ARTIFICIAL INTELLIGENCE IN CORPORATE BOARDROOMS AND COMPLIANCE MECHANISMS

Abhinav Suresh*

ABSTRACT

Corporate Governance has been a huge theme of focus for over three decades now, primarily as a consequence of an increasing public investment cycle that has been observed globally. It is no longer simply limited to the set of practices followed by a body corporate, a firm, or an organization at a local jurisdiction but has wide inter-continental ramifications which have only been amplified in the post-pandemic world. Every national regulatory body, be it in the company law sphere or the capital markets sphere has been involved in greater cross-border synchronicity with their international counterparts. OECD has seen greater participation from countries, especially in the developing economies. With the advent of Artificial Intelligence, business processes are going to undergo a tectonic shift and thus the compliance aspects of regulators and companies have to keep up with such a shift. This journal seeks to explore the opportunities and challenges in Corporate Governance mechanisms and regulations with the arrival of AI.

Keywords: *Corporate Governance; Compliance; Artificial Intelligence; Companies; Business Process.*

INTRODUCTION

Perhaps the global permeation of the internet has led us to a completely different way of life since what it used to be in the advent of the 21st century. The past decade has seen an accelerated introduction and evolution of communication technology which is unmatched by any of the past waves of the Industrial Revolution. This has given rise to the standard question of how beneficial or dangerous such a disruptive usage of technology going to be in the years to come. We have noticed that the time for every successive tech to be adopted and incorporated amongst the masses has successively reduced and such a trend seems to be the order in the near future, till a 'saturation' occurs.

*LLM, SECOND YEAR, OSMANIA UNIVERSITY, HYDERABAD.

In the legal arena, such changes have had a delayed impact, owing to the litigation process itself being exhaustive and multi-layered, in contrast to the immediate fixes we get as a consequence of the tech revolution. The challenges involved in an increasingly tech-driven world however override the traditional inertness of the legislative intervention. This has been reflected in the global appreciation of the fact that technology is going to be a key factor in driving the next generation of changes in compliance and regulation of companies. Governance rules have been tweaked keeping in mind the advancement in business processes and the nature of conducting business activities.

For instance, The Organization for Economic Co-operation and Development (OECD) is an international organization that works with governments across the globe to set policy frameworks in the arenas of economic growth, fighting tax evasion, and addressing the most pressing social and economic needs of their respective citizens.[1] An important part of the OECD's works includes the setting of sound Corporate Governance standards, working with the various governments to ensure the standardization of such practices, and updating them from time to time keeping in view the extremely dynamic nature of technological advancement which brings its challenges. A porous compliance system of a country shall mean the death knell of its economy and given the interdependent world that we are living in, it shall have a huge impact globally. It is thus not just a prudent safety mechanism, but also an imperative countermeasure to tackle evasion and non-compliance.

The OECD has an updated set of guidelines named "G20/OECD Principles of Corporate Governance" which is a publicly accessible document that lays down the latest Corporate Governance principles and systems to ensure the compliance of the same. Apart from this the OECD also releases a yearly factbook titled "The OECD Corporate Governance Factbook", which provides easily accessible and up-to-date information about the institutional, legal, and regulatory frameworks for corporate governance across 50 jurisdictions worldwide. The Factbook complements the G20/OECD Principles of Corporate Governance and can be used by governments, regulators, and the private sector to compare their respective frameworks with those of other countries and also to get information on practices in specific jurisdictions.

The OECD constantly updates all the latest developments in this regard. The OECD Corporate Governance Committee is tasked with the review of all principles using peer-

[1] About the OECD – OECD <https://www.oecd.org/about/>accessed 11th April 2023

reviewed write-ups and journals. Some of the latest peer-reviewed write-ups are on the subjects of:

A) Duties and Responsibilities of Boards in Company Groups

B) Flexibility and Proportionality in Corporate Governance

C) Risk Management and Corporate Governance

D) Supervision and Enforcement in Corporate Governance

E) Board Member Nomination and Elections

F) Related Party Transactions and Minority Shareholder Rights

G) The Role of Institutional Investors in Promoting Good Corporate Governance

H) Board Practices: Incentives and Governing Risks[2]

CORPORATE GOVERNANCE: A BRIEF OUTLOOK

Corporate Governance refers to the set of practices followed by a body corporate, a firm, or an organization, by which it is governed. This implies that in a good corporate governance mechanism, all decisions being taken by the controllers of the Company (Board of Directors) are being taken with diligence, and care, in line with the statutory principles, and in the interest of the shareholders of the Company. It is essentially the bye-laws and rules followed by the control system of the company and the Key Managerial Personnel (KMP) of the Company, who have control of the Company for all practical purposes. This means that the Board of Directors, comprised of requisite numbers as statutorily mandated, along with the CEO or MD, Whole Time Director, CFO, and the Company Secretary, as enumerated under Section 51(2) of the Companies Act, 2013 have the statutory obligation to report to the Registrar of Companies (ROC) for all mandated compliances and also to Securities and Exchange Board of India (SEBI) in case the Company is listed.

An ideal Corporate Governance mechanism involves the smooth and effective functioning of all the KMPs and the shareholders' interests being upheld, and parallelly ensuring that all compliances as mandated by law are being followed in letter and spirit. This consequentially

[2] Ibid

ensures that the financial health of the Company is safeguarded, and malpractices are avoided. This also acts as a protective blanket to the shareholders in a Company since the penalties for non-compliance are severe and criminal liabilities may be imposed on the KMPs involved in such malpractices. Thus, Corporate Governance is a methodical system of managing a Company to ensure that the social obligations of the Company are met and that the Company does business cleanly and transparently.

Corporate governance refers to all the systems—processes, structures, and mechanisms—that affect a company's direction. In some aspects, the idea predates the invention of modern businesses, which dates to the 17th century, when European superpowers started to assert their control on a global scale. The contemporary concept of Corporate Governance didn't develop until the latter decades of the 20th century.[3] We thus observe that the importance of Corporate Governance as a principle though in vogue for a long time, was predominantly the focus of the American regulatory mechanisms, more specifically the Securities and Exchange Commission (SEC): the American market regulator led the efforts to develop it.

THE SARBANES-OXLEY ACT

Following the corporate accounting crises that made names like Enron associated with corporate wrongdoing, the SOX Act was developed to re-establish public trust in firms. The Sarbanes-Oxley Act was conceived and presented by Senator Paul Sarbanes and Representative Michael Oxley, to whom the genesis of the name (SOX) is owed. By enhancing the accuracy and dependability of corporate disclosures in financial statements and other documents, SOX aimed to protect investors from being defrauded owing to the lack of transparency. The vulnerability of the investors was sought to be shielded by the proposed Bill.

The Bill proposed to fulfill the stated objective by implementing the following measures:

a) Establishing sound accounting principles and practices. (In the case of Enron, the primary tool in the arsenal was the immunity granted to external auditors and thus Arthur Andersen LLP, the auditing firm of Enron actively participated in the deviant practices while being aware of the consequences.)

[3] Brian R. Cheffins, 'The History of Corporate Governance' (SSRN Journal, 22nd December 2011)(University of Cambridge Faculty of Law Research Paper No. 54/2011, ECGI - Law Working Paper No. 184/2012) <http://ssrn.com/abstract=1975404>Accessed 13th April 2023

b) A robust relook at the corporate governance practices and compliance aspects.

c) Updating the disclosure requirements and establishing answerability on the part of the highest level of management in the Companies, including at the executive level.

d) Enhancing the culpability of public accountants and auditors in the event of wrong-doings.

e) Overhauling the reporting mechanisms to the shareholders and establishing norms concerning the description of the finances of the Company.

f) Bringing in measures of corporate transparency and annual reporting practices.

g) Framing rules for whistle-blowers' protection and the norms for monitoring the governance.

h) Imposition of liabilities and charges upon wrong-doers, especially in the highest level of a Company's management: at the executive level. This included the Board, the CEO, the CFO, and other executives.[4]

These liabilities were clearly defined and it was propounded that the highest liability ought to be placed on the most powerful decision-makers.

EVOLUTION AND DEVELOPMENT

Corporate Governance is not a concept exclusive to India, and it has found its roots mostly in the American and English Company Law framework. There are Corporate Governance codes and reviews which keep getting updated from time to time. Ensuring proper compliance and establishing a robust corporate governance hierarchy is the most significant area of concern for large corporations and firms alike. The general principles of good corporate governance practices are universally applicable and are interoperable on a global scale. India's first definitive step towards Corporate Governance was the establishment of SEBI in 1992 to enhance transparency and accountability in corporate dealings. Since then, the SEBI has functioned as a market regulator and a watchdog that protects the interest of the investors and has played a predominant role in ensuring that the compliance regime is strict and vigilant.

There was a long process of reforming the Company Law itself, which culminated in the year 2013, with the enactment of the new Companies Act, 2013. In 1996, the CII launched the first

[4] Ibid.

industry-wide initiative in India and took a crucial step toward corporate governance. The stated objective was to establish a code of conduct and governance principles for companies, whether it is the public or private sector, financial institutions, or business entities and body corporates, the main goal was to promote and establish a code of corporations[5].

The economic might of India has largely been relegated to being seen as a huge market with a large population. This made the global corporations want a market share in India, but without placing excessive capital expenditures. However, whether or not there were regulations in place, innovative businesses in India made an effort to establish the foundations of sound corporate governance from the start. The situation, meanwhile, was not particularly positive because it was too promoter-centric, and appropriate governance standards were disregarded for the sake of promoters' agendas and objectives.

A multitude of discussions and events have prompted the improvement of corporate governance as companies have realized the need for more professional and effective corporate governance to make them more competitive globally. The Chamber of Indian Industries (CII) proposed the core rule for corporate governance in 1998. According to the definition put forth by the CII, corporate governance regulates the laws, procedures, customs, and accepted principles that determine an organization's ability to make administrative decisions, particularly those affecting its investors, banks, clients, the State, and representatives.[6]

The SEBI recruited acclaimed industrialist Mr. Kumar Mangalam Birla to address the issue of insider trading and protect the interests of our investors. All body corporates were requested to submit a supplementary corporate governance report along with their annual report, detailing the actions they had done to abide by the committee's recommendations

Some of these measures included the following:

1. Incorporation of Clause-49: The committee came to understand the value of the auditing body, and numerous specific recommendations about the structure, members, and composition of the audit committees of the Board were made. Clause 49, a new component of

[5]Samarth Nair, 'Corporate Governance in India'(Legal Service India e-Journal) <https://www.legalserviceindia.com/legal/article-4694-corporate-governance-in-india.html> Accessed 11th April 2023

[6]SCC: Evolution of Corporate Governance in India, Bhumesh Verma and Himani Singh (2019) PL (CL) November 69 <https://www.scconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/> Accessed 15th April 2023

the listing agreement that went into effect partially in 2000 and partially in 2003, made reference to certain rules and regulations

2. Report of the Bank Directors Consultative Group: April 2001

The Corporate Governance Code for banking institutions was established by the Reserve Bank of India to review the supervisory roles performed by the boards of banks and financial institutions and to obtain feedback on the board's compliance, disclosure, transparency, audit committee, and other activities, apart from offering suggestions for improving the effectiveness of the board of directors work to lower the risks.

3. Corporate Audit and Governance Committee Report: December 2002

To make sure that management and firms present a true and fair statement of the financial affairs of the company, the committee worked on the stated objective to assess and recommend some modifications, such as a statutory auditor, company relationship, the appointment of an auditor, and audit fee measures.

4. N.R. Narayan Murthy's SEBI Report on Corporate Governance, February 2003

To raise the bar for governance, SEBI established a committee to evaluate and review the function of independent directors, the relationships between related parties, risk mitigation, chairmanship, board of directors and compensation, codes of conduct, and financial disclosures.

5. Report of the Committee on Regulation of Private Companies and Partnerships (Naresh Chandra Committee II) [7]

There was a need to examine the statute again when a big number of private sector enterprises entered the picture. The Government established a committee in January 2003 to provide a reasonable and scientific regulatory environment to build upon this foundation. The Companies Act of 1956 and the Partnership Act of 1932 were the main agenda of this report. On July 23, 2003, the final report was presented.

[7]Verma and Singh (2019) PL (CL) November 69

6. Murthy Committee Amendment to Clause 49 [8]

Further amendments to Clause 49 were made in 2004 by SEBI in accordance with the recommendations of the Murthy Committee. Implementation of these amendments was delayed until January 1, 2006, due to a lack of acceptance and industry resistance to such extensive reforms. Even though the Murthy Report resulted in numerous changes to Clause 49, the governance requirements relating to corporate boards, audit committees, shareholder disclosure, and CEO/CFO certification of internal controls represented the most significant change to the governance and disclosure standards of Indian companies.

INTERNATIONAL CO-OPERATION ON GOVERNANCE AND CORPORATE COMPLIANCE FRAMEWORK

Despite individual countries taking serious efforts to curb corporate malpractices, we have seen how creating an environment for honesty and propriety in reporting mechanisms of a Company is essential. In this direction, international cooperation in framing governance norms has gone a long way in guiding developing economies, especially in the African continent the importance of having well-protected economic growth. It has also enabled a platform where learning from other systems is made possible and the expertise from the world over is brought together on a single platform which has led to greater efficiency and comprehensive efforts in tackling non-reporting.

The world has already noticed the crucial role being played by institutions like the Financial Action Task Force (FATF) in tackling the menace of money laundering and terrorist financing. A similar if not greater success is anticipated in the governance and compliance aspects by evolving the roles of similar international organizations. Organizations like the Organization for Economic Co-operation and Development (OECD) and the Corporate Governance Institute (CGI) have played a pertinent role in enabling greater cross-border assimilation of governance practices and have helped nations in developing a national code for governance and compliance frameworks.

The OECD publishes and releases a yearly factbook which is a comprehensive note and analysis of the latest developments in the corporate governance sphere. It is a data-oriented

[8] SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release <https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release_17040.html> Accessed 15th April 2023

document that helps countries and regulators keep themselves abreast with updated information. Another great development in this area has been the arrival of Corporate Governance Professionals. They specialize in the compliance laws of the region and then advise boards and companies on how to make themselves more compliant without losing out on efficiency.

The latest OECD Fact book published on 30 June 2021 notes the following developments about the corporate regulations and institutional structure in this regard:

"Nearly two-thirds of jurisdictions have revised their national corporate governance codes in the past four years. The balance between formal regulation and a "comply or explain" approach in the corporate governance framework varies across jurisdictions. In dealing with corporate governance issues, countries have used various combinations of legal and regulatory instruments on the one hand, and codes and principles on the other. In all surveyed jurisdictions, corporate governance standards are included in company law and securities law."[9]

The Factbook goes on to give out data and updates about which regulatory mechanism is followed by whom. The substantial observation has been that there is an exceptional awareness of the importance of having a good corporate governance code in place, even in countries that are not the epicenter of world economic activity. This is a gladdening change that has happened over the past decade and compliance is considered an important benchmark for the progress of a nation's economy. Needless to say, these constant efforts are praiseworthy and every institution which has played a crucial role in effecting this change is a very key stakeholder in the further progress which happens in this area in the future.

THE EMERGENCE OF DATA ANALYTICS AND INTELLIGENT SYSTEMS IN BUSINESSES

Data Analytics has been of foremost importance to all large businesses and corporations for over a decade now. We have witnessed a rather stupendous growth in the services being offered in the field of data analytics and the importance being given to the same in the corporate boardrooms. The study of examining unprocessed data to draw inferences about such information is known as data analytics. Many data analytics methods and procedures

[9]The OECD Corporate Governance Factbook 2021, 33, para 2.1 <https://www.oecd.org/corporate/ca/corporate-governance-factbook.htm>Accessed 15th April 2023

have been mechanized into mechanical procedures and algorithms that operate on raw data to make it comprehensible for end-user consumption. The phrase "data analytics" is broad and covers a wide range of data analysis techniques. Data analytics techniques can be applied to any type of information to gain insight that can be utilized to make things better. Techniques for data analytics can make trends and indicators visible that might otherwise be lost in the sea of data. The efficiency of a firm or system can then be improved by using this knowledge to optimize procedures.[10]

Data analytics is significant since it aids in the performance optimization of enterprises. By finding more cost-effective ways to do business and retaining a lot of data, firms can help cut expenses by incorporating it into their business strategy. Additionally, a business can use data analytics to improve management decisions and track consumer preferences and trends to develop fresh, improved goods and services. To the extent that it aids in making business decisions faster, more accurate, and better targeted, data analytics has been a real game changer in terms of how business is conducted and operated. It has led to the next phase of automation which has the potential to revolutionize Industry in a way that has never been witnessed before. A more sophisticated understanding of the user needs is ultimately going to augment the targeted sales of business and thus create hyper-focussed needs-based marketing.

Data Analytics has been AI's most advanced and widespread application in the sphere of commerce. This is now being tested and implemented in every sphere of our lives: education, healthcare, delivery of government services, and the creation of assets (in the form of Non-Fungible Tokens or NFTs). The scope of this development is yet to be captured and we ought not to be surprised in data analytics takes over hitherto man-managed entry-level jobs. While analytics is an excellent tool, we have seen in the past how inadequate control mechanisms can cause large-scale damage to all the stakeholders in a transformative environment. Because of the sheer scale and size of analytics (it has been found that most of the analytics happens on regular customers, which is a large sample size by itself), tighter regulations are paramount to ensuring probity and proper usage of data in this regard.

[10] Jake Frankenfield, Data Analytics: What It Is, How It's Used, and 4 Basic Techniques(Investopedia Journal) <https://www.investopedia.com/terms/d/data-analytics.asp>Accessed 15th April 2023

CONTRACT LIFECYCLE MANAGEMENT (CLM): AI IN THE ARENA OF BUSINESS CONTRACTS

Another widespread manifestation of AI in the conducting of business has been the adoption of Contract Lifecycle Management (CLM) Software. The phrase "contract lifecycle management," or CLM, is used to refer to the process of managing contracts across their full life cycle. By enhancing visibility and control throughout the whole contract process, CLM aims to maximize the performance of contracts.[11]

Contract management till now was largely a manual process, with lawyers from all sides representing their parties, sitting together and working on the nitty-gritty of the clauses and applicability of the same. This was a time-consuming process, and Companies that had to enter into multiple contracts with various parties, some of them across multiple jurisdictions, with various deadlines and maturity dates, would have to depend on a large human resource to remain on top of the process.

This invariably drove up the costs of the business and it was in the form of a revenue expense which has to be incurred repeatedly, at least on an annual basis. The management process was also not comprehensive and was prone to human errors. Since the lifetime of these contracts was for a longer period, the process involved a lot of capital being expensed.

This is the lacunae that the CLM service providers sought to address. Since most of the contracts were similar and not much differed substantially apart from the parties involved and the operational aspect of the contracts, most of the wordings, clauses, and conditions could be automated on a pre-set platform which would draft the document and employ various advanced tools to keep a record of the expiry of the contract.

A solution of this nature was what all businesses with regular contract drafting and maintaining necessities were looking towards. Since the integration of technology has happened in this sphere, it has shown a considerable difference in the cost-effectiveness and efficiency of contract management.

CLM is an amalgamation of various heterogeneous components, such as contract drafting and negotiation, contract administration and supervision, contract closing, and contract archiving.

[11]What is Contract Lifecycle Management? | Icertis <https://www.icertis.com/learn/what-is-contract-lifecycle-management/> Accessed 16th April 2023

Organizations may boost compliance, cut costs, and manage risk more effectively by adopting a comprehensive approach to the contract lifecycle. Contract lifecycle management gives businesses the ability to automate many of the manual operations that are often involved with contract management, which is one of its main advantages. This can increase productivity and lessen the possibility of human error. Additionally, automation aids in ensuring that contracts are carried out consistently across various divisions and locations.[12]

We are witnessing an increasingly remote world with a contrastingly ever-increasing interdependence. The pandemic of COVID-19 has only accelerated this paradox. In the wake of this, most companies interested in cutting their non-essential operational costs have done so with an exceeding reliance on technology and used various alternatives to inter-continental travel. This situation has also led more small-scale enterprises which dealt with manual contract management to switch to a CLM-based regime. This trend has prompted many in the CLM software business to experiment with various advanced tools and promote their product as distinct in terms of the scope of the services that they offer. For instance, *Icertis*, a CLM Software provider has integrated the next generation AI tools in their CLM software, given the increasing complexities in the nature of the contracts and agreements.

It has developed multiple AI-powered tools and integrated the same into its CML solutions portfolio. According to its webpage for the AI applications that it offers, some of these tools include:

AI Studio: AI Studio is a self-serve and self-learning cognitive tool that empowers users to analyze multiple sets of contract documents on the go and to generate actionable analytics for real-time decisions and actions. AI-Studio leverages powerful AI models that can be customized to progressively build the analysis over repeated runs- all independent of any data scientist involvement.

DiscoverAI: DiscoverAI identifies contract attributes and clauses and semantically matches them directly to your contract type definitions and enterprise clause library in the platform.

DiscoverAI seamlessly guides you through importing legacy and third-party contracts, managing clause deviations, and verifying attributes.

NegotiateAI: NegotiateAI gives businesses the AI-powered insights they need to optimize

[12]Ibid.

their contractual negotiations.

With the help of this app, you can easily analyze high volumes of contracts, understand their component terms and clauses, and find similar precedents from across your company's entire contract repository.

The app works with Microsoft Word to seamlessly surface these insights within the familiar Office user experience.

VisualizeAI: VisualizeAI enables users to quickly find and load a large volume of contract data, navigate complex relationships, and quickly discover patterns. This app allows users to group and link contracts based on their status, risk level, or other attributes and then navigate and take action across their entire contract portfolio."[13] The basis of business is a contract, and for the first time, contracts are being digitalized. Contracts become interactive living documents that may interact with people, external systems, and ultimately other contracts when Artificial Intelligence (AI) is applied to this new pool of digital data.

Businesses are now overcoming complex corporate contract management problems that are being specifically solved by an AI-based solution.

The main reasons for this shift are as follows:

- By automating crucial steps in the contract review process, the cycle time may be decreased and errors can be removed.
- Greater ability to look for the most favorable terms and results from a given party.
- Making sure that all necessary conditions and provisions are followed, especially in contracts with third parties.
- Ability to execute contracts from third parties more quickly while lowering risk and enhancing contract performance.
- Feature of finding the connections between related common entities concealed in contract data to improve decisions.

[13] Icertis AI Applications | Bring Static Contracts to Life with Artificial Intelligence <https://www.icertis.com/products/ai-applications/>Accessed 16th April 2023

Manually managing the contract lifecycles can cause delays in the implementation of contracts since it requires numerous approvals and rounds of negotiation after mailing the paperwork for physical signatures.

Additionally, manual contracting frequently leads to missed deadlines, breach risks, and missed opportunities for significant contract renewals. By extracting insights and data analytics from contracts and leveraging these to address problem areas in the lifecycle of the contract and gain a thorough understanding of the contractual component of the business, businesses, and organizations can profit from CLM.

In the post-COVID-19 era, we shall witness a stupendous rise in the applications of AI-powered solutions for hitherto complex and unsolvable problems, and we shall see it permeating into the legal arena sooner than later. We have noted how AI has permeated into the non-litigious aspects of the law already, with commercial contracts and international business contracts being executed with the help of Augmented AI. A lot of mere clerical jobs of lawyers are now being taken over by these 'intelligent systems' and hence improving efficiency. Although the threat of job losses owing to this rapid rise of technology remains, we have seen in the past how the first phase of computerization, and the later advancements in technology have only helped in advancing the quality of living and we have adapted to the use of technology very willingly.

INTEGRATION OF ARTIFICIAL INTELLIGENCE IN COMPANIES

The evolution of technology over the past several years has been one of the key ingredients of the massive rise in the standards of living for humans. Even as traditional problems continue to persist, this rapid reach of technology provides us with a unique opportunity to eradicate these traditional problems once and for all and set us on a new growth trajectory that shall be all-inclusive and all-pervasive. For instance, online education and on-demand doctors are not phenomena we would have seen twenty years before. The scale of this change has been magnanimous and wide.

In furtherance to this trend, the evolution of Artificial Intelligence and its application in various spheres of life spell a new trajectory of growth which shall resolve the age-old problem of financial scams and corporate misgovernance. We are already witnessing this integration happening at the international level as boardrooms are bringing in AI-based robots, albeit without voting rights.

The board of Deep Knowledge Ventures (DKV), a venture capital firm based in Hong Kong that invests in businesses creating treatments for age-related diseases and regenerative medicine, has brought in VITAL, a machine learning program that can suggest investments in the life science industry, to the organization.

Machine learning is used by VITAL (Validating Investment Tool for Advancing Life Sciences) to examine financing patterns in databases of life science companies and forecast profitable investments. [14]

ADVANTAGES OF SHIFTING TO AN AI-BASED GOVERNANCE SYSTEM

The COVID-19 pandemic has noticeably changed the way business is conducted and thus the shift toward new-age technology is absolute and long-lasting. Additionally, corporations' organizational structures are evolving daily. It is challenging to make wise decisions quickly, especially in crisis management, because of the complexity and rapid development of the world, and since many mistakes have largely irreversible consequences. Since AI systems have cognitive skills, they can be utilized to lower risks. AI systems can comprehend human behaviors and assist humans in making well-informed decisions by informing them of both the advantages and disadvantages of those actions.

The incorporation of AI in the boardroom will solve yet another long-standing problem: that of human deceit and greed. Since the distinct judicial character of a Company is often used as a screen or a veil by the directors to indulge in unscrupulous activities and later claim immunity, the question of imposing liability arose. This issue has been quite significantly addressed by the doctrine of the "Lifting of Corporate Veil" and by holding the Key Managerial Personnel of the Company personally liable for the loss which consequentially occurs.

Regulations in place also impose criminal liabilities on directors for mismanagement or failure to comply. With the arrival of AI in boardrooms, however, the systems would not have a vested interest and thus the only worrying factor would be to ensure that the decision-making capacity is enhanced to make it fit in the real world.

[14] Nicky Burridge (Nikkei Asia, May 10, 2017) 'Artificial intelligence gets a seat in the boardroom'<https://asia.nikkei.com/Business/Artificial-intelligence-gets-a-seat-in-the-boardroom> Accessed 17th April 2023

It is also pertinent to mention that humans ultimately make mistakes, some of which are potentially disastrous financially and societally. The integration of AI, at least the hybrid or the augmented version of it is surely going to make better, the decision-making process and help in building capacity for tackling multiple problems in a fraction of time. Subject matter expertise would not be of concern here, since machines incorporated here would have greater thinking capacity and effective execution of the same.

DISADVANTAGES OF AN AI-DRIVEN GOVERNANCE STRUCTURE

While debating such a huge change, it is also essential to look into the potential disadvantages of incorporating this change into our governance systems.

The basic purposes of AI systems are to analyze data quickly and arrive at unbiased conclusions. Evidence does, however, suggest that specific social groups might be negatively impacted by decisions made by AI systems. There are several instances where biased decisions are made by AI systems. [15]

The now-famous Reuters article which detailed the initial adoption, and the subsequent scrapping of the AI-based recruitment system at Amazon in the wake of allegations of it being biased against women is a case in point.

The article stated, in effect, "*Amazon's system taught itself that male candidates were preferable. It penalized resumes that included the word "women's," as in "women's chess club captain." And it downgraded graduates of two all-women's colleges, according to people familiar with the matter. They did not specify the names of the schools*." [16]

This is a problem that needs fixing on the part of the algorithmic developers and the evolution of the AI systems may, in the future, account for parameters of social justice to be included in its architecture.

In addition to this, there is always the looming threat of unemployment owing to automation, which will only be hastened by the incorporation of AI. In a paper titled *Artificial*

[15]Baran Can Kaya, 'The role of artificial intelligence in corporate governance' (SSRN E-Journal, 19th July 2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4143846>

[16]Jeffrey Dastin (Reuters, 11th Oct 2018), 'Amazon scraps secret AI recruiting tool that showed bias against women'<https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G> Accessed 18th April 2023

Intelligence, Jobs, Inequality and Productivity: Does Aggregate Demand Matter?, Thomas Gries of the University of Paderborn argued,

"Rapid technological progress in artificial intelligence (AI) has been predicted to lead to mass unemployment, rising inequality, and higher productivity growth through automation. In this paper, we critically re-assess these predictions by (i) surveying the recent literature and (ii) incorporating AI-facilitated automation into a product variety model, frequently used in endogenous growth theory, but modified to allow for demand-side constraints. This is a novel approach, given that endogenous growth models, and including the most recent work on AI in economic growth, are largely supply-driven. Our contribution is motivated by two reasons.

One is that there are still only very few theoretical models of economic growth that incorporate AI, and an absence of growth models with AI that takes into consideration growth constraints due to insufficient aggregate demand. A second is that the predictions of AI causing massive job losses and faster growth in productivity and GDP are at odds with reality so far: if anything, unemployment in many advanced economies is historically low. However, wage growth and productivity are stagnating and inequality is rising."[17]

Hence, these drawbacks of AI shall make its integration into corporate decision-making, more challenging.

CHALLENGES: AUDITING AI GOVERNANCE

In an AI-governed Board, the biggest and the most untested aspect would be the conduction of an Audit on the Board and on how to impose liabilities in such a regime. Kitty Kan Chan, in the Institute of Internal Auditors paper titled Auditing AI Governance, summarised the problem thus: *"With a growing focus on the governance of Artificial Intelligence (AI), internal auditors need to determine how to assess whether that governance is designed appropriately and implemented effectively. Auditors should ensure their organization's use of AI is consistent with its AI governance principles for accountability, transparency and robustness, fairness and inclusivity, and privacy, security, and safety."*[18]

[17]Thomas Gries and Wim Naudé, 'Artificial Intelligence, Jobs, Inequality and Productivity: Does Aggregate Demand Matter?' (SSRN Journal, 17th December 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3301777> Accessed 18th April 2023

[18]Kitty Kan Chan, 'Auditing AI Governance' (Internal Auditor | The Institute of Internal Auditors, 21st February 2022) <Auditing AI Governance (theiia.org)> Accessed 18th April 2023

The pertinent question of "whom to impose the liability on?" remains unanswered. In the times to come, the biggest challenge would be to try and answer the critics of AI by highlighting that the negative implications of AI can be offset by appropriate measures.

The article goes on to state that the most pressing problem for any change is the need for it to be implemented effectively. With the hastened advancement of technologies, including AI, it is not feasible for the law or the regulations to keep up with the pace of the change, often referred to as the "pacing problem". A regulatory framework by default requires a thorough look into all aspects before enactment; meanwhile, the technology being proposed to be integrated has already gotten outdated.

For the time being, it is thus important that the Companies which are eager to switch to a more automated process establish some form of an AI Governance Code, which is comprehensive, in order to have some answers in the event of judicial scrutiny.

IMPACT OF AI ON THE INDIAN GOVERNANCE SETUP

In India, the liability of ensuring governance and compliance has been placed on the Company Secretary of a Company. Thus, the challenges faced by a CS Professional in the environment of an AI-driven business are only going to compound. Professionals in the future have to keep themselves aware of all changes which happen in the field of Machine Learning and its impact on the Company that they are in charge of.

It can be gauged that artificial intelligence may have a big impact on the job of a company secretary by eliminating monotonous and administrative chores, which still make up a sizable portion of the position. Artificial intelligence will streamline manual tasks and automate more basic Company Secretary tasks, enhancing compliance procedures and boosting due diligence processes. It should be noted that the rise of artificial intelligence has increased the need for aspiring company secretaries to be familiar with a variety of administrative duties that are essential to the profession.

CONCLUSION

Kitty Kan Chan, in her article on Auditing AI Governance, argues, "*Effective governance requires accountability. This is a special challenge with AI, provided that different parties and stakeholders are involved and it is difficult to finalize the metrics of success.*

One of the main strengths of AI is its ability to predict. Algorithmic developers have been rated on the basis of the accuracy of the predictions made by their algorithms. On the flip side, in a bid to maintain secrecy, Companies may attempt to conceal the rationale behind any decision by claiming that the algorithm is of a confidential nature. This is also a grey area of regulation that we need to deal with in the coming years. To evaluate whether there is an effective governance framework to support accountability, the internal controllers and other professionals in the Company ought to see whether there are clear protocols in place to apportion the responsibility of the multiple parts of AI and the system. Each individual needs to be given a specific mandate vis-à-vis the system and ensuring answerability should be the job of the governance professional. It is for this reason that having a sound governance code is a necessity for each Company. This shall serve as a guideline and a benchmark when the necessity of fixing accountability is there."[19]

It is essential that the AI governance put in place is monitored appropriately and constant reinforcements are made to the source codes or algorithms to ensure updated systems. If there is a lack of adequate monitoring, then the system can turn detrimental and even dangerous for the Company. Constant testing is necessary to ensure that the system is performing as intended, without any false data.

The governance audit being performed on AI-based regimes should account for the peculiarities of the system and be conducted accordingly. Her write-up quite succinctly captures the challenges vis-à-vis ensuring compliance by an AI-governed board and imposing liabilities thereupon. It is thus a challenge of integrating a complex language tool into our Corporate Governance with no clear answer as to whom the liability ought to be placed. Rapid progress in this arena promises to be the most interesting and path-defining turn in our way of governing corporate bodies.

[19]Ibid.