Legal Implications of Artificial Intelligence in Corporate Decision-Making

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ABSTRACT

AI has emerged as a valuable tool for supporting administrative and decision-making tasks in companies, with the potential to rationalize board decision-making, challenge groupthink, and bolster directors' independence. The use of AI in corporate governance has demonstrated its potential to enhance the decision-making capabilities of directors. This paper discusses the role and potential of Artificial Intelligence (AI) in corporate governance and decision-making processes. However, there exists a critical challenge in the legal and regulatory domain, as existing company law frameworks worldwide remain firmly rooted in the traditional paradigm of human decision-making, disregarding the potential of AI technology to contribute to corporate governance. This lack of clear legal guidance on the permissibility and consequences of implementing AI in the corporate realm contributes to uncertainty among corporations, which may hinder the widespread adoption of AI despite its potential benefits. The research aims to delve into the current state of AI in corporate governance, examine its impact on board decision-making processes, group dynamics, and directorial independence, and analyze the existing legal frameworks surrounding AI in the corporate context. The research seeks to contribute to a better understanding of the implications of integrating AI in corporate management and promote informed discussions on updating regulatory strategies to accommodate AI technologies effectively.

INTRODUCTION

The emergence of Artificial Intelligence (AI) has revolutionized human communication and decision-making processes, permeating various aspects of our lives, from weather forecasts to genomics research. Its pervasive presence is undeniable, but as AI finds its way into the corporate domain, the implications of its integration remain uncertain. In today's context, where the importance of good corporate governance is increasingly emphasized, understanding the potential impact of AI in the corporate world becomes all the more crucial. The rapid advancement of Artificial Intelligence (AI) has led to its increasing integration into various aspects of corporate management. As AI emerges as a valuable tool for supporting administrative and decision-making tasks, it is poised to play a significant role in the management of companies. While only a few pioneering companies have ventured into appointing AI-driven robo-directors, the widespread adoption of AI in corporate governance has demonstrated its potential to rationalize board decision-making, challenge groupthink, and bolster directors' independence. The management level of a business or organization is often where the requirement for data is taken into account. This position denotes the certainty of the endorsement of the outcomes of the data analysis and the

potential for their monetization. The ability of all firm divisions to use pertinent information jointly to respond as rapidly as possible to the evolution of the economic landscape is of utmost significance nowadays. Information is a type of asset, and the effectiveness of that asset is particularly crucial for successful activity.

The lack of clear legal guidance on the permissibility and consequences of implementing AI in the corporate realm contributes to uncertainty among corporations. This uncertainty, in turn, may hinder the widespread adoption of AI, despite its potential to enhance the decision-making capabilities of directors.

APPLICATION OF AI IN CORPORATE GOVERNANCE AND DECISION MAKING

To examine the relationship between Artificial Intelligence and Corporate Governance and its applications, it is essential to define and explain the terms of Artificial Intelligence and Corporations.

A corporation is a legal entity that can be distinguished from its owners. This is characterized by several features, including the ability to enter into contracts and own assets independently, limited liability for shareholders, the ability to transfer shares to third parties, a separate management system, and investor ownership with voting and profit distribution rights proportional to share ownership. Corporate governance refers to a system of rules, practices, and processes that guide and control the operations of a company. It encompasses the relationships between different stakeholders, such as shareholders, management, employees, customers, suppliers, and the wider community. The primary objective of corporate governance is to manage the business in a manner that maximizes long-term value while safeguarding the interests of all stakeholders. Corporate governance is crucial for the health and success of a company as it provides a structure for effective decision-making and strategic planning. It establishes accountability and transparency, allowing organizations to adapt to changing market conditions and mitigate financial and reputational risks. Additionally, it promotes ethical behavior and ensures compliance with laws and regulations.[1]

AI, or Artificial Intelligence, is a field of computer science that aims to create systems capable of performing tasks that typically require human intelligence. These tasks may include

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[1] ("Corporate Governance: What It Is and Why It Matters" 2023)

problem-solving, learning, perception, decision-making, and language understanding, among others. AI systems are designed to mimic cognitive functions such as reasoning, learning, and problem-solving, utilizing techniques such as machine learning, neural networks, natural language processing, and computer vision.

In contemporary society, artificial intelligence (AI) encompasses a diverse array of methodologies and technologies, including symbolic logic, artificial neural networks, fuzzy systems, evolutionary computing, intelligent agents, and probabilistic reasoning models. These tools and techniques empower AI to undertake a range of tasks, including coordinating data delivery, analyzing data, generating forecasts, working on data inconsistency, quantifying uncertainty, anticipating users' data requirements, presenting information in optimal formats, and proposing actionable strategies[2]. The main function of AI is to carry out duties in situations that are autonomous, effective, enhanced, and amplified, thus removing unwarranted concerns and risks to the governance system. Employees, managers, owners, investors, advisers, and consumers all play important roles in enhancing an organization's performance. The use of AI and machine learning in corporate decision-making takes place largely relying upon the existing data be it consumer data, market trends, and report figures which are programmed to generate the best results however this very reliance becomes the root of the problem at a later stage and as we go deeper into its subtleties.

The capacity of AI to handle and analyze massive volumes of data, which enables better informed and strategic decision-making, is one of the technology's most important advantages in corporate governance. Boards and executives may spot new trends, threats, and opportunities in real-time by utilizing AI-powered technologies, which enables them to make prompt, well-informed choices. In turn, this improves stakeholder satisfaction, organizational performance, and overall corporate success.

Boards and executives may improve their performance by using AI-powered technologies that offer real-time feedback on their decision-making processes. These tools may analyze the patterns of board discussions and detect areas that need improvement, such as broadening the range of viewpoints or making sure all opinions are heard. Boards may foster a more inclusive and productive atmosphere for decision-making by addressing these issues.

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[2] Kaya, Baran C. 2022. "The Role of Artificial Intelligence In Corporate Governance."

AI & COVID ERA

AI turned from an alternative to a necessity when the pandemic struck. Survival took precedence over regulation and that is when AI flourished. The incorporation of artificial intelligence (AI) within the company boardroom settings demands comprehensive examination due to its capacity to handle vast and intricate datasets. Nevertheless, the introduction of AI into corporate environments prompts a multitude of considerations regarding its legality, the necessity for robust safeguards, and its potential impact on corporate governance structures. In the current landscape of market volatility precipitated by the pandemic, there exists a heightened sense of accountability vested in the board of directors (BODs) of corporations. Confronted with a myriad of formidable decisions, BODs have navigated challenges to sustain their company's operations and financial viability amidst these trying times. Thus, the imperative for judicious decision-making by BODs has become paramount. The BOD has to make various important decisions such as dividend payments to shareholders, profit management, and investment strategies. These decisions become even more crucial when the company is under financial stress and hence require comparatively more time for decision-making. While the ubiquitous nature of Artificial Intelligence (AI) in our daily routines is undeniable, the ramifications of its integration within corporate environments remain uncertain. This uncertainty is particularly pronounced in an era where the significance of effective corporate governance is being underscored with increasing urgency.

AI IN CORPORATE GOVERNANCE IN TODAY'S WORLD

Nations globally are recognizing the prospective economic and societal advantages associated with the advancement and implementation of artificial intelligence (AI). Notably, China and the United Kingdom project that by 2030, AI-related endeavors and enterprises will contribute an estimated 26% and 10% respectively to their Gross Domestic Products (GDPs).[3]

Artificial Intelligence (AI) methodologies are extensively employed across diverse domains to enhance user services and bolster the feasibility and efficiency of applications. Within corporate governance, AI techniques are leveraged to promote the interests of both customers and shareholders. The fundamental function of AI lies in executing tasks through autonomous, efficient, augmented, and amplified scenarios, thereby mitigating concerns and vulnerabilities

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[3] Kelley, Kevin. n.d. "National Strategy for Artificial Intelligence." NITI Aayog. Accessed March 2, 2024.

within the governance framework. AI-driven applications are commonly deployed in corporate settings to ensure the precision of governance policies and enhance customer security against potential threats.[4] Additionally, Internet of Things (IoT) applications play a pivotal role in corporate governance by delineating legal parameters and conditions for users, thereby furnishing essential safeguards to mitigate risks in the investment landscape.

For many years, organizations have employed artificial intelligence (AI) to automate numerous manual tasks, including data entry. The advent of next-generation intelligence, such as generative AI, has enabled the handling of cognitive tasks such as report summarization and communication drafting. Furthermore, generative AI offers substantial assistance to workers, allowing individuals with limited or no experience to utilize the tool for activities such as software code writing, logo design, and marketing strategy formulation.

An essential application of AI within enterprises is the utilization of intelligent decision support systems (DSS). These systems analyze and organize data, providing suggestions and guidance to humans during decision-making processes. In customer service, chatbots powered by machine learning algorithms and Natural Language Processing systems are employed to comprehend customer requests and deliver responses more quickly and cost-effectively than human workers. AI also drives recommendation functions in marketing, leveraging customer data and analytics to propose products likely to meet customer needs and preferences, thus increasing purchase likelihood.

Moreover, in the supply-chain domain, algorithms are used to forecast demand and optimize supply movement timings. By leveraging AI, businesses can establish more efficient and cost-effective supply chains, mitigating risks associated with overstocking or product shortages. Additionally, AI-powered systems in human resources facilitate the creation of compelling and accurate job postings, candidate screening, and personalized training programs for employees. In the realm of cybersecurity, AI plays a crucial role in enhancing monitoring capabilities within enterprise IT environments. By efficiently detecting anomalies that may indicate cyber threats, AI-driven cybersecurity systems contribute to bolstering the security posture of organizations.[5]

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[4] Shen, Wenjun. 2022. "Analysis of the application of artificial intelligence technology in the protection of corporate governance rights and interests." NCBI.
[5] Pratt, Mary K. 2023. "15 Top Applications of Artificial Intelligence in Business." TechTarget.

Generative AI exhibits the capability to assimilate insights from existing artifacts and generate fresh, authentic outputs on a large scale, mirroring the attributes of the training data while avoiding duplication. This technology encompasses the generation of diverse content types, including images, videos, music, speech, text, software code, and product designs. Many firms have now launched generative AI tools or chatbots such as ChatGPT by openAI, Bard by Google, Copilot by Microsoft, etc. The adoption of generative AI tools has witnessed a notable rise within the business sphere, owing to its capacity to enhance operational efficiencies, augment creative endeavors, and confer competitive advantages to organizations amidst the dynamic and swiftly evolving market environment. In India, linguistic diversity poses a significant challenge, necessitating innovative approaches for effective governance. In response, the Government of India has strategically utilized various AI tools to address these challenges. One such initiative is Bhashini, initiated as part of the National Language Technology Mission (NLTM), which was inaugurated by the Prime Minister in July 2022. Bhashini aims to provide language technology solutions as digital public goods through the BHASHINI platform. This objective is pursued through the utilization of cutting-edge technologies such as Artificial Intelligence (AI), Machine Learning (ML), and Natural Language Processing (NLP) to develop and disseminate open-source models, tools, and solutions tailored for Indian languages. The initiative fosters ecosystem development by engaging diverse stakeholders including startups, industries, academia, research groups, enthusiasts, and State and Central Governments. But as it can be observed, all the AI-driven programs and tools are data-driven which in itself poses a lot of restrictions, legal obligations, privacy invasion, and cyber threats.

ARTIFICIAL INTELLIGENCE AROUND THE WORLD AND REGULATIONS

Countries that have seen an AI boom have also begun to realize the dire need for regulating the intervention of AI in day-to-day activities. The fact that AI can easily be rigged and many processes compromised remains a concern for lawmakers across the world. In jurisdictions throughout the world, particularly in the European Union and in supranational groups like the Institute of Electrical and Electronics Engineers (IEEE), Organisation for Economic Co-operation and Development (OECD), and others, the regulatory and policy environment for AI is a developing topic. The legal anomalies that exist such as those of transparency, accountability, as well as fairness, can be legally proven by amending the laws so that they gel with an AI-equipped corporate sector.

Let's have a look at the Singaporean example ;

The Singapore Government's Model Framework outlines three distinct modes of human-AI interaction applicable to corporate governance: "human-in-the-loop," "human-out-of-the-loop," and "human-over-the-loop." In the "human-in-the-loop" scenario, human oversight retains ultimate decision-making authority over AI-generated decisions, prioritizing human judgement over automated processes. Conversely, the "human-out-of-the-loop" approach delegates decision-making responsibilities entirely to AI systems. The "human-over-the-loop" strategy mandates human monitoring to enable intervention in case of unexpected events.

Within corporate governance, the selection among these strategies should consider the potential severity of harm resulting from AI errors and the likelihood of such errors occurring. This framework underscores the importance of striking a balance between leveraging AI's efficiency and ensuring human oversight to mitigate risks and uphold ethical standards in decision-making processes.

Let's have a look at the UK's example ;

In March 2023, the Department for Science, Innovation, and Technology unveiled the Data Protection and Digital Information (No. 2) Bill (referred to as 'the Bill'). This legislative initiative seeks to tackle the challenges posed by AI-driven automated decision-making and establish the necessary data protection measures for such procedures. One major objective of the bill is to establish a framework for the provision of digital verification services to enable digital identities to be used with the same confidence as paper documents.

Among its objectives, the Bill aims to elucidate the mechanisms by which individuals can exercise their right to avoid being subject to automated decision-making, as stipulated in Article 22 of the UK General Data Protection Regulation (GDPR). The Data Protection and Digital Information (No. 2) Bill significantly impacts corporate governance by establishing legal requirements for data protection, enhancing accountability and transparency, emphasizing risk management practices, promoting data security measures, and influencing corporate reputation and stakeholder trust. Compliance with these regulations is essential for organizations to navigate the evolving data privacy landscape and mitigate associated risks effectively.

AI IN CORPORATE GOVERNANCE IN INDIA AND ITS LEGAL FRAMEWORK

In the realm of business, Artificial Intelligence (AI) typically serves to fulfil three significant organizational requirements: streamlining business operations, extracting insights from data analysis, and fostering interaction with both customers and employees. Consequently, the principal advantages of leveraging AI for decision-making primarily stem from its rapid processing capabilities and its aptitude for analyzing vast datasets. By employing computational analytical methodologies on extensive datasets, board members can uncover concealed insights and valuable information, thereby yielding actionable analytical outcomes. Such data-driven techniques hold the potential to enhance the efficiency and calibre of the board's decision-making procedures.

Differing based on the allocation of decision rights between human beings and AI, there are three types of roles that may be played by AI, regardless of the area they are applied within: assisted AI, advisory or augmented AI, and autonomous AI. This classification is based on the level of autonomy enjoyed by the AI.[6]

India does not have a comprehensive and specified AI Regulation in place on a federal level. Though regulations regarding the corporate world are stated in the Companies Act 2013 ("Companies Act" or "the Act") . Corporate governance has 2 main pillars which are Director and Board of Directors. Section 166 of the Companies Act delineates the responsibilities of directors, while Section 179 outlines the powers vested in the Board of Directors. Some basic duties of a Director are to act in compliance with the articles of association ("AOA") of the company, to "act in good faith", to act in the best interests of the company and all the stakeholders(Under Section 166(2) of the Act), not to acquire or attempt to acquire any undue gain or advantage to himself or his relatives(under Section 166(5)). These duties were set up under normal circumstances when the idea of Artificial Intelligence was not given due importance.But when we plan to integrate AI in corporate governance or boardrooms,it is important to monitor that these duties are fulfilled. The primary objective behind integrating AI into corporate boardrooms is to optimize decision-making processes for the benefit of the company. AI directors (Mechanism of setting up AI systems in place of human directors) operate on predefined codes and algorithms, allowing them to align their actions with both the company's objectives and legal requirements. Unlike human directors, AI is

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[6] Zhao Guangdong University, Jingchen. 2022. "Artificial Intelligence and Corporate Decisions: Fantasy, Reality or Destiny." Catholic Law Scholarship Repository.

immune to external influences such as financial incentives or power dynamics, minimizing the risk of fiduciary breaches such as misappropriation of corporate resources. However, it's essential to recognize that certain decisions, particularly those affecting employees, members, and stakeholders, may require emotional intelligence and intuitive judgement—qualities that AI may lack. AI might also be inefficient in taking independent decisions because it works on the big data fed to it which is ultimately programmed by humans and can thus reflect human bias.

The corporate board of directors comprises individuals tasked with supervising and guiding the management and strategic direction of a company or organization. In essence, the board serves as a fiduciary entity representing the interests of shareholders. Some basic functions of BOD are Representing the shareholders interests and striving to optimize shareholder value through strategic decision-making , overseeing financial performance of the company and taking investment decisions i.e. The board conducts a comprehensive assessment of the company's financial statements, ensuring diligent management of finances. This is a complicated yet very important part for the progress of an organisation which requires financial analysis and taking under consideration various factors risk analysis , profit analysis etc. Introducing AI in this field can prove to be fruitful since it can identify the flaws and errors more efficiently and faster in accordance with the stipulations outlined in the Articles of Association (AOA) and in conjunction with the pertinent legal prerequisites than a human brain. This type of AI involvement as Board of Directors is an autonomous intelligence system.[7] According to the Indian legal framework, Section 2(53) of the Act states that only a single individual can be appointed as a manager. Similarly Section 149 of the Act states that only a single individual can be appointed as a director of the company and hence decision making powers cannot be shared by AI manpower and AI.

THE DILEMMA - COMPLIANCE OR TRANSPARENCY

The long-standing objectives of corporate law in various countries frequently centre on being generally supportive and facilitative of commerce while also containing certain crucial regulatory components to safeguard the general public who interacts with firms from misconduct. The unequivocal compliance of these laws is a prerequisite for any business to run wherein AI can play a key role.

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[7]BABURAJ, AASHIRWA. n.d. "ARTIFICIAL INTELLIGENCE V. INTUITIVE DECISION MAKING: HOW FAR CAN IT TRANSFORM CORPORATE GOVERNANCE?" Gujarat National Law University.

The efficacies of AI can help achieve compliance of fundamental regulatory laws through rhythmic scrutiny of processes where scope of discrepancy may exist due to human error or maliciousness while at the same time ensuring decision making is fast and smooth. For eg: A commercial bank's call of whether to approve a massive loan to a business house can be easily taken using Machine learning techniques and the need for risk managers and the whole vertical system linked to it would not be required. Moreover, A critical value for accountability is trust in corporate actors, which may be supported by AI.

On the other hand, transparency becomes a hard nut to crack and so does fixing accountability.The inexplicability of algorithmic decision-making runs counter to the need of openness and makes creating accountability difficult. The companies are expected to be as transparent about their statements and positions as possible particularly to their shareholders and the same applies.

Drawbacks pertaining to transparency in AI :

- Vulnerable to rigging : Transparent AI models are more vulnerable to attacks because threat actors have a better understanding of how they operate and may identify their weaknesses. Developers must test their systems and construct their AI models with security in mind in order to overcome these difficulties.
- Complex designing : Transparent algorithms are more difficult to create, especially for complicated models with a large number of parameters. Using less advanced algorithms can be necessary in situations when AI transparency is required.
- Risk of exposure of proprietary algorithms : Protection of proprietary algorithms is another issue with AI openness, since researchers have shown that whole algorithms may be stolen just by glancing at their descriptions.
- Governance challenges : Another basic flaw is believing that any transparency technique would, out of the box, serve all governance requirements. Instead, we should think about what, specifically, we need from our systems in order for them to be trusted, and then build systems with transparency mechanisms to meet those needs. To ensure interpretability and explainability, for instance, it might be tempting to concentrate on technological transparency measures. However, it's possible that these models will still rely on people to recognise biassed and false information. A person must still decide if a source is reliable even if an AI chatbot references it. This requires effort and time and has the opportunity for mistakes.

- <u>Lack of ways of assessing and monitoring transparency :</u> Furthermore, not all transparency-related techniques are trustworthy. Every time they are carried out, they could provide a distinct set of findings. This lack of repetition and dependability might undermine system credibility and obstruct efforts to increase openness.

EXPLAINABILITY AND INTERPRETABILITY

Although they are similar ideas, AI explainability and interpretability and AI transparency are not the same. AI transparency ensures that everyone involved can understand how an AI system functions, including how it makes judgements and handles data.

Explainability, on the other hand, focuses on giving clear justifications for the judgements that an AI system makes. The term "interpretability" describes how predictable a model's results are given its inputs. Therefore, even while explainability and interpretability are essential for establishing AI transparency, they do not entirely satisfy it. Being transparent regarding data processing, the model's constraints, potential biases, and the context of its application are other components of AI transparency.

The Machine Learning (ML) community is currently addressing explainability as a key issue. It will be difficult for something truly terrible to go unnoticed since everyone will be focusing on different aspects of the same issue. While, low-risk scenarios do not provide a difficulty with interpretability. Making movie recommendations might be a low-risk assignment for a model. On a game with high risk and stakes, a model with good interpretability is preferred. High interpretability models imply the ability to hold a third party accountable. The cornerstone of corporate governance is often regarded as accountability in decision-making. Delegating primary responsibilities to machines is not feasible, thereby restricting the role of AI to that of assisting in decision-making. Even if the Board of Directors were to fully automate decision-making through AI systems, they would still retain accountability within the existing legal framework.

POLICY RECOMMENDATIONS

After getting an understanding of the legal ramifications of AI within the Indian corporate landscape and a comprehensive survey of various AI implementation methods, it is deduced that the incorporation of augmented AI system i.e AI and BOD working together or autonomous

intelligence into Board of Directors (BODs) is prohibited under Indian corporate legislation. This determination stems from the stipulation that only humans are eligible for directorial positions. As stated above, based on current technology status, AI cannot develop on a true intelligence basis as it majorly works on trained data which might also reflect human bias. Artificial Intelligence (AI) possesses the capability to identify risks, make decisions, and execute actions, relying solely on the dataset it has been trained on. However, its capacity is constrained by the limitations of its training data, underscoring the necessity for human intervention in handling novel or unprecedented scenarios. This critical requirement for human oversight may partly explain why AI has not yet been accorded a seat in boardrooms across the globe and hence assisted intelligence model is likely to prevail. For this model to work in the Indian Legal framework, some amendments are required.

1) The Companies Act 2013 should be modified to include AI as a potential member in the boardroom and hence make the use of AI assistance in boardroom decisions legal.

2) The Companies Act 2013 should be modified to define the clear boundaries of roles in administration in which the human board members and AI will work, and responsibilities should be clearly defined. For example, since the AI still is not capable of understanding human nature and instinct, its decisions might harm social ethics and hence the responsibilities in the boardroom should be clearly defined and stated.

3) Keeping in mind the misuse of AI and data, comprehensive regulatory guidelines need to be framed to prevent the misconduct of AI systems and to ensure accountability and transparency. India needs to establish a Data Protection Board of India as mentioned in The Digital Personal Data Protection Bill, 2023[8] to ensure that the guidelines and laws enacted are being adhered to.

4) After the establishment of the Data Protection Board of India, corporate associations and firms should work in collaboration with the Data Protection Board of India to access information and data of the citizens to assure data privacy.

5) Implementation of training and certification requirements for professionals involved in the development, deployment, and management of assisted intelligence systems in corporate governance should be made necessary. These requirements should cover topics such as AI ethics, bias mitigation, data privacy, and legal compliance. This initiative should be

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[8] An Act to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.
Mohan, Kshitiz. 2023. "THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 (NO. 22 OF 2023) An Act to provide for the processing of digital personal data in." MeitY.

mandated by the government and undertaken by every corporate firm for better governance using artificial intelligence.

CONCLUSION

From this, it can be concluded that two major ways in which AI can be incorporated into corporate decision-making are either by assisting the human workforce i.e Board of Directors or by completely replacing human directors i.e the Autonomous system. The objectives of AI are well-defined which are that it must adhere to legality, ethics, and technical robustness. However, the manner in which the board of directors interacts with AI systems in corporate decision-making significantly influences the resultant benefits. If the board were to lean towards automated decision-making relying solely on AI applications, it becomes evident that the existing regulatory framework lacks the necessary sophistication to adequately address the complexities arising from such decisions. As a result, a legal void exists concerning accountability, liability, data protection, and power division issues related to AI. Henceforth,the concept of "assisted intelligence" presents an opportunity for integration within the Indian boardroom setting. This approach strives to establish a harmonious balance between quantitative and qualitative analyses, leveraging the efficiency of AI in processing vast amounts of data while complementing it with the diverse learning capabilities inherent to humans.

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