders, the community and the safe guarding of the environment."

²⁴The requirement that a director exercise his or her

¹⁴Steptoe-Warren, G., Howat, D., & Hume, I., Strategic Thinking and Decision Making: Literature Review, 9 J. STRATEGY & MGMT. (2011)

¹⁵D. Wang et al., Machine Learning for Business Forecasting, ACR J., 2024; Y. Zhang et al., Predictive Insights: Leveraging Artificial Intelligence for Strategic Business Decision-Making, ACR J., 2025

¹⁶ Id.

¹⁷ N.H.R. Dumont, Sentiment Analysis & Natural Language Processing Techniques for Capital Markets, 25 CORP. GOVERNANCE ADVISOR 16–19 (Nov./Dec. 2017)

¹⁸ Id.

¹⁹Revolutionizing Information Management: AI-Driven Decision Support Systems for Dynamic Business Environments, JISEM J. (2024)

²⁰ Id.

²¹ AI-Driven Predictive Analytics for Business Forecasting and Decision-Making, 3 INT'L J. RECENT INNOVATION TRENDS COMPUTING & COMM. (2024)

²² Stephen M. Bainbridge, *Corporate Governance After the Financial Crisis*, 36 J. Corp. L. 295, 300–05 (2011).

²³ Jill E. Fisch, *The Uncertain Role of Corporate Boards in Modern Governance*, 32 Yale J. Reg. 89, 95–103 (2015).

²⁴ Companies Act, 2013, S. 166(1) (India).



duties with "due care" and "skill and diligence" is the key to establishing and enforcing these duties.²⁵ All of the provisions of the Act are based on the assumption that directors have the ability to comprehend the actions of the corporation, analyze the potential ramifications of those actions and make informed decisions about whether to approve the actions of the corporation.²⁶

Similarly, Section 134(5) of the Act stipulates that effective internal control systems must be set up and maintained by a company's Board of Directors for purposes of ensuring compliance with all applicable legislation, producing accurate financial statements, preventing and detecting fraud and errors.²⁷ It is assumed that directors understand these systems because, without that understanding, they will not be able to adequately certify the effectiveness of control over those systems.²⁸

3.2 Algorithmic Interference with Accountability Mechanisms

Various pathways that allow AI to disrupt existing accountability systems require further examination. One such pathway, 'Opacity and Interpretation Loss', addresses the epistemological foundation of corporate accountability: namely, that the accountable parties understand how they arrive at their decisions and can effectively communicate this information to impacted parties.²⁹ Due to advances in deep neural networks and advanced machine learning, the ability for actors to demonstrate an understanding of their decision-making processes has become increasingly more difficult: the so-called 'black-box problem', where

machine learning algorithms can generate results that developers cannot explain even after they are produced, has become commonplace with today's most advanced machine learning technologies.³⁰

The automated hiring system created by Amazon from 2014 to 2018 illustrates this problem with the structure of the algorithm.³¹ The system was trained on a decade of historical hiring records to determine which type of candidate would most likely get hired successfully. However, even after the completion of non-discriminatory training, the algorithm gave women candidates a lower score than men candidates.³² Although the post hoc analysis performed after the incident showed that the algorithm learned to associate men with success and women with failure based on training data, neither Amazon's engineers nor its leadership were able to identify specifically how the algorithm had made these associations or why the algorithm had produced biased outcomes.³³ Because of this lack of clarity in the coding of the algorithm, board members for Amazon could not perform their duties to the best of their abilities. They were unable to grasp how the algorithm made decisions regarding hiring, nor were they able to communicate those decisions and the resulting adverse consequences of those decisions to either the candidates or regulatory agencies.³⁴

3.2.1 Diffusion of Responsibility and Liability.

The lack of established definitions for who is responsible for their respective roles across autonomous systems leaves much room for potential liability issues between different individuals involved

²⁵ Id. S. 166(2).

²⁶ Umakanth Varottil, *Corporate Boards and Decision-Making in India*, Indian Corp. L. Rev. (2022).

²⁷ Companies Act, 2013, S. 134(5) (India).

²⁸ Supra note 10, at 15–20

²⁹ Mireille Hildebrandt, *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* 95–115 (Edward Elgar 2015).

³⁰ Finale Doshi-Velez & Been Kim, *Towards a Rigorous Science of Interpretable Machine Learning*,

arXiv 1702.08608 (2017), <https://arxiv.org/abs/1702.08608>

³¹ Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, Reuters (Oct. 10, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK0AG>

³² Id.

³³ Id.

³⁴ Supra note 22, at 12–15



with developing/operating autonomous systems.³⁵ With autonomous systems, there can be many people involved with creating the programming or algorithms behind them (data scientists, project managers, business executives) and the board of directors who ultimately have oversight and fiduciary responsibility for the corporate entity.³⁶

There are currently no legal standards that provide guidance on how to assign liability from autonomous systems. Examples of the lack of guidance in this area can be found in the various cases involving Tesla and its Autopilot product.³⁷ An example would be when Joshua Brown was killed by his Tesla's Autopilot while driving down the highway in Florida. Investigators learned that although it was obvious there was a tractor-trailer ahead (the tractor-trailer was perfectly visible), the Tesla's Autopilot did not recognize the object and took no evasive action.³⁸ Regarding Tesla's liability position, they have argued that the driver of the vehicle is solely responsible for keeping his or her eyes on the road to ensure he or she is paying close attention to the roadway. On the other hand, the injured party's positions were that Tesla had created an improper reliance on their marketing for using the autopilot as a fully autonomous driving system.³⁹ Finally, both the Companies Act and common law provide no guidance as to whether or not the Board of Directors breached its statutory duty of care (to act prudently) by deploying an inadequately tested automated driving system without adequate warnings to both drivers and potential users of the

product.⁴⁰ The lack of clear assignment of responsibility from a corporate law standpoint between the human operators creating the automation (explicit design) and the humans using those systems (emergent behaviour) is creating significant gaps in liability that our current legal systems have not yet addressed.⁴¹

3.2.2 Algorithmic Bias and Discrimination.

The data used to create and train Artificial intelligence systems contains biases that AI systems learn from. This allows the AI systems to translate past forms of discrimination on to discrimination by using an algorithm over a large amount of data.⁴² For example, Amazon's hiring algorithm discounted women applicants due to the patterns that the algorithm recognised in historical hiring records, which included systematic discrimination against women.⁴³ This pattern violates Article 14 of the Constitution of India, which calls for equality in all aspects of employment.⁴⁴ Although, there is no specific prohibition in the Companies Act against the deployment of discriminatory algorithms, nor is there any liability for systematic bias incorporated into the corporate decision-making systems.⁴⁵

The potential for systematic discrimination extends beyond simply protected categories. Algorithms that have been trained to predict results based on historical data reflecting socio-economic disparity, may systematically discriminate against lower-income

³⁵ Mihailis Diamantis, *Algorithms Acting Badly: A Solution from Corporate Law*, 89 Geo. Wash. L. Rev. 801, 820–35 (2021).

³⁶ Id.

³⁷ U.S. Nat'l Transp. Safety Bd., *Collision Between a Car Operating with Automated Vehicle Control Systems* (2017), <https://www.nts.gov/investigations/Pages/hwy16fh018.aspx>

³⁸ Id.

³⁹ Jack Stewart, *What We Know About the First Fatal Tesla Autopilot Crash*, Wired (July 1, 2016), <https://www.wired.com/2016/07/tesla-autopilot-killed-someone-now-what/>.

⁴⁰ Supra note 29

⁴¹ Chris Reed, *Liability for Artificial Intelligence*, Queen Mary University of London Legal Studies Paper No. 273/2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2981784

⁴² Solon Barocas & Moritz Hardt, *Fairness in Machine Learning*, NIPS Tutorial (2017), <https://fairmlbook.org>.

⁴³ Supra note 23.

⁴⁴ Constitution of India, 1950, art. 14; OECD, *Principles of Corporate Governance* (2015), <https://www.oecd.org/>

⁴⁵ Supra note 6, at 8-12.



people with respect to their credit worthiness, employment screening or even allocation of customer service.⁴⁶ The reason this occurs is not because the designer programmed the algorithm to do so, but rather due to the algorithm optimising its prediction based on a set of statistically related variables. Therein lies the disconnect between the traditional approach to liability (identifying intentional or negligent conduct) and the actual mechanism of algorithmic harm, which arises out of the patterns identified within data, rather than human intent.⁴⁷

3.2.3 Autonomous Action Beyond Human Oversight.

Algorithmic systems today make decisions at speeds and volumes that humans cannot effectively supervise.⁴⁸ High-frequency trading algorithms execute millions of trades every day by processing millions of data points that no human could have processed; they also modify investment strategies in microseconds, as opposed to days.⁴⁹ With regard to dynamic pricing; there exist algorithms that change the prices of multiple products simultaneously based on changes in: market pricing, competitor pricing, and supply and demand influences.⁵⁰ Companies employ chatbots or automated message-response systems to respond to customer service inquiries without the direct involvement of a human being.⁵¹ Because companies do not typically disclose to customers the role of an algorithm in their customer service interactions, many customers do not realise that the bot or automated response was the result of an algorithm.⁵¹

The traditional accountability structure foresees humans authorising or approving of major decisions made by an autonomous system and thereby accepting any resultant responsibility for those decisions; where an autonomous system acts independently, without the knowledge or consent of the human overseer, this traditional structure is ineffective.⁵² If a pricing algorithm raises the price of basic necessities on those who can least afford them, or if a hiring algorithm systematically excludes qualified applicants, those pricing structure changes were not the subject of substantive and informed discussions.

3.3 The Erosion of Transparency Obligations

Corporate governance frameworks utilize transparency as an essential support to corporate accountability.⁵³ SEBI's Listing Obligations and Disclosure Requirements assume that once material corporate information is disclosed, then all shareholders and regulators can assess how well a company has made its decisions and whether it is appropriately controlled.⁵⁴ However, due to the complexities of using AI, there are numerous roadblocks to providing effective disclosures.

To begin with, algorithmic complexity has surpassed the ability of most stakeholders to understand it; this limits the stakeholders' ability to adequately assess how algorithmic decisions were made.⁵⁵ Thus, how does SEBI's requirement to disclose "material events" related to share price or other stakeholder interests relate to algorithmic decision-making, when the results are often unexplainable, even to experts?⁵⁶ Although a company may accurately state "AI pricing

⁴⁶ Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 685–95 (2016).

⁴⁷ Cary Coglianese & David Lehr, *Transparency and Algorithmic Governance*, Brookings (2019), <https://www.brookings.edu/articles/algorithms-and-accountability/>.

⁴⁸ Supra note 1, at 125–45

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Supra note 2, at 8–15

⁵³ Id. at 20–25

⁵⁴ Supra note 10, at 18–25

⁵⁵ Supra note 14, at 305–10

⁵⁶ Securities and Exchange Board of India, *Listing Obligations and Disclosure Requirements (LODR) Regulations* (2015), <https://www.sebi.gov.in/>



algorithm implemented," it may not know how the pricing algorithm impacts customers or the market.⁵⁷ The second barrier to transparency is that many algorithms are proprietary assets, and companies are hesitant to disclose the parameters of those assets, since they fear that disclosing this information would create competitive disadvantages or could facilitate reverse engineering.⁵⁸ SEBI's 2025 Consultation Paper regarding the use of AI in securities market highlights this point: companies are reluctant to comply with the requirement to disclose algorithmic parameters because they believe doing so would harm their ability to remain competitive.⁵⁹ Therefore, while accountability and property protection for algorithms must be provided, they are not yet reconciled.

Thirdly, AI systems are always evolving using new retraining methods, adjustments to the model's parameters and adding new models.⁶⁰ The algorithm that was used in January could be modified by March, while conventional disclosure practices would assume the underlying corporate governance structure remains static and therefore can be described at a specific point in time based on a reporting period.⁶¹ Continuous evolution of algorithms creates an inadequacy between the requirements of the temporal nature of disclosure requirements (for static corporate governance) and the rapidly changing nature of the algorithms themselves.

4. Structural Inadequacies in India's Legal and Regulatory Environment

4.1 Gaps in the Companies Act, 2013

Although the Companies Act is India's principal statutory framework for the regulation of corporate governance within India, the Act does not specifically provide for algorithmic accountability and algorithmic transparency.⁶² The duties of directors in section 166, the statements of responsibility to be included in their financial statements under section 134, and the requirements for the composition of the board of directors under section 149 all assume that directors have the capacity to exercise human decision-making.⁶³ The Act does not provide any answers to several key questions: How can directors ensure that they exercise due care in respect of decisions that may be made by systems that are beyond their understanding?⁶⁴ How should the certification of the internal control system be determined when those systems incorporate AI technology that is beyond the directors' understanding?⁶⁵ How should independence of the board of directors be defined when the directors lack the technical ability to evaluate algorithmically determined decisions?⁶⁶

Similarly, the statutory audit framework established under section 138, views that auditors will evaluate the effectiveness of internal controls primarily using traditional auditing techniques, as opposed to using the same methods to assess the effectiveness of the controls utilised in AI technologies.⁶⁷ This means there are many aspects of the AI technology used that would not fall within the competence of a traditional auditor and many existing auditing standards that do not apply to auditing an AI technology.⁶⁸ These gaps in regulation create a scenario where AI technologies may operate without a proper independent assessment

⁵⁷ Supra note 39, at 5–10

⁵⁸ SEBI, *Consultation Paper on Responsible Use of AI/ML in Securities Markets* (June 20, 2025), <https://www.sebi.gov.in/>

⁵⁹ Id.

⁶⁰ Aurélie Jean, *AI Models Evolve. The Law Must Keep Up*, MIT Technology Review (2021), <https://www.technologyreview.com>

⁶¹ Id.

⁶² Supra note 6, at 15–20

⁶³ Id.

⁶⁴ Supra note 10, at 25–35

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Deloitte, *AI Audit: A New Paradigm for Corporate Assurance* (2022), <https://www2.deloitte.com>.

⁶⁸ Institute of Chartered Accountants of India, *Standards on Internal Audit* (2020), <https://www.icaai.org/>.



of their fairness, accuracy and compliance with applicable laws.

4.2 Comparative Analysis of International Standards

The EU's AI Act, effective from August 1, 2024 and to be fully implemented by August 2, 2026, creates a risk based regulation that defines the level of regulatory scrutiny based on the potential for negative impact of an algorithm.⁶⁹ High-risk applications (i.e. those that support credit decisions, employment decisions, law enforcement, & critical infrastructure) will be subject to strict transparency and fairness requirements, including required bias tests and reporting of reported incidents.⁷⁰ The Act requires the vendors of AI systems to understand how their algorithms operate, which is currently not required by Indian law.⁷¹

Updated in 2024 with the endorsement of 47 countries including India, the OECD AI Principles establish five governance foundations based on human-centered values, accountability, transparency and robustness.⁷² More importantly, because of the way that the OECD Principles emphasise that the assignment of accountability mechanisms must be based on human action and be explicitly attributed to people, there can be no delegation or evasion of accountability through algorithmic intermediaries.⁷³ Because the OECD Principles require that assignment of accountability and responsibility for actions be directly assigned to humans, this principle addresses the gap in accountability that exists in current Indian practices.

⁶⁹ EU Commission, *High-Risk AI Requirements*, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>

⁷⁰ Id.

⁷¹ OECD, *OECD AI Principles* (2024 Update), <https://oecd.ai/en/ai-principles>

⁷² Id.

⁷³ Id.

⁷⁴ISO, *ISO/IEC 42001:2023 , AI Management Systems*, <https://www.iso.org/standard/81230.html>

ISO/IEC 42001:2023 is an International Standard on AI Management Systems, which specifies that comprehensive documentation must be made available to facilitate accessibility of the knowledge and skills used to develop AI and that third parties should be able to assess how well the AI system functions in accordance with these documents using their preferred auditing process.⁷⁴ In India, this standard is not legally binding but will potentially be used as a guideline in the future for the development of new regulations.⁷⁵

5. Global Illustrations of Accountability Gaps

5.1 The Amazon Recruitment Algorithm

In the period from 2014 to 2018, Amazon developed an automated recruiting system that was designed to expedite the hiring process for their technical positions.⁷⁶ To accomplish this goal, the algorithm utilized Amazon's data from the previous decade to develop a set of predictors regarding the characteristics of successful employees in this field (i.e., technical).⁷⁷ Unbeknownst to Amazon's algorithm development team, the algorithm also identified correlations between gender and technical ability based on data from a historically male-dominated technical workforce at Amazon.⁷⁸ As a result, female applicants were systematically evaluated at a lower level than male candidates and had their resumes from women's colleges excluded from consideration by the algorithm.⁷⁹ Additionally, there was a significant disadvantage in terms of the score assigned to each female applicant's

⁷⁵Neumetric, *ISO 42001 Explained*, <https://www.neumetric.com/iso-42001-requirements-for-algorithmic-transparency>

⁷⁶Jeffrey Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, Reuters (Oct. 10, 2018), <https://www.reuters.com/world/insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-2018-10-10/>

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.



qualifications compared to the equivalent male applicant.

As a result of the above, several corporate accountability lapses exist relative to this situation. For example, board directors were unable to explain the reasons for the discriminatory actions taken by the algorithm, even though these actions significantly impacted employment decisions for thousands of Amazon applicants.⁸⁰ Additionally, Indian courts have no means of utilizing the Companies Act framework to evaluate whether a board of directors has violated fiduciary duty by using a discriminatory recruiting system that has not been properly tested.⁸¹ Finally, the algorithm's systematic gender discrimination directly violated the Constitution's equal protection clause, as well as under the provisions of various non-discrimination laws. However, corporate governance law does not provide mechanisms for addressing the consequences of these violations using traditional mechanisms for holding a corporation liable for its actions.⁸²

5.2 Tesla's Autopilot Failures

The general public has only recently become aware of Tesla's Autopilot as it gained popularity as a more sophisticated form of automated driving.⁸³ Unfortunately, there have been a number of deaths, including the death of Joshua Brown, who died in June 2016 after crashing into a self driving Tesla on a white tractor-trailer which went undetected under bright sunshine.⁸⁴ An investigation revealed significant deficiencies in Autopilot's ability to accurately see objects, which were much more severe than what Tesla had promoted in its advertisement that describes Autopilot as a self-driving system.⁸⁵

There are still a lot of unresolved questions regarding who is going to be held accountable for these failures. Did the Board of Directors of Tesla violate their fiduciary duty under Section 166 by allowing the company to promote the use of unsafe automation through its advertising practices?⁸⁶ Did the board of directors execute their duty to exercise care to ensure that they comprehended and accurately portrayed the limitations of Autopilot as a result of its potential life-or-death implications?⁸⁷ Unfortunately, Indian law does not provide any clear guidance on any of these matters. Thus, these cases highlight the inadequacy of existing legal structures for addressing the intersection of algorithmic decision-making and human safety.

5.3 Algorithmic Collusion and Anti-Competitive Conduct

The October 2025 Market Study of AI and Competition conducted by the Competition Commission of India found six broad areas of competition law violations due to AI driven Pricing Algorithms.⁸⁸ AI driven Pricing Algorithms in particular enable horizontal price increases without requiring any type of overt collusion or even the intent, of those that run the Pricing Algorithm, representing a new type of collusion that would be difficult for traditional antitrust law enforcement to detect and/or investigate.⁸⁹ Survey respondents from 37% of AI start-ups expressed concerns with respect to the potential of their AI algorithms to lead to collusion and/or 36% felt they could potentially be responsible for algorithmic price discrimination.⁹⁰

This lack of accountability in the current antitrust enforcement system creates a significant challenge and barrier to enforcement when the algorithm generates a collusive outcome without human intent or knowledge.⁹¹ Current antitrust frameworks lack the

⁸⁰ Id.

⁸¹ Companies Act, 2013, S.166 (India)

⁸² Supra note 38, at 685–95

⁸³ Supra note 29

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Companies Act, 2013, § 166 (India); Supra note 31

⁸⁷ Supra note 31

⁸⁸ Supra note 4, at 18–25

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.



capability to reasonably identify who is responsible or liable for the outcome of the AI-created price increase, given the fact that the Pricing Algorithm creates a vertical upward pricing effect without any human communication. The CCI's recommendation to the industry to conduct their own audits of their AI Pricing Algorithm is basically an admission that the current accountability mechanisms are inadequate.⁹²

6. A Proposed Framework for AI Governance in Corporate Decision-Making

6.1 Foundational Principles

To address the identified deficiencies, an integrated governance framework should contain 5 core principles, (1) Transparency: all corporate decisions impacted materially by AI should be identified, disclosed and include an explanation of 2 categories (i.e, algorithmic objectives and limitations), (2) Accountability: all decisions made using AI should continue to have human oversight, verification and responsibility, including clear liability for any algorithmic harm caused, (3) Fairness: various tests should be performed to verify the existence of bias, discrimination or disproportionate impact on important groups or those at risk, from AI, (4) Compliance: all AI deployed should comply with the relevant laws and regulations as well as anti-discrimination and data protection laws; and (5) Data Integrity and Security: all stakeholders and investors information and data should be used in accordance with the ethical and legal standards throughout the AI life cycle.⁹³

6.2. Integration with Global Best Practices

The Transparency Requirements in the EU AI Act should be the basis for the amendments to the Disclosure Obligations in the Indian Securities Regulation and Corporate Governance Standards.⁹⁴ The highest risks of an algorithmic system are those

that support credit decisions, employment determinations, pricing strategies and market analysis; therefore, pre-deployment assessments and a comprehensive technical documentation should be required, along with a mandatory event reporting mechanism.⁹⁵ The implementation of the above requirements can be accomplished by amending Section 166 or through regulatory guidance from SEBI and the Ministry of Corporate Affairs.

To meet this objective, the creation of these types of accountability mechanisms should be guided by principles outlined by OECD. Specifically, it is essential that all accountability mechanisms, including algorithms, are clearly established to hold individuals responsible for their decisions.⁹⁶ This implies creating a framework that clearly outlines the individual or group accountable (data scientist or developer) for creating biased or flawed systems, the manager who uses the algorithm(s) for implementation, and any additional responsibilities associated with the executive director's responsibilities and the overall level of oversight of the algorithms by the executive director's board of directors and shareholders/regulators.⁹⁷

ISO 42001 provides an excellent example of how to establish market incentives for good AI governance practices. Organizations that use ISO-certified AI systems, will be eligible for credits in the cases of regulatory enforcement action, while organizations that do not meet the international standards will be viewed as having acted in a negligent manner in breach-of-fiduciary duty cases.

6.3 Implementation Mechanisms

AI Literacy and Governance by Boards of Directors: Directors who approve the use of AI must have enough technical knowledge to understand the capabilities, limitations, and risks associated with AI

⁹²Id. at 25–30

⁹³Id.

⁹⁴Supra note 61.

⁹⁵Id.

⁹⁶ supra note 63.

⁹⁷ Supra note 27, at 840–55



algorithmic models.⁹⁸ The proposed new requirement for directors to be "technologically skilled" as part of the amended version of the 2024 AI Deployment Act should be expanded to require that all board members charged with overseeing the implementation of AI algorithms receive specific training on governing these types of systems.⁹⁹ Also, AI Governance Certification Programs should be created via government-sponsored education through collaboration between national and multi-national organisations (e.g. ISO, IEEE).¹⁰⁰

Mandatory Algorithmic Auditing and Bias Testing: All organisations that are using AI that significantly impact their stakeholders will be required to conduct regular audits of model precision, screening for discrimination against various classes of individuals, and verifying compliance with current statutory and regulatory obligations.¹⁰¹ Independent, third-party audit firms that meet specific professional qualifications will have to perform these audits and report them to the appropriate Audit Committee and provide a summary to the Board of Directors.¹⁰²

Balanced Transparency and Trade Secret Protection: Organisations should make available applicable algorithmic data required by auditors and regulators under legally signed confidentiality agreements that will protect proprietary interests and allow for proper oversight.¹⁰³ Regulators will retain the right to obtain full access to algorithmic data as needed when conducting investigations or enforcement actions. All data obtained by regulatory investigations will be protected as per the standard confidentiality protection provisions available to all auditors.¹⁰⁴ This approach creates a balance between the competitive concern of an organisation with the requirements of regulatory oversight.

Liability Frameworks for AI: The Companies Act should clearly define these categories of liability for companies with AI, 1) Companies using defective, non-compliant, or biased AI Systems, 2) Directors approving AI Systems without sufficient knowledge or oversight, 3) Data Scientists/Developers creating AI systems with flaws known or identifiable through reasonable investigation, and 4) Vendors/Suppliers of algorithmic tools which are defective.¹⁰⁵

Regulatory incentives should continue to spur the creation of liability insurance products that are AI-oriented, allowing both insurers and companies to create a marketplace where insurers could encourage superior practices for those businesses, thus creating an overall incentive to improve governance.¹⁰⁶

7. Addressing Implementation Challenges

7.1 Balancing Innovation and Regulation

Excessive Regulatory Burdens associated with regulating AI Creation may lead to development of AI Outside of India, resulting in the loss of benefit to India, while a lack of adequacy in Governance Structures creates a risk for many Stakeholders to be harmed by Algorithms.¹⁰⁷ By addressing both of these conflicting concepts within this proposed framework, the Companies Act creates Ministry; to designate the highest risk AI applications in an organization but allows companies to streamline compliance processes with their AI Systems as internal use applications supporting standard operating process, such as fraud detection and optimizing customer service levels.¹⁰⁸

Current Regulatory Sandboxes established by the SEBI and RBI must continue to allow for Controlled Experimentation within the development of new AI Applications prior to full roll-out at all times.¹⁰⁹ The controlled experimentation model always allows for

⁹⁸ Supra note 68

⁹⁹ Supra note 2, at 18–25

¹⁰⁰ Supra note 10, at 38–42

¹⁰¹ Id.

¹⁰² Companies Act, 2013, S. 149 (India).

¹⁰³ Id.

¹⁰⁴ Supra note 22, at 18–22

¹⁰⁵ Supra note 59

¹⁰⁶ Id.

¹⁰⁷ Supra note 51, at 1480–90

¹⁰⁸ Id.

¹⁰⁹ Supra note 27, at 845–65



discovery of governance needs prior to AI Technology Roll-out, allowing the regulatory body to reconcile innovation in the space of AI with established Governance Structures.

7.2 Capacity Building and Professional Development

There is currently a shortage of specialists in algorithm auditing, AI governance, and data ethics that could support the development and implementation of algorithm auditing, board-level education regarding AI, and advanced governance in India.¹¹⁰ Therefore, it is essential that the Government, via State Agencies, develop and maintain an ongoing schedule of training programmes for the purpose of developing and certifying algorithm auditors and AI governance personnel.¹¹¹

The establishment of a National Certification Examination for all practitioners of algorithmic auditing and data ethics will create and formalised a set of professional standards, whereby every practitioner of algorithmic auditing/auditors is required to have an understanding of both the technical aspects of an algorithm, and the Legal and governance implications of algorithmic decision-making.¹¹² In addition, through co-operation with the EU, OECD and ISO organisations, India will facilitate the transfer of knowledge and adoption of best practices for algorithm auditors and AI governance personnel.¹¹³

8. Conclusion

AI has entered the corporate decision making process, not merely as a transparent tool for corporate governance, but as an autonomous actor, making legally, financially and personally binding corporate decisions. The transformation has created an "Accountability Gap". The Absence of a Human Agent who bears the Consequences of Corporate

Actions has resulted in a gap between the Legal and Responsibility Opportunities for Corporations and their Decision-Making.

The Companies Act, 2013 was written in a time when human directors were required to manage, control and be accountable for the core decisions and results of their Company. Therefore, all of the provisions of the Companies Act, 2013 (i.e., Fiduciary duties, responsibilities, board oversight and disclosure obligations) are based upon human agency and understanding. The above assumptions no longer hold if moment to moment and machine-generated choices are very unpredictable, the very construction of responsibility is distributed amongst many people, so bewilderment surrounding responsibility is extensive, and the type of decisions possible with autonomous algorithms can be completed at speeds far greater than human beings are able to oversee adequately.

In addition to demonstrating the inadequacy of India's legal frameworks for algorithmic accountability, this work shows that the central oversight of the RBI and SEBI with respect to the usage of autonomous algorithms are not sustainable because they don't provide the necessary means through which to assess or mitigate the inherent concerns associated with rapidly evolving technology, nor do they address the more significant societal issues associated with the pervasive usage of autonomous decision-making algorithms. As seen through the EU, OECD, and ISO example, other countries have developed more comprehensive accountability mechanisms that would serve as a best practices model or framework, although any model or framework developed in India must take into consideration its existing legal framework, governance traditions, and development goals.

The future of corporate law must be altered in order for companies to achieve accountability for algorithms. While maximizing the benefits of

¹¹⁰ Id.

¹¹¹Supra note 2, at 20–25.

¹¹²Supra note 10, at 42–45

¹¹³Supra note 52



innovation within this space. There must also be an establishment of a set of duties on behalf of Directors for AI oversight. Amendments should define an audit standard for algorithmic systems, create transparency for corporate algorithms based on the complexity of the technology used, and a liability framework under which a corporate entity is the prescribed entity to be held liable for algorithmic harm. This will necessitate an investment into capability building for individuals who will perform roles of algorithmic auditor, AI governance specialist and Technical Director for an organization. Corporations should also adopt a stance that promotes transparency in the algorithmic decision-making process from an internal perspective, rather than as a regulatory burden imposed upon them, thus establishing trust amongst the organization's stakeholders and its overall corporate legitimacy.

In sum, the key role of artificial intelligence in the overall governance of a corporation should be to serve humanity and its purpose within institutional governance rather than the opposite. When corporations don't reform their accountability and transparency practices in relation to algorithmic systems, their ability to continue to drive innovation through technological advances will erode their trust and legitimacy as ultimately established and relied upon by the general public.

