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# Novel Impetus of AI in the Expansive World of Corporate Governance in India

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SAHIL J SINGH<sup>1</sup>

## ABSTRACT

*The world is progressing at a rapid pace, it is quintessential to adopt machine learning mechanism and inculcate various paradigm shift reshaping the decision-making process of corporation and individual. AI performs task independently, capable of processing data. It is observed in 2014, Deep Knowledge Ventures (DPV) appointed an AI named VITAL, Advancing Tool for Validation of Life Science in correlation with other Board of Directors Shareholders/Stakeholders have often lost trust in companies due to failure and negligence of corporate governance. Building a fiduciary relationship essentially provides for further expansion of a company. But humans are susceptible to greed and misinterpreting information to inflate the financial statement. Board of Directors failure of complying with governance led to formulation of novel regulations. It's the necessity of today's ordeal to inculcate a new reform and legislation promoting AI as a protective sheath but with more flexibility as compared to corporate veil principle.*

*This article will provide a multifaceted provision of corporate law in India, ubiquitously collaborating the theory of Board of Directors under the Companies Act of 2013 to the expansion of corporate law, Ai The Novel Tool For Successful Corporate Administration; Impact On Unwavering Aspect Of Governance, principle of Corporate law governance and its sustainability, Assessing The Limit Of Corporate Governance In The Company And Lastly The Futuristic Approach Of AI The New Ordeal Of Today.*

**Keywords:** Artificial Intelligence, Board of Directors, Companies Act of 2013, Fiduciary Relationship, Corporate Governance.

## I. INTRODUCTION

The unprecedented year of 2021, the world suffered adversely from unprecedented global pandemic through the medium of COVID-19 pandemic Fueled by the ever-lasting expansion of colossal data in correlation with Artificial Intelligence , it is pivotal to create rules and regulations in compliance to humanize the concept of AI and its effect on the society and people on a widespread. We live in a world wherein business is constantly transforming, Throughout centuries numerous transactions have occurred wherein A.I is the most profound development

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<sup>1</sup> Author has studied at PES Modern Law College, India.

in the field of computer, processing of information and harnessing strategies to enhance the way we approach the society. AI has left a striking resemblance upon varied aspects in the society inclusive of healthcare, education and entertainment. The aspect of corporate governance is no exception to this novel wave, there is an increment in companies incorporating the process of A.I into their decision making process and enhancement, aiming to revolutionize business through innovation and resilient approach. However there exist a slew of concerns pertaining to its legal permissibility and application of integration of AI in a corporate realm, potentially effecting the governance of a company. A survey conducted in 2015 via the World Economic Forum Concerning Global Agenda Council on Future, Development of Society and Software state that 45% of individuals believed that first AI model and learning on the Board of Company directors will come into existence by 2025<sup>2</sup>.

In 2014 long before the market is hampered with pandemic and other induced challenge, it is observed in 2014, Deep Knowledge Ventures (DPV) appointed an AI named VITAL, Advancing Tool for Validation of Life Science in correlation with other Board of Directors, Indian Companies find themselves in a perilous situation with the introduction of AI in the boardroom and radical reforms to the future of corporate practice in correlation with AI. The article delves into the potential landscape for the development of corporate law and various approaches in the field of governance along with the quintessential impact AI has upon the intriguing aspect of corporate and management structure. Decisions regarding to issuing dividend payment to shareholders entailing no serious introspecting considering the historical practice of corporate governance. Furthermore, investment strategies' have become crucial business under duress. This eventually led to augmentation in decision making of the BOD. The aspect of fragmented policies increase to economic uncertainty; it is essential for the BOD to understand the comprehensive range of input in formulating of decisions.

Furthermore, the inclusion of an AI director in the board room of the directors, seems like a novel idea. AI alters the functions of human dialogue and decision-making in a modern era, infiltrating every individual and all those concerned in a multifarious process. Although AI has a wholesome experience in our daily life, its vital to emphasize the prominence of corporate governance in the society

## **II. AI THE NOVEL TOOL FOR SUCCESSFUL CORPORATE ADMINISTRATION**

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<sup>2</sup> Ellie Zolfagharifard, Would You Take Orders from a Robot? An Artificial Intelligence Becomes the World's First Company Director, Daily Mail (May 19, 2014), <https://www.dailymail.co.uk/sciencetech/article-2632920/Would-orders-ROBOT-Artificial-intelligence-world-s-company-director-Japan.html> (hereinafter 'Zolfagharifard').

A company is an artificial person having a separate legal identity, jural person, perpetual succession with the common seal contained via S.20(2) Act of 2013<sup>3</sup>. The concept of separating the company from its natural person is to safeguard the rights and liabilities of the natural person from that of the company. But there are certain cases wherein this protective sheath of corporate veil is lifted. The word director is not precisely defined under the Act of 2013. A director is anyone who has a fiduciary relationship between a company and shall be liable for any wrong doing committed during the action of directorship. All the management, administration of the affairs of the company directly or indirectly is vested with the Board of Director's(BOD). The position of each directors is that of a trustee and being entrusted with the responsibility in managing the affairs and working interest of the company, safeguarding the interest oof all stakeholders of he company. The fundamental aspect of BOD is to ensure that the company ensures prosperity and conduct meeting in the general interest of share holders along with having a multifaceted role ranging from legal compliance, financial oversight and risk management and restrictions. AI has the proven ability of enhancing collecting data from various sources and providing such valuable information to the board , executives with valuable insight and expertise. AI powered algorithm mitigate the potential risk of information with acute analysis of historical and real time data. Periodically corporates suffer adversely from adherence to compliance and regulatory issues. AI continuously monitors the changing regulation and bring about conformity with any update in corporate practice and policies significantly reducing the risk of non-compliance and legal penalties

#### **(A) Key Functions of Company's Board Of Directors (BOD)**

Directors are solely accountable for formulating the compliance strategy of the company inculcating key decisions which align with the general interest and objectives of the company. The word fiduciary implies relationship based solely upon trust. Directors are instrumental in protecting the interest of the shareholders or investors of a company or corporation, ensuring all rights duties, and interest of minority shareholders along with disclosure of all essential material facts in compliance with Article of Association and Memorandum of Understanding. Section 2(20) provides compliance of any rules under this act or under any erstwhile legislation of Companies Act 2013. Directors are required adheres to all relevant rules and regulations inclusive of tax laws and requisite of corporate governance. Directors are tasked with overseeing the practice of corporate governance and essential practices within the organization/corporation ensuring transparency and accountability in proceedings. Monitoring of company's

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<sup>3</sup> Companies Act, 2013, § 2(10), No. 18, Acts of Parliament, 2013 (India).

financial performance complying with all provisions in appointment of an auditor via **S.139, Companies Act, 2013**<sup>4</sup>. Approve budget for the fiscal year along with appointment of any independent director and overseeing that all results of the company quarterly, half-yearly and yearly is duly complied with Director's access and manage the risk associated with the company along with the procedure of Merger and Amalgamation contained in **S.232 of the Act, 2013**<sup>5</sup>. Merger is when a company "is when a target company is taken over by another", which is inclusive of All assets, liabilities and any other details provided in the provision contained in the provision of Companies Act, 2013

### **III. LEGAL QUALIFICATION: UNDERSTANDING VARIOUS CONCEPT UNDER THE ACT**

Board of Directors is a "Collective body of directors of the company" responsible for controlling, managing and directing the affair of the company provided via S.2(10) Companies Act, 2013<sup>6</sup>. The definition does not precisely define the definition of director, every company shall have a BOD as provided u/s 149 of the Act<sup>7</sup> It is quintessential for each director to have a **Director Identification Number (DIN)** provided via S.154 of the Act<sup>8</sup> An independent director include a person of integrity, expertise and experience not having a relation with the director, promoter of that company. A person registered as Director of the company is required to furnish the Director Identification Number(Section 154 of the Act). No one shall be appointed as a director if disqualified via S.164<sup>9</sup> and 169 of the Act<sup>10</sup>. The Provision of Companies Act, 2013 state that "No director or individual will be permitted to have more than one DIN number" . It is the sole responsibility of companies to furnish a receipt of information regarding to the Director Identification Number of all its directors as prescribed in the registrar of the company via S.157 of the Act<sup>11</sup>. The Article of the company specifically provides any individual not other wise disqualified in the above provision or failing to be appointed as the Director in the general meeting will be conferred with authority of appointment as director of company. The provisions of the Act precisely stat via S.164 of the Act that any person will not be eligible for the post of the director if the person is an undischarged insolvent, unsound in mind or declared incompetent by an adjudicating authority or convicted for an offence of moral turpitude ; sentence shall not be less than six months but extend to five years. Failure to adhere to the rule of appointment via

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<sup>4</sup> Id., § 139

<sup>5</sup> Id., § 232

<sup>6</sup> Id., § 2(10)

<sup>7</sup> Id., § 149

<sup>8</sup> Id., § 154

<sup>9</sup> Id., § 164

<sup>10</sup> Id., § 169

<sup>11</sup> Id., § 157

S.152 of the Act, Not filling of annual financial statement or return for a period of three continuous years

#### **IV. COMPLIANCE WITH DIRECTORS DUTIES, S.166 COMPANIES ACT, 2013**

Before analyzing the expansive nature of AI in controlling and regulating the functioning of the board of directors, its pivotal to analyses the compliance and duties of the directors in general aspects. Director is contained with a multitude of tasks as outlined in the provision of Companies Act, 2013. One fundamental duty is to act in procedure of company's Article of Association (AOA). Further the directors are in pre-requisite in "acting in good faith" in advancing the objectives of the company and protection of the general interest of the stakeholders, prohibited from taking a decision detrimental to the interest of the company as a whole. The Directors of the company are provided to act in the best interest of the company and stakeholders as contained in S.166(2)<sup>12</sup> of the Act. Furthermore The Act proscribes any directors from making any decision involving themselves which directly or indirectly conflicts with the general interest of the company contained via S.166(5) of the act<sup>13</sup> or the attempt to gain or acquire an undue advantage to himself or any relate party transaction. In all case an AI director will perform the duty tasked at hand diligently as programmed in the advance machine learning algorithm and shall not be influenced by any activity which swindle's the human mind from performing its task efficiently. AI unlike humans will process this data rigorously, ensuring strict compliance with the Article of Association. This would inadvertently reduce the risk of deviation of the human mind. AL directors can operate on code and algorithm, aligning with company goals and legal standard. This would potentially reduce the likelihood of corporate resources for personal benefit. But its pertinent to note that "Not only all decisions can be solely based on logic and reasoning but also some decisions require emotional attribute which requires human intelligence and intuition which AI lacks.

##### **(A) Categories of AI -: in processing and storing data**

AI futuristic approach in the boardroom of the company is categorized into various aspects of administrative and judgmental work. Administrative work comprises of routine tasks inclusive of scheduling and optimal resource allocation. Whereas judgement work provides for creative, analytical and strategic mind set

**Assisted AI -:** Processing, collecting and obtaining vast amount of data in correlation to shareholders grievances which is inclusive of email as well as social media mentions and

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<sup>12</sup> Id., § 166

<sup>13</sup> Id., § 166(5)

prioritizing grievances pertaining to the severity and impact to the company reputation

**Augmented AI -:** Provide the board with a comprehensive impetus of reports summarizing the grievances and underlying cause to the issue. Offering an insight into the benchmark practices and governance involving the company. Suggesting of potential solution in addressing strategic grievances and mitigating shareholder's concern

**Autonomous AI -:** Automate the creation of regular share holder report and disclosure of shareholder information. Ensuring that all pre-requisite information is accurately presented and in adherence with all regulatory requirements provided via the Companies Act, 2013. When a significant deviation in shareholders information and regulatory data occur, AI can provide a response to provide a grievance mechanism in resolution of the issue at hand.

## **V. CORPORATE GOVERNANCE: FIDUCIARY RELATIONSHIP NEW ORDEAL OF THE DAY**

Normally the Principle of Corporate governance deals with the procedure and manner in which corporates is managed, employee treatment and business process conducted in an ethical and transparent methodology. Corporate governance refers to rules, regulations , practices which a said corporate is directed to follow and comply with the norms conferred via the provision of the Act or any other Act in time being in force. The primary goal of corporate governance ensures object of transparency, ethics and maximization of company value for general interest of the company is duly complied with in accordance with provisions contained in law per se. In colossal corporate, the key governance issue and regulations is managed via the top board of directors. The board fundamental task is to oversee companies management and regulations. The Executive team of the company is directly involved in the process of day to day operations and implementation of strategic decision in compliance with the board. Share holders are the owners of the company or have a part of the unit of the company know as share, having certain rights of preferential and equity basis of share allotment. Good governance ensures that shareholders interest is adequately protected and their voice is heard. Transparency is the key facet of the company for "long term sustainability of corporate governance. This information is disclosed in auditing and publishing of financial reports and hold all board of directors liable for their misconduct. Corporate governance includes the process of ethics and good conduct acting as a guiding force for ensuring the company and all the directors and authority concerned comply via applicable laws and regulations. Corporate governance brings about several ethical and practical values to the life of the corporate when conducted in an efficient and effective manner.

## **VI. AI IN THE BOARD ROOM: IMPACT ON UNWAVERING ASPECT OF GOVERNANCE**

In the rapid expansion and fast paced world of corporate governance, the role of a corporate board is instrumental as business evolve and so the expectation and challenges faced by the directors of the company. A.I Is making significant strands in the corporate world, reshaping the decision by a body corporate. Board of directors play a pivotal role in overseeing management and strategic decision ; inclusive of approving various business decision and evaluation of executive performance. Ethical leadership for a company must commence at its board. Strategy implementation of company commences from the Board of director. Top executive are responsible for setting the direction of the board in operation. The management team is directly responsible for company's operational excellence and effective day to day administration and management to reach the goal of the company's objective. It involves process of preparing acute and transparent financial reports to the stakeholders of the company. Human inconsistencies are prevalent in the society, the swindle belief of obtaining an unfair advantage at the expense of another; providing any false and misleading report. This is where the concept of AI is of vital significance. It is observed that AI application are even more persuasive promising to streamline the work of the human directors, maintaining a strict sense of corporate governance and its sustainability in the long run.; taking over daily routine and administrative task of the company. This expansive shift is pivotal in allowing human company directors to focus on he task on requiring human judgement, intelligence and expertise. Corporate Decision policy making involves three key elements -: Shareholders, stakeholders and directors. All essential decision are delegated within day to day management of the Board of Directors ranging from novel activities involving supervision, monitoring and strategic decision management. In concise and strategic explanation AI takes over administrative task of the human directors and the directors will only need to oversee AI action. But in the long term, the directors and managerial functions will be ubiquitously combined as one unhindered in handling both tasks with ease, expertise and transparency

## **VII. ARTIFICIAL INTELLIGENCE: ASSESSING THE LIMIT OF CORPORATE GOVERNANCE IN THE COMPANY**

The boardroom war at OpenAI eventually laid emphasis upon the role of corporate governance and AI effect over the society. Opinion from few researchers' state that AI expansion is detrimental for the society, government is being advised in devising regulatory polices to protect the general interest of the society or corporation. AI is being utilized by private firms supervised by the board of directors funded by the company investors, proving as the most vital



technological innovation of an individual life is overseen by the rules of corporate governance. Corporate governance refers to a certain set of rules, regulations, practices and processes which directs, manages and hold account of a company or any other individual concerned in a transparent and efficient manner. Section 134 mandates minimum number of board meeting between two consecutive general meeting will not exceed stipulated period of one-twenty days.

### **1. Traditional Theory of Corporate Governance:**

Open AI, Gemini advanced players of AI development, its observed in Open aAI Microsoft has heavily invested billion of dollars. Unlike the traditional convention of corporate governance having certain sets of rules and regulation and controlling stake of the company, AI is on a mission to ensure that Artificial intelligence benefit all of humanity and provide a fiduciary duty to that of humanity.

### **2. Failure of Creative governance of Taming profit Motive:**

The phenomena of “amoral drift” governance war is seen when CEO of Open AI, Sam Altman is fired by the board on the pretext of general interest and protection of the company. The Legal entity of the company is protected but the knowledge developed by the company could be acquired by another.

### **3. Social Responsibility:**

An important and crucial concept in AI safety is that of “orthogonality thesis” wherein AI intelligence and the final goal of achieving the goal of simplification of complex task is not necessarily correlated. Intelligence in itself does not define the behavior of a machine. An independent director supposed to be loyal to the shareholders might have an ulterior motive and own interest to pursue or follow his own interest to harm the shareholders. AI will select the independent director from the data bank in compliance with that of procedure under the Companies Act.

### **4. Alignment of Profit and Safety:**

Super intelligent AI might have value and orientation issue, the goal of the AI accomplishment will be incompatible to that of human intelligence. There is no methodology to program the AI to behave in a manner suitable to human values. AI alignment problem is similar to the issue of governance, investors entrust their money in corporation with the firm belief that managers will perform to the best of the investors. But just like AI programmers investors cannot specify each situation at hand in regards to the company.

## **5. Catastrophic Risk:**

Many risks and hazards posed by AI are not fatal in nature. Job displacement, misinformation, copyright infringement and privacy concerns are harmful but they will not be irreparable to the society.

## **VIII. INDIA'S SITUATION OF CORPORATE GOVERNANCE AFTER SATYAM AFTERMATH**

The last major corporate governance crisis existed in the form of Satyam Scam 2009 which adversely affected the entire market and world policies as a whole. Satyam exposed severe weakness in previous iteration of companies and other legislation, particularly failing to address the responsibilities of the board. The aftermath of Satyam led to the formulation of novel Companies Act of 2013 and Security Exchange Board of India (SEBI) (Listing Obligations, Disclosure Requirements) Regulations, 2015<sup>14</sup> These novel reforms aim at enhancing board and auditors independent report and improve the process of corporate governance. AI is the future ordeal of corporate governance and functioning of the corporates. Situation such as Satyam and all other scams would be significantly reduced had AI existed before the actual conducting of various scams. There is no doubt there was requirement of novel regulations but it is quintessential for the Government of India to have a Companies Amendment Act, 2024 to inculcate AI not in its entirety but to oversee functions of the board to see a successful transition to a world where corporate governance will be at its utmost full potential

### **(A) AI Role in Complex Decision Making: Simplifying The Complicated Process**

The heart of the matter solely relies in strategic decision of the directors which in regular sense is of complex nature. The Board of Directors is designed focusing all intricate details in discussing and directing aspects affecting the company. It is essential that the Board of Directors perform tasks which do not influence the auditing results of the company for the quarter, half-yearly or yearly. Financial status will be audited in compliance with S.139 Companies Act, 2013<sup>15</sup>. Companies incorporated have certain objects set out in their Memorandum of Association (MOA)<sup>16</sup>, fundamental document for company formation and Article of Association (AOA)<sup>17</sup>, rules regulations of the company concerning entrenchment. The Object Clause of MOA is quintessential as it provides the certain task a company can carry out. Borrowing and Lending

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<sup>14</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on September 20, 2023] SEBI/LAD-NRO/GN/2015-16/013(India)

<sup>15</sup> Supra Note 4 § 139

<sup>16</sup> Supra Note 4 § 2(56)

<sup>17</sup> Supra Note 4 § 2(5)

Money for the purpose of expansion, acquisition and merger; companies are provided with the aspect of borrowing and lending money or distribution of bond and debentures via S.2(71) Act, 2013<sup>18</sup>. Diversification of Business activity provides for companies to be engaged into various field which would lead to expansion of business. The merger is through the medium of Horizontal and Vertical merger To protect the interest of minority shareholders and provision of Class Suit Contained in S.245, Companies Act, 2013<sup>19</sup>. For better control of the affairs of the committee, the Board of Directors generally delegate their matters to the authority or the committee of selected individuals formulated for the purpose of reviewing matter. In such case AI impact is of utmost importance, having the ability of processing and storing colossal amount of data. AI is currently equipped in dealing with assisting directors in their functions, collecting of extensive data, improving the decision making process and enabling the corporate board in providing a quick, speedy disposal of informed information.

### **(B) AI and the novel process of corporate communication**

Corporate Communication is a concept involving companies sharing and dissemination of information concerning communication, marketing to an internal or external authority in anticipation of incrementing brand value and perception. AI through the medium of Virtual Reality, holograms have the ability of improving corporate communication and accountability. Business and companies take entrepreneurship to the next level through inducement of AI in corporate communication, involving valuable data of customers. AI approach of analyzing and interpretation of individual, corporation behavior and targeting a personalized audience. We have heard of the concept of prospectus, S.2(70), Companies Act 2013 wherein a circular, document or publication is issued to the public to invite purchase of share in lieu of minimum paid-up capital. Corporate communication provide impetus for further expansion of data and improving process of ease and accessibility of company's process

## **IX. LIMITED DRAWBACK OF AI IMPLEMENTATION IN CORPORATE WORLD**

There will never exist any innovation which will be free from the critics of the society. Some may argue that AI is detrimental for the corporate world as a whole. The world is constantly changing and change is the only constant. There are certain regulations which should be incorporated not to provide “**full autonomy to AI**”. There are three iterations of AI there should exist a ubiquitous balance between Assisted and augmented AI. The board of the companies should prepare their report and AI with its historical data and analysis of the company should

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<sup>18</sup> Supra Note 4 § 2(71)

<sup>19</sup> Supra Note 4 § 245

provide impetus to the correctness of information. The issue of corporate governance will be resolved in its entirety. There exists certain drawbacks of Utilization of machine and loss of jobs but this doesn't mean the end of human civilization. The laws are regulated to provide certain aspect to AI which can perform complex task with ease and expertise. The Novel AI concept in corporate world would create a differentiation between gender and race as observed in various AI bots and tools. But this issue will be learnt over time. ChatGPT, Gemini and Microsoft Pilot have a machine learning Algorithm which teaches the AI over time and to conduct tasks efficiently. AI will never replace human intelligence as there exist certain human emotions which the machine lacks due to its hundred percent efficiency.

## **X. CONCLUSION**

Today we live in a world of Augmented, Artificial and Virtual Reality. There existed situation wherein certain norms were infallible. But with the rapid pace of society expansion these new norms have become a common place without which individual will not be able to perform as effectively. There should exist a ubiquitous mixture between the Utility of AI in Corporate World and Governance in correlation with Power, Duties and Functions of Board of Directors. The existence of AI in corporate governance and corporate law is of esteem importance as observed in time-immemorial there existed many scams and legislation loopholes which eventually is resolved. One has to understand that society is progressing forward, AI will eventually provide assistance to the future of Company auditing, balance sheet and regulations compliance. Members and Corporation should embrace the change but with a "protective sheath" similar to that of Corporate Veil Theory but with more liberty. Law and Legislation will be eventually framed inculcating AI with the Human Directors. Not replacing the functions of the Human Directors in an entirety. Humanization is essential but further expansion and growth of corporate world will only succeed with novel legislation supporting the implementation of AI in the society. India will formulate their own AI law for corporate preferably with the Amendment to the companies in a couple of years time. The corporation should embrace the change and work towards improving their corporate governance and perform their duty diligently for welfare of shareholders and stakeholders of that company.

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