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CORPORATE GOVERNANCE IN INDIA- AN OVERVIEW

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ABSTRACT

Looking back at India's corporate oversight, shifts began taking shape slowly, shaped by laws passed piece by piece over time. One change followed another - rules updated, agencies formed, reports issued with clear warnings. SEBI stepped in early, pushing new standards that firms had to follow. The Companies Act arrived later, bringing structure where little existed before. Committees played their part too, each one adding something different - Birla focusing on disclosure, Chandra digging into audit flaws, Murthy tightening codes for boards. Together, these moves sharpened how companies report, who watches them, and what happens when they fail. Trust grew bit by bit as checks multiplied across offices and filings.

Despite progress, hurdles remain in enforcing rules within India's governance system. New tools like artificial intelligence open unseen loopholes regulators aren't ready for. Instead of waiting, updates to laws could set clear roles for handling AI risks. Think mandatory reviews before rollout, transparency on how systems work, plus watchful leadership at the top levels of companies. Responsibility must be spelled out - vagueness weakens accountability. Stronger frameworks might just keep pace with change.

Introduction

Corporate governance has gained prominence on the business world stage since the recent spate of corporate failures resulting from unethical and illegal behavior of companies, such as Enron and WorldCom, have caught the attention of the business community. These two companies in particular were shocking examples of how pervasive and entrenched unethical behavior can be at the highest levels of an organization, with little regard for anyone other than themselves.

This is just a glimpse of a much larger problem that many businesses have either ignored or refused to acknowledge. Although the initial investigation into corporate practices was focused

primarily on US companies, it soon became apparent that unethical practices by companies around the world are not unique to any one country. Additionally, if there were to be sufficient evidence of corporate governance problems in the US, then one could only imagine what problems businesses located in countries such as Italy, Parmalat and Hollinger Inc, are going through. Furthermore, how can the worlds' oldest stock exchange, the New York Stock Exchange, remove an executive due to excessive salaries without inciting public outcry over other companies that may also have corporate governance issues? From this perspective, it would appear that corporate governance issues exist all over the world; therefore there is an immediate need for a complete overhaul of corporate governance practices in both developed and developing countries.¹

Corporate Governance is fundamentally about leadership, as companies compete globally and provide jobs to people. Corporate Governance is about integrity, as investors want to know that the company's leadership will act with honesty and morality towards all, including their shareholders. Corporate Governance addresses responsibility as corporations continue to be held responsible for addressing legitimate social issues related to their operations. Finally, Corporate Governance is about transparency and accountability; without this type of leadership, business leaders are not trusted and thus the company and ultimately the economy of the country will suffer.

Bringing the interests of investors and managers together, and ensuring that companies operate for the benefit of investors, is at the heart of Corporate Governance. Corporate Governance is made up of "the systems, structures, processes and culture that will lead to the successful operation of businesses."²

Objectives of Corporate Governance

A connection exists between corporate governance and its "objectives." Corporate governance is the key to a company's existence because it builds and enhances investor confidence through its commitment to growing and maximizing profits.

¹ Mervyn King, King Report on Corporate Governance for South Africa [King II Report] [Parktown, South Africa: Institute of Directors in Southern Africa, 2002]

² Mervyn King, King Report on Corporate Governance for South Africa [King II Report] [Parktown, South Africa: Institute of Directors in Southern Africa, 2002]

Corporate governance has specific objectives:

1. To ensure there is a properly structured Board that has the authority to lead and can make independent and objective decisions.
2. To ensure that the Board has a balance of both executive and independent non-executive directors so that they are prioritizing the interests of all stakeholders.
3. To implement transparent processes and practices and make decisions based upon adequate information.
4. To create mechanisms for addressing stakeholder concerns effectively.
5. To keep shareholders informed of important events related to the company.
6. To monitor the performance of the management team actively and regularly.
7. To always maintain effective control over the company's activities.

The Board's primary objective should be to move the organization ahead by maximizing long-term value and shareholder wealth.

Corporate Governance in India

Due to economic liberalization; defined supervisory institutions, an increasing deregulation of both industry and business (by eliminating government controls); and an increasing call for corporate responsibility (to induce a cultural change), establishing new corporate governance has become a matter of urgent priority for Indian policy-makers. A unique aspect of India's economic environment is the prevalence of very large investors (primarily banks) in many companies, resulting in a heightened focus on director accountability (in particular non-executive and nominee directors).³

After years of research and extensive discussions with stakeholders throughout the country, the initiatives and actions taken by the Governance of India; the SEBI; and the Confederation of Indian Industry (CII); have all significantly contributed to generating new ideas and stimulating debate regarding corporate governance in India. The Kumar Mangalam Committee report on corporate governance represents the culmination of this effort and acts as an important tool to respond to societal need for greater corporate governance. In 1999, after studying the various issues of corporate governance in detail through dialogue with various corporate and governmental agencies; the Kumar Mangalam Committee was formed to

³ Parmjit Kaur, Globalisation: Corporate Governance and its position in India, Deep and Deep publications Pvt. Ltd, New Delhi 2003, P-104-106

develop a roadmap for the establishment of a corporate governance regime that would create an environment conducive to the development of prosperity in India.

Four years ago the Confederation of Indian Industry (CII) released their Corporate Governance Code. The following points were included in the CII's Corporate Governance Principles:

- One board which meets at least six times a year, preferably with two months between meetings
- For listed companies with a turnover of more than Rs 100 crore and non-executive chairman: a minimum of 30% of the members on the board must consist of professionally competent independent non-executive directors. For listed companies with combined chairmen/managing director and owned by a single shareholder 50% of the members must consist of independent non-executive directors.
- No individual may be a director of more than ten listed companies.
- Independent directors should actively participate on boards and have a well-defined role within them to ensure they possess: the ability to read and comprehend financial statements, balance sheets, profit/loss statements — cash flow statements and knowledge of Indian Company Law.
- Independent Directors should receive a commission in addition to their sitting fees.
- Attendance should be a criterion in the determination of whether an independent director will be re-elected.

The following set of key information should be sent to the Board:

- Annual Operational Plans and budgets, along with Long Term Plans (to include Asset Acquisition Plans).
- Capital, Manpower and Overhead Budgets.
- Quarterly results of the Company (as a whole and by operating segment).
- Internal Audit Reports.
- Various notices from Revenue Authorities (or such authority as the Board may specify).
- Any accidents; any pollution problem, etc.
- Any default on payment of interest or failure to pay any principal on public deposits or secured creditors.
- Any defaults on payment of intercorporate debt.
- Any issue that may involve public or product liability claims.
- The full details of any Joint Venture or Collaboration Agreements.

- Any transactions involving substantial payments to Goodwill, Brand Equity, etc.
- Any recruitment or remuneration of Senior Officers below board level.
- Any labour problems and solutions and Quarter details of Foreign Exchange Exposure.

Developments in India

Due to the worldwide interest arising from the Cadbury Committee Report, as well as by various Government responses to corporate developments worldwide, several major events related to corporate governance have occurred, significant among which are:

1.1.1 Committees drawing upon the knowledge and resources of the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry and the Securities and Exchange Board of India (SEBI) have been established to develop proposals for corporate governance.

1.1.2 CII took the lead in launching a major corporate governance initiative for the Indian industry in 1996. As part of this initiative, a code for corporate governance was developed for all Indian companies including both private sectors and publicly owned companies; CII released its "Desirable Corporate Governance" code in 1999.

The Kumar Mangalam Birla Committee's recommendations led to Clause 49 being added to the Listing Agreement, which made the provisions under Clause 49 almost mandatory for the compliance of listed companies. The committee also recommended a corporate governance section be added to companies' Annual Reports, wherein the companies will provide an account of measures taken to comply with the Kumar Mangalam Birla Committee's recommendations and inform shareholders of some of the specific initiatives taken to establish corporate governance in the company. The three main principles of corporate governance, as identified by the committee, are: accountability, transparency, and equal treatment of all stakeholders. SEBI has developed a Corporate Governance Rating (CGR) using the services of a leading rating agency to establish a detailed framework to evaluate the quality of governance at listed entities.

Enforcement of Corporate Governance In India

The Companies Act

The Companies Act of 2013, as amended from time to time, applies to all companies existing in India. This legislation is extensive and includes provisions for almost every aspect of a company's business. The Companies Act ensures good corporate governance by giving

shareholders legal rights to:

- 1.1.2.1 Participate in annual general meetings;
- 1.1.2.2 Vote on all resolutions presented at an annual general meeting;
- 1.1.2.3 Elect directors, who will develop the company's objectives and policies;

The Department of Company Affairs (DCA) established a study group on 15 May, 2000, under the chairmanship of the then-Secretary to the Department of Company Affairs (DCA), to investigate ways to improve corporate governance, as well as to establish a task force to carry out the recommendations of the study group. One of the recommendations of the study group was to establish an independent, autonomous corporate excellence centre, which would provide accreditation, policy research and studies, training and education, and recognition for the corporate governance achievements of companies. Other recommendations of the study group included encouraging greater participation of shareholders, establishing formal recognition of corporate social responsibility, and assigning strategic responsibilities to non-executive directors.

On August 21, 2002, the Department of Company Affairs set up a high-powered committee, referred to as the Naresh Chandra Committee. This committee's purpose was to examine a number of issues relating to corporate governance and make recommendations for amendment in a number of areas, including: – The relationship between statutory auditors and companies – Rotation of statutory auditors – The method of appointing statutory auditors and determining audit fees – Possible restrictions on non-audit fees – Independence of audit functions – Accuracy in the presentation of audited financial statements – Certifying financial statements and accounts – Regulation of oversight bodies – Setting up an independent regulator – The role of independent directors.

The committee made a large number of recommendations for amendments to the Companies Act, a full list of which will be provided in the final report. In addition, SEBI created another committee that will review the implementation of corporate governance codes by listed companies. This committee was led by Shri N.R. Narayana Murthy and made mandatory recommendations that are described in the Appendix.

In addition, a standing committee with an ongoing focus on company law advice was established under the Department of Company Affairs (DCA) to provide assistance on corporate inspections of misconduct, responsibilities & liabilities of independent directors &

auditors and suggestions to enhance penalty enforcement. A Central Co-ordination & Monitoring Committee ("CCMC") has been set up which is to be jointly chaired by the DCA Secretary and SEBI Chairman in relation to acts undertaken against companies that have disappeared and by promoters who have fraudulently obtained funds from the public.

1.1.2.4 Set the remuneration for directors and the CEO;

1.1.2.5 Remove directors; and

1.1.2.6 Attend and participate actively at annual general meetings.

1.1.2.7 Vote on all corporate resolutions at the annual general meeting;

1.1.2.8 Elect the directors who will be responsible for establishing the company's objectives and policies;

1.1.2.9 Fix the remuneration of both the company directors and the CEO;

1.1.2.10 Removal of director;

The Securities and Exchange Board of India (SEBI)

The SEBI act is a government law regulating securities activity, based on the SEBI board that was formed in 1992 in India. The board has initiated a variety of programs designed to protect investors; one example of this is requiring that public companies disclose detailed information in their annual reports and prospectuses (as the Companies Act does), with the significant increase in the amount of information that separates the two acts having occurred due to the requirement for public companies to submit materials consistent with the provisions of both acts. The main purpose of the SEBI regulations is so that public companies can maximize their shareholder value through good corporate governance and to decrease the disparity of information available to investors vs. managers of public companies. Jensen (2000) also holds that the primary purpose of any business is to increase shareholder wealth.

Reserve Bank of India (RBI)

The Reserve Bank of India (RBI) was established on 1 April 1935 as India's central bank to maintain monetary stability, manage currency, and supervise the financial and payments systems in India. The functions and focus of the RBI have evolved with

India's changing economic environment. As India's central bank, the RBI serves as banker to both the state governments and the national government of India, as the last resort lender to commercial banks, and as the monetary authority responsible for controlling the money supply and foreign exchange in India.

The RBI oversees the operations of commercial banks and non-banking financial companies (NBFCs) throughout India. The RBI is responsible for Monetary Policy, setting benchmark interest rates, and managing the treasury operations of both the state and national governments (borrowing and paying off) and acting as the custodian and controller of foreign currency reserves.

Criminal Actions taken under the Indian Penal Code

There are numerous provisions established under the IPC that can be utilized to solve governance problems, such as sections 406 (criminal breach of trust) and 420 (cheating). While these provisions aren't focused on resolving core governance issues, they can sometimes be employed to do so (Khanna & Mathew, 2010). Conviction rates in both cases are relatively low (which is true for many provisions of the IPC and its related statutory offenses) and therefore reduce the effectiveness of deterrence (Debroy & Singh 2009; Khanna 2010a). In this regard, however, the power vested in law enforcement to effect an arrest is everywhere, but a corresponding level of due process via conviction does not exist. This mismatched relationship between the ease with which individuals may be arrested and the difficulty associated with securing a conviction creates multiple concerns that must be resolved prior to the effective application of criminal law to address governance issues (Khanna 2010a; Khanna & Mathew 2010).

Recommendations of Various Committees on corporate governance in India

CII Code Recommendations (1997)

"Effective corporate governance is now widely regarded as a requirement of today's marketplace. As India increasingly becomes part of the global economy, there will be pressure from both domestic and international investors for improved transparency – including, but not limited to, providing adequate disclosures and more timely and clear explanations for significant corporate events – in order to enhance returns to shareholders."²⁰

Birla Committee (SEBI) Recommendations (2000)

"Resilient and vibrant capital markets depend on having strong systems of corporate governance; corporate governance represents the lifeblood of transparent corporate financial reporting and high-quality accounting. It also is the muscle that powers the access and viability of the financial reporting ecosystem."

Naresh Chandra Committee Report

CII Taskforce on Corporate Governance Mr. Naresh Chandra (Chair) (November 2009)¹⁰
Department of Company Affairs (2000) Report on the taskforce on Corporate Excellence through Governance based on the report by the Committee chaired by Dr. P L Sanjeeva Reddy and Kumar Mangalam Birla Committee on Corporate Governance, Chartered Secretary (March 2000).

Narayana Murthy Committee (SEBI) Recommendations (2003)

In 2003, the Narayana Murthy Committee was established to review the effectiveness of Corporate Governance and assess how businesses respond to any rumors or vague but sensitive information that exist about their companies in the marketplace to ensure that markets are clean and transparent. The Committee's findings were included in its report and the Committee members agreed that "Corporate Governance cannot be enacted into law.

Similarly Corporate governance will never remain static; because of its very nature corporate governance must continue to evolve in order to stay relevant." In response, SEBI adopted several guiding principles of Corporate Governance and established an additional clause #49 to the Listing Agreement with Stock Exchanges.

The revised Corporate Governance Principles were phased-in on July 1, 2001 and apply to all companies listed at any point in time from July 1, 2001 with a paid-up equity capital of at least Rs 3 crore or a net worth of at least Rs 25 crore as of March 31, 2003.

In order to improve the standards of Corporate Governance, the SEBI based its actions concerning revisions to Clause 49 of the Listing Agreement, as outlined in Circular SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003, on the recommendations made by the Corporate Governance Committee as well as the comments it received from members of the public on those recommendations. The SEBI revised the existing guidelines by utilizing its powers under Sections 11(1) of the Securities and Exchange Board of India Act, 1992 and Section 10 of the Securities Contracts (Regulation) Act, 1956. Accordingly, the SEBI clarified that certain sub-clauses in amended Clause 49 will be amended to reflect amendments to the Companies Act, 1956 made by the Companies (Amendment) Bill/Act, 2003 and that the applicable provisions of the Listing Agreement regarding Corporate Governance and the Companies Act will remain in harmony with one another.

Recent Policy Taken by SEBI⁴

- Dematerialization of Promoter Holdings: companies will only be permitted to trade in securities in the normal trading segment of the exchanges in the event the promotion and group shareholdings are fully (100 out of 100) held in dematerialized form. The securities of firms that fail to comply with this will be traded in the Trade-For-Trade segment.

- Peer Reviewed Auditor: The limited review or statutory audit reports that are presented to a stock exchange by listed entities should be presented by auditors that have passed through the Peer Review Process of the ICAI and have a contemporaneous valid certificate issued by the Peer Review Board of the Institute.

- Audit Committee Approval of CFO Appointments: All appointments of Chief Financial Officers (CFOs) must first receive the approval of the Audit Committee before management may make a final decision regarding the individual to be appointed CFO. The Audit Committee will review the qualifications and experience of the candidate.

Publication of Voting Results: Listed companies are required to publish their voting results/voting patterns on their websites and to the exchanges within forty eight (48) hours of the completion of each such meeting of the relevant shareholders such that there would be a complete record of the voting patterns.

Electronic Voting Availability: Listed Companies must allow shareholders to submit their votes electronically for all matters transacted by Proxy Voting by Mail (Postal Ballots).

Management of Assurance Audit Reports: The Securities and Exchange Board of India (SEBI) has developed a formula for processing Qualified Public Reports (QPA) or Assurance Audit Reports (AQP) submitted by listed entities or public companies under the Stock Exchange Act. This process is designed to improve issues identified within current procedures and to create a Qualified Assurance Auditor Review Committee (QAARC) that includes representation from interested parties. Listed entities must submit their Annual Audit Report (AAR) and prescribed forms each year to the Stock Exchange and will forward those with significant qualifications to ICAI Financial Reporting Review Board (FRRB) for additional evaluation. Upon

⁴ Consultative Paper on Review of Corporate Governance Norms in India, SEBI

satisfactory review, SEBI may order an entity to restate its financial statements and require that written notice of restatement be provided to shareholders. Further, the Bombay Stock Exchange recently held a conference in conjunction with SEBI and the Foundation for Corporate Governance of America focusing on "Independent Director - Issues and Challenges". This conference was expected to increase the understanding of independent directors.

REGULATORY CHALLENGES AND LEGAL REFORMS IN INDIA

The analytical work of this paper, establishes a comprehensive and documented case for the proposition that Indian corporate governance law is structurally inadequate to address the challenges generated by the integration of artificial intelligence into corporate decision-making. The Companies Act, 2013 and SEBI's regulatory framework contain no provisions governing algorithmic decision-making, no standards for the meaningful oversight of AI systems by directors, no transparency requirements regarding AI governance practices, no mandatory AI impact assessment mechanisms, and no clear framework for the allocation of liability when AI-influenced corporate decisions cause harm. This regulatory vacuum is not merely an inconvenience; it is a structural governance failure that undermines the accountability of directors, the protection of stakeholders, and the integrity of the corporate governance framework that the Companies Act, 2013 was designed to create.

- This paper undertakes the constructive work of the dissertation, proposing a comprehensive and practical programme of legal and regulatory reform designed to address the identified deficiencies. The reform proposals are developed from three principles that have guided the analysis throughout: proportionality, meaning that regulatory requirements should be calibrated to the governance risks presented by AI deployments, avoiding both overreach and underprotection; practicability, meaning that reforms should be capable of implementation within the institutional capacities of existing Indian regulatory authorities without creating disproportionate compliance burdens; and consistency with India's international commitments on responsible AI governance, specifically the OECD AI Principles and the G20 AI governance commitments made during India's G20 Presidency in 2023.

ADEQUACY OF EXISTING CORPORATE GOVERNANCE LAWS: A CRITICAL ASSESSMENT

The Companies Act, 2013: Structural Gaps

The Companies Act, 2013 contains several provisions that are in principle applicable to AI-related governance challenges but none that directly and specifically addresses them with the clarity and precision that effective governance requires. The analysis has identified the following specific and material gaps in the existing statutory framework.

The duty of care under Section 166(3) applies in principle to AI-assisted decisions but the Act provides no guidance on what the standard of reasonable care and skill demands of directors who deploy or rely upon AI systems, specifically what level of technological understanding directors must have, what due diligence they must conduct before deploying AI systems, and what ongoing oversight obligations they must discharge. This absence of specific guidance creates regulatory uncertainty that benefits neither directors seeking to comply nor regulators seeking to enforce.

- The duty of independent judgment under Section 166(3) is at structural risk of erosion through automation bias and institutional deference to algorithmic outputs. The Act contains no provision addressing this specific risk or establishing the meaningful control standard that independent judgment requires in the AI context.
- Section 179(3)'s framework for the delegation of board powers does not address the deployment of AI systems in the performance of board functions, creating ambiguity about the legal validity of AI-assisted board processes and the accountability of directors for AI-generated recommendations adopted without genuine independent evaluation.

The liability framework of Sections 166, 447, and 448 does not address the attribution of responsibility in AI-influenced harm scenarios involving multiple actors, directors, corporations, AI developers, and vendors, whose respective contributions to harmful outcomes may be difficult to disentangle under existing causal attribution principles.

SEBI's Regulatory Framework: Specific Deficiencies

SEBI's LODR Regulations impose comprehensive governance obligations on listed companies but contain no provisions specifically addressing AI governance. The risk management framework required by Regulation 21 does not identify AI-specific risks, including model risk, algorithmic bias, adversarial vulnerability, and systemic correlated risk, as categories of enterprise risk requiring explicit board-level oversight. The disclosure framework does not

require listed companies to disclose material AI governance practices, the nature and extent of AI deployment in corporate decision-making, or AI-related risks to investors. The governance requirements applicable to audit and risk management committees do not address the oversight of AI systems as a distinct and recognised area of committee responsibility.

SEBI's existing framework for algorithmic trading, which imposes pre-approval requirements, risk controls, audit obligations, and half-yearly reports on algorithmic trading activity, provides a sector-specific model of AI governance regulation that is directly applicable to the development of more comprehensive AI governance standards for corporate management more broadly.

PROPOSED LEGAL AND POLICY REFORMS

Amendment to the Companies Act, 2013

The most fundamental and enduring reform required is the amendment of the Companies Act, 2013 to codify explicitly the governance obligations of directors with respect to AI systems deployed in corporate management. The legislative history of the 2013 Act demonstrates that statutory codification, as exemplified by the codification of directors' duties in Section 166, provides governance clarity, regulatory certainty, and enforcement foundation that reliance upon implicit application of existing principles cannot.

The following specific amendments are proposed to the Companies Act, 2013.

Section 166 should be amended to insert a new sub-section, Section 166(3A), specifically addressing directors' duties in the context of AI-assisted decision-making. The proposed provision should provide that a director who relies upon the output or recommendation of an artificial intelligence system in the course of discharging any duty or making any decision shall: ensure, prior to such reliance, that adequate due diligence has been conducted regarding the system's functioning, accuracy, limitations, and potential for algorithmic bias; maintain a level of understanding of the system's capabilities and limitations sufficient to enable critical evaluation of its outputs; exercise genuine independent judgment in adopting or rejecting the system's output or recommendation, having regard to all material considerations; and ensure that adequate mechanisms for human oversight of the system's functioning and outputs are in place and are maintained throughout the period of such reliance.

Section 179 should be amended to insert a new sub-section clarifying that the deployment of an artificial intelligence system in the performance of a power or function vested in the board of directors does not relieve directors of their legal obligations with respect to the exercise of

that power or function, and that a decision of material corporate consequence that is substantially determined by an artificial intelligence system without meaningful deliberative engagement by the board of directors shall not be regarded as having been made on an adequately informed basis for the purposes of the business judgment rule as recognised in Indian corporate law.

A new Section 134A should be inserted requiring every company above a prescribed threshold, to be defined by reference to paid-up share capital, turnover, or the nature of AI deployments, to adopt an Artificial Intelligence Governance Policy approved by the board of directors and reviewed annually. The Policy should address: the categories of corporate decisions for which AI systems may be used; the standards for AI system procurement, testing, and validation; the oversight mechanisms applicable to AI deployments; the human oversight and intervention protocols applicable to AI-assisted decisions; the bias assessment and mitigation requirements applicable to AI systems used in employment, credit, or other high-stakes decisions; and the accountability and reporting mechanisms applicable to material AI governance failures.

Table: Identified Regulatory Gaps and Proposed Reforms in Indian Corporate Governance Law

Regulatory Gap	Current Position	Legal	Proposed Reform	Legislative/Regulatory Vehicle
No AI-specific director duty standard	Section 166(3) applies in principle but without specific guidance	166(3)	New Section 166(3A) codifying AI governance duties of directors	Companies Act amendment
No meaningful oversight standard	Business judgment rule poorly adapted to AI context	Business judgment rule	Section 179 amendment clarifying AI delegation limits	Companies Act amendment
No AI governance policy requirement	No obligation to adopt AI governance policy	No obligation to adopt AI governance policy	New Section 134A requiring AI Governance Policy	Companies Act amendment
No AI-specific risk management requirement	Regulation 21 does not address AI risk	Regulation 21	Amendment to Regulation 21 adding AI risk categories	LODR Regulation amendment
No investor	No AI-specific	No AI-specific	New LODR provision	LODR Regulation

disclosure of AI governance	disclosure requirement	requiring annual AI governance disclosure	amendment
No pre-deployment AI assessment	No mandatory assessment before AI deployment	Mandatory AI Impact Assessment requirement	SEBI circular and Companies Act amendment
Inadequate developer and vendor liability	Consumer Protection Act poorly adapted to AI	Amendment to Consumer Protection Act and guidance	Legislative amendment and MCA guidance

SEBI Regulatory Reform

SEBI should develop and implement AI governance requirements for listed companies through amendments to the LODR Regulations and through the issuance of dedicated guidance circulars, building upon its existing regulatory powers and drawing upon the substantive standards developed in international frameworks.

The following specific regulatory interventions are proposed.

Regulation 21 of the LODR Regulations governing risk management committees should be amended to identify AI-specific risk as an explicit category of enterprise risk requiring board-level oversight, including model risk, algorithmic bias risk, AI cybersecurity risk, and systemic correlated AI risk. The risk management policy required under Regulation 21 should be amended to require assessment and management of these AI-specific risk categories.

A new Regulation in the LODR Regulations should be introduced requiring listed companies to include in their annual corporate governance report a dedicated section on AI governance practices. This section should disclose: the categories of corporate functions in which AI systems are deployed; the board-level oversight mechanisms applicable to AI deployments; the AI-specific risk assessment processes conducted during the year; the bias assessment and mitigation measures implemented for AI systems used in high-stakes decisions; and any material AI governance failures or incidents identified during the reporting period and the corrective measures taken.

SEBI should issue a comprehensive AI Governance Circular, addressed to all listed companies and their boards of directors, setting out the governance standards applicable to AI deployment Act's high-risk obligations, and India's G20 AI governance commitments to establish minimum governance standards for AI systems deployed in material corporate functions. The standards should address transparency and explainability, human oversight, data governance, bias

assessment and mitigation, cybersecurity, and accountability and reporting.

Mandatory AI Governance Committees at the Board Level

Drawing upon the model of mandatory audit and risk management committees established by the Companies Act, 2013 and the LODR Regulations, Indian corporate governance reform should introduce a requirement, applicable initially to listed companies above a prescribed threshold and subsequently extended more broadly, for the establishment of a dedicated AI Governance Committee at the board level, or the explicit extension of the mandate of the risk management committee to include comprehensive oversight of AI governance.

The AI Governance Committee, or expanded risk management committee, should be responsible for: approving the company's AI Governance Policy and material AI deployments above prescribed risk thresholds; overseeing the conduct of AI Impact Assessments for high-stakes AI deployments; reviewing AI system performance, bias assessments, and incident reports on a regular basis; reporting to the full board on material AI governance matters; and engaging with external auditors and regulators on AI governance assurance.

The constitution of a dedicated AI governance function at the board level serves multiple governance purposes. It creates an institutional mechanism for developing board-level competence in AI governance, ensuring that at least a subset of directors develops the technical understanding necessary to provide meaningful oversight. It creates a forum for the systematic review of AI governance across the enterprise rather than piecemeal engagement with individual AI deployments. And it creates an accountability mechanism, a named committee whose responsibilities include AI governance, that enhances the enforceability of AI governance obligations by regulators and in legal proceedings.

Mandatory AI Impact Assessments

Drawing upon the data protection impact assessment model of the DPDPA and the EU GDPR, and the broader conformity assessment requirements of the EU AI Act, Indian corporate governance reform should introduce a requirement for Mandatory AI Impact Assessments prior to the deployment of AI systems in high-stakes corporate decision-making contexts.

An AIIA should systematically assess: the purpose and scope of the proposed AI deployment and its alignment with applicable legal and governance standards; the potential impacts of the deployment on employees, customers, investors, and other affected stakeholders; the risk of algorithmic bias and discriminatory outcomes, including the demographic representativeness of training data and the fairness of the outcome distributions generated by the system; the

explainability and transparency of the system's decision-making, specifically whether the system can provide outputs that are accessible and comprehensible to directors responsible for oversight; the adequacy of human oversight mechanisms, specifically whether meaningful human control is maintained over consequential AI-assisted decisions; the data governance framework applicable to the system's training and operational data, including DPDPA compliance; and the cybersecurity and resilience characteristics of the system.

The AIIA should be conducted before deployment, approved by the AI Governance Committee or equivalent board committee, and updated materially whenever the AI system's architecture, training data, or deployment context changes in ways that may affect its risk profile. An AIIA report in summary form should be included in the company's annual corporate governance disclosure to shareholders.

Reform of the Liability Framework

The inadequacy of existing liability frameworks in addressing the distributed responsibility generated by AI-influenced corporate harm requires targeted legislative intervention. The following specific reforms are proposed.

The Companies Act, 2013 should be amended to introduce an explicit AI governance oversight duty, analogous in structure to the Caremark doctrine developed in US corporate law, providing that directors may be held liable for loss or damage caused to the company where the loss or damage arises from an AI governance failure that a system of adequate AI oversight would have prevented, and where the directors failed to implement or maintain such a system. This provision would codify the accountability of directors for structural AI governance failures, not merely for individual AI-assisted decisions, and would provide the legal foundation for enforcement action against directors who allow systemic AI governance deficiencies to persist without board-level corrective action.

The Consumer Protection Act, 2019 should be amended or supplemented by regulatory guidance to clarify the liability of AI technology developers and vendors for defects in AI systems supplied to corporate users, specifically addressing the enforceability of contractual limitation of liability clauses in AI supply agreements in circumstances where those clauses seek to exclude liability for foreseeable AI-related harms. The amendment should provide that contractual provisions excluding or limiting AI vendor liability for gross negligence, wilful misconduct, or systemic design defects are void as against public policy.

The Ministry of Corporate Affairs should issue guidance on the allocation of responsibility among directors, corporations, AI developers, and vendors for AI-influenced corporate harms,

drawing upon the distributed responsibility framework developed

Capacity Building

The effectiveness of any AI governance reform programme depends upon the capacity of those responsible for its implementation to engage meaningfully with its requirements. Regulatory standards that directors, auditors, company secretaries, and regulators lack the knowledge to apply will remain aspirational rather than operational.

The Institute of Company Secretaries of India should develop and mandate continuing professional development modules addressing AI governance fundamentals, the legal obligations of directors in respect of AI systems, the conduct of AI Impact Assessments, and the disclosure of AI governance practices in corporate reports. The Institute of Chartered Accountants of India should develop guidance on the audit of AI governance systems, the assessment of AI-related internal controls, and the disclosure of AI governance risks in statutory audit reports.

Directors of listed companies should be required, through amendments to the LODR Regulations or through SEBI guidance, to complete a minimum programme of AI governance education as part of their onboarding training and continuing director education obligations. The programme should address the functioning and limitations of AI systems in corporate management contexts, the specific governance obligations arising from AI deployment, and the practical implementation of meaningful human oversight.

SEBI should develop internal technical capacity for AI governance oversight, including the appointment of specialist AI governance advisers, the development of AI-specific examination and inspection methodologies, and collaborative arrangements with the Ministry of Electronics and Information Technology and the Data Protection Board to leverage the technical expertise of those bodies in the exercise of SEBI's corporate governance supervisory functions.

THE ROLE OF NITI AAYOG AND SECTOR-SPECIFIC REGULATORS

NITI Aayog's National Strategy for Artificial Intelligence, published in 2018, identified governance and regulation as a priority area for AI policy development.⁵ The translation of this strategic commitment into an operational governance framework for the corporate sector has, however, been limited. The gap between strategic aspiration and operational regulatory

⁵ NITI Aayog, *National Strategy for Artificial Intelligence: #AIforAll* (Government of India, June 2018), p.

framework is precisely the gap that the reforms proposed in this paper seek to close.

NITI Aayog, in collaboration with the Ministry of Corporate Affairs, SEBI, the Reserve Bank of India, and the Ministry of Electronics and Information Technology, should develop a National Framework for AI Governance in Corporate Environments that provides a coordinated and coherent policy architecture spanning the corporate governance, financial regulation, data protection, and competition dimensions of AI governance. This framework should articulate the overarching governance principles applicable to AI in corporate environments, provide guidance on the application of sector-specific regulatory requirements to AI deployments, and establish mechanisms for regulatory coordination and information sharing across the multiple agencies with relevant jurisdictions.

Sector-specific regulators, including the Reserve Bank of India, the Insurance Regulatory and Development Authority, the Pension Fund Regulatory and Development Authority, and the Telecom Regulatory Authority of India, have developed varying degrees of AI governance guidance for their respective sectors. A coordinated cross-sectoral approach, aligning sector-specific guidance with the broader corporate governance reform framework proposed in this paper, would enhance the coherence, consistency, and effectiveness of the overall regulatory architecture for AI governance in India.

IMPLEMENTATION SEQUENCING AND TRANSITION

The reforms proposed in this paper, if adopted comprehensively, would represent a significant expansion of the regulatory obligations applicable to Indian corporations in respect of AI governance. Their practical effectiveness depends critically upon the sequencing and transition arrangements through which they are implemented.

A phased implementation approach is recommended. In the immediate term, within twelve months of legislative and regulatory reform, SEBI should issue its AI Governance Circular establishing minimum standards for AI governance in listed company management, applicable initially to the top five hundred listed companies by market capitalization. Simultaneously, the Ministry of Corporate Affairs should initiate the legislative drafting process for the proposed amendments to the Companies Act, 2013.

In the medium term, within two to three years, the Companies Act amendments should be enacted, the AIIA requirement introduced, the AI Governance Committee requirement operationalized, and the professional capacity building programmed initiated. The AIIA and AI Governance Committee requirements should be applied initially to listed companies above prescribed thresholds before progressive extension to a broader population of companies.

In the longer term, within five years, the full suite of reforms should be operational across the corporate sector, with regulatory guidance updated in light of implementation experience and international developments, and with enforcement activity demonstrating the seriousness with which the regulatory framework is applied.

CONCLUSION

Corporate governance has gone through significant changes over the years in India in order to create greater transparency, accountability and honesty in companies. The aims of corporate governance are to protect stakeholders' interests, ensure that the company is well managed, achieve fair and responsible business practices. In India, the regulatory bodies, as well as various expert committees and legislation have all contributed to the development of governance structures.

As the corporate governance landscape in India has changed, the focus has remained on developing as many of the world's standards as possible, while addressing the local issues that Australian companies face. The area of law enforcement is particularly important to this issue; regulatory regimes can only ever be as effective as the way that the regulations are enforced. For example, the legal punishment (e.g., based on the Indian Penal Code) is a deterrent and may create a degree of corporate accountability.

Furthermore, there has been further progress made through the publication of numerous committees and the moving forward of policy by the Securities and Exchange Board of India (SEBI) in supporting better corporate governance practices, increasing disclosure requirements, greater board independence, and better protection to investors have been undertaken.

Despite a significant body of corporate governance structure, enforcement and compliance continue to present significant challenges. In order for corporate governance in India to be

successful, there continues to be a need for enhanced regulatory oversight, improved enforcement and compliance and a culture of ethical behavior.

The reforms proposed in this paper represent a comprehensive, proportionate, and practicable programme for the development of an AI governance framework adequate to the challenges that artificial intelligence presents to Indian corporate governance. They address, systematically and specifically, each of the regulatory gaps identified as the absence of director duty standards for AI, the lack of meaningful oversight requirements, the non-existence of AI impact assessment obligations, the deficiency of transparency and disclosure standards, the inadequacy of liability frameworks, and the need for professional capacity building. Their implementation would position Indian corporate governance law as a responsible and contemporary framework, one that is consistent with India's international AI governance commitments and adequate to the governance challenges of the algorithmically mediated corporate environment that is rapidly becoming the dominant feature of economic life in the twenty-first century.

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