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AI and Legal Decisions Making in The Corporate Governance

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ABSTRACT

The revolution of Artificial Intelligence (AI) is widespread in today's world. It ranges from the healthcare sector to corporations and even in individual daily lives. The article explores the adaptation and impact of artificial intelligence on the practice of corporate governance. It intends to assess the desirability, feasibility and liability of automated board-level decision-making to ensure effective corporate governance. The present era of technological revolution has opened wide doors for companies to access Big Data and AI technology for potent decision making in corporations. The corporations intend to avail the benefits of constructive mechanisms of corporate decision-making which AI provides. The paper intends to investigate the use of AI in corporate decision making with special emphasis on the decision making of the Board of Directors by analysing the technical facets of AI in corporations, the practical challenges it poses and finally, the legal consequences of AI decision making in the corporations. Furthermore, it sets to examine the immense contribution of AI in the decision outcomes and the crisis of the stakeholders as a result of the outcomes. Thus, the ultimate aim is to assess the legal outcome of AI decision making in corporate social responsibility to a considerable extent.

***Keywords**: Artificial intelligence; Corporate Governance; Decision making; Legal; Liability.*

I. INTRODUCTION

Artificial intelligence (AI) is a wide-ranging branch of computer science concerned with building smart machines which are capable of performing those tasks that typically require human intelligence. The Merriam- Webster Dictionary defines artificial intelligence as "a branch of computer science dealing with the simulation of intelligent behavior in computers."[3] The main objective of artificial intelligence is to create a system of machines, computers and software programmes which will ease the human effort at its best. It intends to generate intelligent behaviour, but in some cases,

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[3] Artificial Intelligence *Merriam-Webster.com*. 2021. https://www.merriam-webster.com (11 October 2021).

that leads to certain unpredictable and creative functions as well. If we refer to the principles of OECD, we find that it sums up the essential characteristics of AI. It says "AI system is a machine-based system that can for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments."

For the purpose of the paper, it is necessary to delve into the concept of corporate governance. Corporate Governance refers to the application of structured rules and practices which are essential for the management of a company. At the micro level, it ensures that a company functions in pursuit of its purposes. At the macro level, the main objective of corporate governance is to ensure and promote reasonable allocation of the nation's savings to its productive use.[4] Thus corporate governance sets to ensure the well-being of the company that is to say the well being of the owner shareholders. Thus, it involves certain decision making regarding the protecting the rights of the shareholders and increasing shareholder values.

So far AI is concerned, at present it has played a major role in corporate governance.

The decision-making power of Board of Directors. The Board of Directors are involved in many active decision-making processes.

- **Decision on innovation**: Innovation is a byproduct of creative thinking. It is indispensable for the smooth functioning of a company so that the processes adopted by a company remains relevant and useful in the changing technological era. It demands time and appropriate technique to make the innovation social. The process may need many institutions such as different modes and media. The Board of Directors must foresee the advantages of innovation and thus decide on its application. The need for innovative tools and techniques can be understood from the incident of Kodak Company. Kodak was a leading company in digital photography. It developed a patent on digital photography. Yet, it could not pace up with the changing trend of digitalisation. It led to the estabishment of a kiosk where a digital user could print out hard copies from the digital system. This action failed to reach the ultimate digital advancement. Thus, though it was aware of the need for innovation, the decision-making process failed to account for it.

- **Decision on collaboration:** In certain cases, collaboration between companies become extremely important for more developed functioning. For instance, the collaboration between TCS and Rolls Royce have been cited to be successful.[5] With an aim of data innovation, Rolls Roys collaborated with TCS which provided the former the TCS Connected Universe platform so as to pioneer the development of its products. Thus, decision of collaboration has a major contribution in the development of companies.

- **Decision on optimisation:** Optimisation becomes a necessary procedure for certain

[4] Alan Greenspan, Speech to the Conference on Bank Structure and Competition, Chicago, 8 May 2003.

[5] Govind D, *Rolls-Royce ties up with TCS to drive growth in India operations*, Mint (November 16, 2017) Rolls-Royce ties up with TCS to drive growth in India operations (livemint.com)

companies under some specific circumstances. Certain situations like economic slowdown demands the companies to take a decision for optimisation of costs. It has been witnessed in the past decade that major companies like Hindustan Unilever Ltd., ITC Ltd. etc. have opted this procedure during inflation.[6]

- **Decision on transformation:** In order to promote efficiency and effective functioning of the company, transformation in strategy and implementation is necessary. It is upon the board of directors to take the call as to when to undergo transformation. There has been instances where many companies like Nike, Lego etc. have undergone digital transformation in order to boost productivity.

- **Decision on diversification/concentration:** The decision of diversification and concentration can minimise the risks. The most common risks which are diversified are financial risks. If there is a reasonable apprehension of financial risks associated with certain businesses, it may be diversified. For instance, when Apple company found its competitor Microsoft blooming in the market, it went into product diversification through the introduction of iBook and iPad products. This diversification brought a huge success which is continuing till now.

- **Decision on internationalisation:** Internationalisation is a huge opportunity for the expansion of the company. However, the risks associated with it is also required to be evalued. Thus, the decision of internationalisation needs to be taken with utmost caution. A very interesting way of internationalisation is observed in the case of IKEA. It internationalises assembly instructions of furniture with the help of diagrams instead of texts thus leading to the absence of the need of translation of any kind.

- **Decision on target achievements:** Target achievement is the most important decision to assert control by the board of directors. What type of targets are to be set, are decided by the Board of directors. Thus, the targets like increasing the profit margin or capturing the market share or arranging for the training of the employees needs to be set for the development of the company.

- **Decision on meeting accounting standards:** The board of directors also play a major role in determining and deciding the way to meet the accounting standards which are set by the financial accounting standards board. This is utmost important as it reflects the process of management of company resources. This helps the investors and lendors to make a decision about supply of resources to the company.

- **Decision on legal compliance:** Every company is founded upon the legal regulations governing it. In India, for instance the Company Act 2013 regulates the functioning of the companies. It is upon the board of directors to ensure whether the functioning of the company has complied with the legal requirements.

[6] Singh Dhanjal Swaraj, Karnik , *HUL, ITC, Tata Motors most successful in cutting costs*, Mint (January 12, 2015, 12:25 AM) HUL, ITC, Tata Motors most successful in cutting costs (livemint.com) Accessed on October 16, 2021

- **Decision on ethical compliance**: Not only legal compliance is necessary but also the compliance of basic ethical requirements is essential. The board of directors perform the duty of determining the effective way of complying the ethical standards of the company.

- **Decision on executive appointments, development and compensation**: For the growth of the company, the most strategic decision is the appointment of the executive. The executive plays an essential role in planning and monitoring the activities of the company with a view of fulfilment of the company objectives. Thus, the board takes an active decision regarding the appointment and development of the executives.[7] The board also has a role to play in determining and setting the standards of executive compensation in a company.[8]

- **Decision on board composition**: The law relating to company lays down the composition of the Board and the minimum and maximum number of directors to be appointed.[9]

[7] Section 203 of the Companies Act 2013- (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—
(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
(ii) company secretary; and
(iii) Chief Financial Officer :
Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—
(a) the articles of such a company provide otherwise; or
(b) the company does not carry multiple businesses:
Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

[8]Section 197 of the Companies Act 2013- (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:
Provided that the company in general meeting may, 4[Omitted], authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:
Provided further that, except with the approval of the company in general meeting 5[By a special resolution],—
(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed, —
(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
(B) three per cent. of the net profits in any other case.]
Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

[9] Section 149 of the Companies Act 2013 – (1)Every company shall have a Board of Directors consisting of individuals as directors and shall have—
(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
(b) a maximum of fifteen directors:
Provided that a company may appoint more than fifteen directors after passing a special resolution:
Provided Further that such class or classes of companies as may be prescribed, shall have at least one-woman director.

The Indian law mandates that the board of directors will constitute of both executive and non-executive directors and shall also include women directors. The quorum of minimum fifty percent of non-executive directors in the board is also to be maintained.[10] Thus, the number of directors and the total composition of the board in each company is subject to the decision of the board.

Thus, the board of directors have an inherent power of decision making in corporate governance. However, in the present technological era, AI can be a useful tool in assisting in the decision making of the board of directors.[11]

II. USE OF AI IN DECISION MAKING

In corporate governance, AI is capable to perform mainly two roles- either assisting human in or replacing human and thus acting autonomous. At present, in case of corporate decision making, the rights of such decision-making rests fully on human or is divided between human and AI systems. The autonomous AI is not used in decision making as yet.

The AI can come into an effective use in decision making with a view of corporate governance in various ways.

Sensing the need of decision making: It is required to sense the necessity that a decision has to be framed so as to cater the need of the change of certain course of actions. For this purpose, the circumstances have to be evalued which demands a certain cognitive ability. AI can make an accurate assessment of the circumstances so as to confirm the need of decision making at the suitable context.

Act of Decision making: After analysing the circumstances which calls for an effective decision, the decision have to be framed. The formulation of a decision is not an easy task. It requires much deliberation and skill so as to make the decision effective. The parties who are involved in such decision must completely understand the probable benefits of such decision and must agree to such decision. Thus, if AI is used to frame such decision, there will be a greater probability of its accuracy and impact.

Data collection: For arriving at a decision, data is a primary element. The act of consolidation of relevant information is extremely necessary. However, data collection and data selection require skill and experience which can be successfully performed by AI.

Strategic decision making: It is utmost important to scrutinise different decisions to examine which decision will have maximum benefit in corporate governance. Thus, the very nature of AI's predictive analysis can make a significant impact on strategic decision-making.

At present, AI system plays a considerably major role in different aspects of decision making. For instance, for business optimisation, business process management software are used which

[10] Regulation 17 of the Listing Obligations and Disclosure Requirements

[11] Eleanore Hickman & Martin Petrin, *Trustworthy AI and Corporate Governance: The EU's Ethics Guidelines for Trustworthy Artificial Intelligence from a Company Law Perspective*, European Business Organization Law Review 3-5 (2021).

assists in streamlining and automating all manner of work–processes, projects, cases, and collaboration.[12]

In several conducted recent studies, the success of AI assistants in the decision-making field are making their way farther up the corporate ladder into boardrooms around the globe. Artificial intelligence in corporate governance is becoming a necessity in several companies. Venture capitalist fund.

Deep Knowledge Ventures attributes their AI board member, Vital, for advising them against a potentially catastrophic decision.

Boards of directors of companies worldwide are going to bring about more artificial intelligence in corporate governance and as board members next to them in coming years if they want to compete in data-driven decision making. the business has become too complex and is moving too rapidly for boards and CEOs to make good decisions without intelligent systems. AI can help streamline decision-making processes, transform big decisions from gut feelings to data-driven knowledge, and better predict the future outcome of such decisions.

Computer algorithms and AI models are becoming more sophisticated, and, perhaps most important of all, the world is generating once-unimaginable volumes of the fuel that powers AI- data. It has led to AI advancement in corporate governance making it successful in collecting and gathering data and analysing the data.

The use of artificial intelligence in corporate governance in board members decisions are based on the analysis of corporate patterns and industry trends. AI does not merely replace board members but augments already intelligent guidance. Data-driven decisions supplemented with AI will improve capital allocation, disbursement of funds, investment guidance based on industry patterns, and risk management.

Companies are utilizing artificial intelligence in corporate governance to help the general counsel by forecasting the outcomes of corporate law suits. It gives relief from avoidance of hefty legal fees or investing in the right legal counsel gives a corporation a huge advantage over the competition.

AI 'board members' are able to predict government pushback to mergers. The competitive advantage of integrating artificial intelligence in corporate governance is essentially endless. The competitive advantage of integrating artificial intelligence in corporate governance is essentially endless.

Early adoption of AI can be financially rewarding it combines strong digital capability with proactive strategies have higher profit margins and expect the performance gap with other firms to widen in the next three years.

AI can be impartial under optimal conditions, but this does not necessarily make AI decisions right. While AI can bring a new data-driven perspective to the table, it should not replace the

[12] Bing Yu & David T. Wright, *Software tools supporting business process analysis and modelling*, 3 Business Process Management Journal 133-150 (1997).

knowledge, accountability and diversity of views that a human board can provide.

AI can also enhance companies' decision making. Several companies like the US company Salesforce uses a version of its proprietary AI, named Einstein, to analyse and answer questions on company performance in executive meetings.

One advantage of this approach has been the ability to distinguish trends in actual company data from organisational politics. In this role, AI can help address biased decision-making by adding a new layer of insight and validation to the boardroom.

As businesses become more complex and change becomes more rapid, it is challenging to evaluate all of the available information and make good decisions. AI can assist in this by offering directors insights into areas such as determining how capital should be allocated. For example, AI can give directors a better perspective on competitor trends, such as the expansion of manufacturing facilities, and it can systematically scan the news for new product launches.

III. CONSEQUENCES OF USE OF AI IN DECISION MAKING

The main purpose of deploying AI system in corporate governance is to increase efficiency and boost productivity. The predictive analysis of AI is considered to be more accurate and thus valuable as compared to human intelligence. However, the use of AI in corporate decision making may lead to certain legal and ethical issues.

In the current regime, the legal infrastructure has not advanced with this expeditious progress of technology so as to make AI accountable for these technological expansions.[13] Especially, when we consider the present scenario of the leap from Artificial Narrow Intelligence (ANI) to Artificial General Intelligence (AGI), we find that legal infrastructure has become redundant in comparison to technological progress. It will not be very far when AGI will be replaced by ASI everywhere. So, the need of the hour is establishing such a legal network which can make even ASI accountable before law. Unfortunately, there has been void in this field which has resulted in the existence of a number of unanswered questions.

The main challenge regarding use of AI is absence of regulatory framework to govern it. Thus, various issues have been observed to exist in use of AI in corporate decision making.

- **Accountability:** Accountability for decision making is considered to be the central component of corporate governance. In a company, the management and supervision of corporate entities lies on natural persons who are accountable for the discharge of duties according to clearly defined criteria. The concept of delegation has been the core part of the process. However, delegation generally applies between natural persons. Thus, though the Board of Directors are entitled to delegate tasks to the teams of top management or an audit firm, the

[13] Niti Ayog, Responsible AI 28-32 (2021).

central tasks of a board of directors namely the management and control of a company cannot be made subject to any kind of delegation. Similarly, in the present scenario, the delegation of the main tasks to machines is not possible. Thus, AI can only be used in assisted decision making. In case the Board of Directors automate the entire decision-making process using AI system, still the Board of Directors will remain accountable under the present legal framework.

- **Legal Liability**: The legal concept of liability is linked to the legal personhood of AI. There has been a constant discussion as to whether AI can be conferred with legal personhood. If it can be assumed that conferring the title of legal personhood does not require the existence of a human genome in any being, still the confusion prevails as to in which category AI should be placed. It goes without saying that natural person who discharges a fiduciary duty can be made liable for any kind of omission to perform the role as director of a company. However, in the absence of legal regime to assess the liability of algorithm, AI may escape the direct liability. Thus, for the wrongful decisions of AI, the board of directors who are natural persons will be held liable.

- **Business judgement**: According to the business judgment rule, the presumption is that the decisions taken by the board of directors are taken in good faith and by observing the duty of care and loyalty. No court will review the decision if the standard of care is met while adopting a particular decision. However, every decision is based on the best available information. Thus, in the most circumstances, the companies are compelled to resort to AI for accurate predictability. On the other hand, during legal disputes, the black boxes which lies behind certain AI applications needs to be decrypted.

- **Data protection**: The regulation of data protection and data access is the need of the hour so as to ensure that the companies can protect sensitive data which forms the basis for strategic decisions. In addition, the companies need to have obtain the data which are publicly accessible to examine the current trends in the corporate sector. In absence of any regulation regarding data protection and data access, using AI for data protection may not bring out desired results.[14]

- **International Concern**: Due to difference in regulatory framework relating to AI, the companies which are involved in international business face challenges. It is the responsibility of the Boards to analyse the opportunities and challenges of such a business in order to ensure that there is free flow of data so as to benefit in decision making. In addition to the above issues, the following issues pose a challenge in the role of AI in decision making.

[14] Section 43A of the Information Technology Act, 2000: A body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

- **Discrimination caused by AI**: With the use of AI in every sphere of life, human rights are being jeopardised. In the current scenario, the predictive algorithmic system has failed to treat all humans with equity. The automated nature of the AI system has put a lot of people at a systematic disadvantage. Thus it sets to violate the right against discrimination of its stakeholders.[15]

- **Distribution of wealth**: Data ownership has become a significant matter in the realm of this progressive technological era. An ambiguity exists regarding the distribution of the benefits derived from AI applications.

- **Misuse of AI**: The Board of Directors has a higher-level responsibility for ensuring corporate responsibility. As AI do not yet possess human values the board of directors must have a complete control over its application. Most importantly, the board of directors must ensure that AI should not be misused in its decision-making application.

- **Principles of morality and value**: A very important requirement of corporate responsibility is that it must not violate the basic principles of morality and value. Thus, if AI system ignores the application of such principles in decision making, it would have adverse effect. However, the challenge lies in the fact that it is not technically easy to instil the human values in AI. The main difference between human intelligence and AI is that AI lacks the basic human features like creativity, improvisation, imagination, ability to learn from past experiences and ability to view a holistic picture. For an AI, it assumes an instrumental instead of a value-based view of morality. Values are the basic foundation of any successful companies, such a limited concept of morality in decision making may result into unfavourable circumstances.

IV. Risk Associated to AI Use

AI provides new and advanced capabilities, but it also poses unique risks. Because AI is programmed by humans, it is still subject to a certain degree of human error and bias.

While there are several advantages in use of AI proper precaution needs to be taken in the risk associated with use of AI. One of the vital risks in such use includes that AI programs is that they can be a "black box," making decisions where the underlying logic is not transparent or discernible to users—and sometimes even to programmers. This is because the logic programmed into the software (the algorithms), is not designed to produce an exact outcome. This lack of transparency poses significant risks to companies when AI produces an outcome that is undesirable or unexplainable.

AI's autonomous nature poses issues when it can make decisions using personal data—especially if people are not aware that their data is being

[15] Article 2 of Universal Declaration of Human Rights: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

used by AI, or if they do not trust the technology. Biased data might also train AI towards biased actions. A recent example is Amazon's AI facial recognition program, which enforced racial and gender biases learned from historical data on recruitment practices. Such biases pose risks and repercussions for companies, including the breaching of anti-discrimination regulations and data-privacy laws as well as missed marketing opportunities.

AI technologies are also exposed to hacking. These risks are compounded when companies do not have transparency in their AI's logic and cannot detect that the program is not performing as intended. These risks may be innocuous, such as implanted bias, or at worst they may endanger human life—including cases of autonomously operated machines malfunctioning. The scale of hacking risks can be very large in the case of malicious infiltration of AI used to manage large systems and assets.

V. Precautions to AI Related Risk

The use of AI and understanding the ethical implications should be a core priority for a board. The board should have proper oversight to ensure ethical considerations are engrained in the decision-making process from design through to testing and onto the audit of actual outcomes. Implementing an AI code of conduct for developers that serves as a modus operandi will assist in ensuring compliance to the company's stated values. Within this, a whistleblowing mechanism should be present for employees to raise concerns. It is critical to ensure that company policies not only consider the human workforce but also the virtual implementation of a corporate policy. Ultimately, as the general public becomes more aware of the use of AI by industry the potential damage caused by ethical misuse of AI will increase. An ongoing review and development function of AI, which includes the board, would allow for a regular review of the tolerances and thresholds in operation. What is appropriate today, can quickly become antiquated.

Boards have an important role in this new arena: ensuring that company leadership is effectively managing both the potential of AI and its organisational risks—including ethical, programming and reputational risks. It is part of a board's fiduciary responsibility to oversee AI and its potential impact on the business. Even if AI is being used in boardrooms, it does not replace the board's responsibility to exercise due care and loyalty—to be fully informed and make its own decisions in the best interests of shareholders and stakeholders.

The board can provide effective oversight by focusing on three key areas:

AI technical expertise, Infrastructure oversight, Impact to the business model, culture, and industry.

A. Board Education and Technical Expertise

In order to provide effective oversight, directors must be educated about AI. This is not a responsibility that should be relegated to the "risk" committee of a board or some other specialised committee, because AI has far-

reaching strategic—and potentially the most transformative—implications a board will face.

AI creates similar challenges in terms of cyber risk—there are many unknowns for a company and board that make constant oversight critical. All directors need to be fully informed on how AI is being used within and outside the organisation, how management expects it to impact the firm and industry over time, and what actions management is taking to leverage AI while managing its risks.

It takes progressive and innovative thinking to determine how AI might disrupt an industry. Board committees responsible for director nominations should update their skill-set matrix to incorporate the need for technical and innovative board members—and make it an integral part of the board refreshment process. A board may have to add one or more new members with technical expertise if the opportunity to develop new talent is not a near-term one.

Boards should also consider if/when a separate technical and/or innovation committee may be necessary.

Boards should also reassess the current company management team to determine if it has the expertise and innovative mindset to navigate the firm through the impact of AI. If there are gaps in this expertise or mindset, the board should work with the CEO to develop a plan to acquire the necessary talent to fill them. This task should be addressed now: time is of the essence.

B. Infrastructure Oversight

With data as the backbone of AI, a board needs to understand the company's current infrastructure, including the quality, accessibility, and security. Directors should ask management for a baseline assessment of data infrastructure, data analytics and data security. Having board members with expertise in this area should provide the opportunity to ask the right questions.

An opinion from an external technical expert may be well worth the investment to augment the board's work. It can help identify vulnerable areas as well as areas where investment in human capital and other resources may be needed to improve the quality of the data environment and security. Without a robust data infrastructure in place, companies will be more vulnerable to making decisions based on bad data, and they may be more exposed to cyberattacks.

Diversity plays an important role in AI. Many firms are focusing on building more diverse and inclusive workforces, but the proliferation of AI makes this effort even more important. The risk of bias in using AI is high: The board must be confident that management is taking diversity and inclusion efforts seriously, and that it has a structure in place to ensure diverse AI working groups.

C. Business Impact

Directors also need to ensure management is considering the broad impact of AI on the company and industry: the implications for their business model, workforce, and ultimately the ability to sustain the business.

This effort requires both inward and outward assessments. A key component is determining how the company wants to position itself: does it

want to be a leader or laggard in its industry? A leadership role will likely require investments of time and resources, but being at the forefront of AI innovation can also pay off.

In either case, directors need a solid grasp of the opportunities and risks that AI presents. From an opportunity perspective, directors should ask themselves and management how their products or services might be enhanced or transformed by AI, or how AI can improve quality, safety and decisions—and ultimately drive better profitability. American Express, for example, analyses large volumes of cardholder spending data to better target new products. To minimize losses, it seeks to identify fraudulent activity in real time by using data analytics and machine learning.

In addition to making sure visionary management is in place to manage through this transformation, boards also have to ensure that a talent management strategy is in place. Employees are starting to see how AI is transforming businesses: some workers' jobs may become obsolete; some employees may see AI as a way to leverage their skills and contribute to the transformation. Boards have a responsibility to ensure management is effectively identifying and addressing how its labour force will evolve. They need to assess whether the right skill sets in place as well as the gaps -- what investment is needed to acquire the talent to lead the company into the future.

AI creates a significant challenge for directors and boards. It is a complex field and technical expertise is in its infancy, even as AI usage is accelerating. AI must become a standard agenda item at board meetings, and both management and boards need to acquire the right talent to help navigate the evolving landscape, capitalize on opportunities and manage risk.

VI. SUGGESTIONS AND CONCLUSION

The functions of AI are clear. It must be lawful, ethical and technically robust. However, the way of interaction of the board of directors with AI system in corporate decision making creates a difference as to the benefit derived from it. If the board of directors believe in automated decision making where the entire decision making is dependant on AI application, the regulatory framework is not advanced enough to govern the issues arising from such decision making. There is a vacuum in legal regime as to the accountability, liability, data protection issues relating to AI. The assisted intelligence where the board of directors use AI applications in selective decision making, has been widely accepted by the society. However, the benefit of AI in decision making has been largely unexplored in case of its selective use. The augmented decision making soon will lose its value taking into consideration of the fact that AI has surpassed human intelligence and thus beyond the control of board of directors. Thus, for any kind of decision making where both human and AI have the opportunity to contribute in decision making together, the human may lag behind AI.[16]

[16] Michael Hilb, *Toward artificial governance? The role of artificial intelligence in shaping the future of corporate governance*, 24 Journal of Management and Governance 851-870 (2020).

Therefore, AI can only support the board of directors in decision making. It cannot replace the directors taking into accounts the challenges in automated decision making. It can be argued that whether AI can take the place of independent directors as it do not have any pecuniary or professional interest in decision making. However, it cannot be surely agreed that AI decision making will be free from digital discrimination.

Thus, the main lookout must be in ensuring that AI must be used in the most rational way so as to create a reasonably high benefit to its stakeholders. However, it must not be beyond the control of law and ethics. For its best application, a regulatory framework must be formed to prevent and punish the wrongdoings of AI in corporate decision making.

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