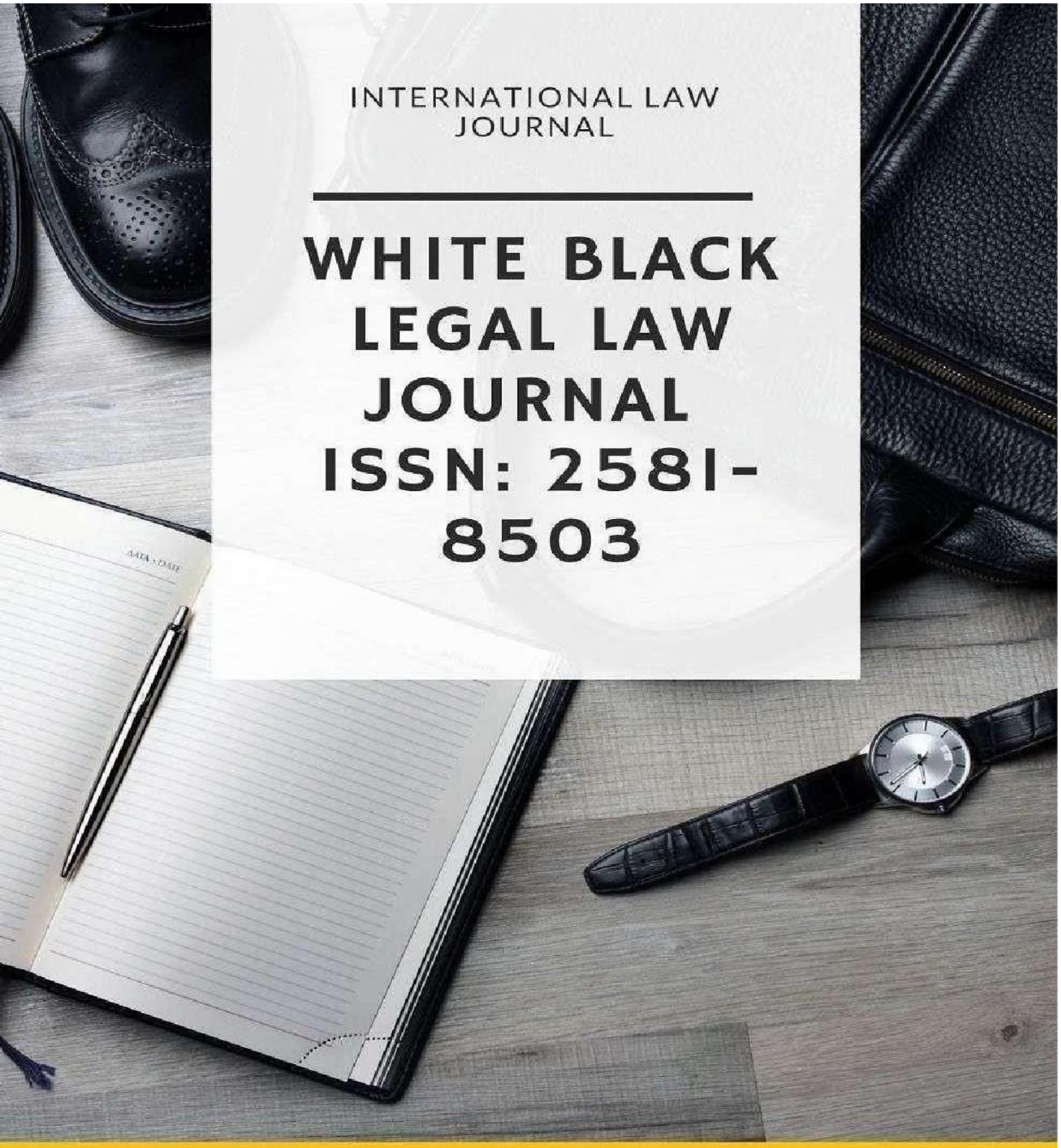

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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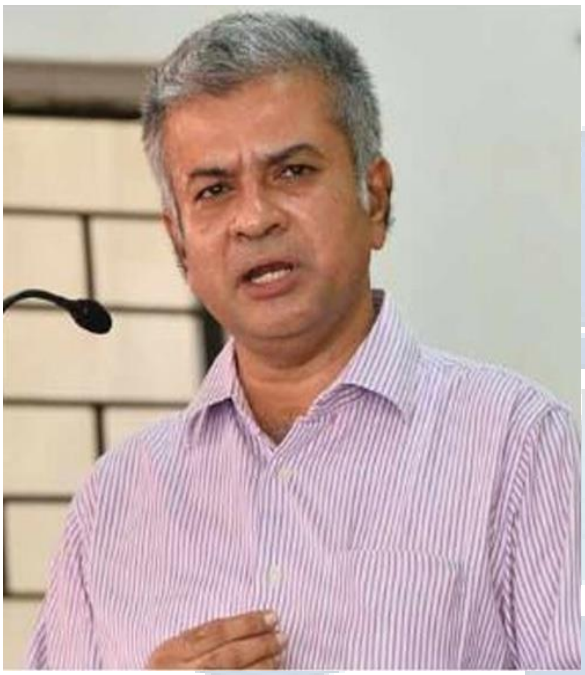

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Volume 3 Issue 1 | Feb 2025 ISSN: 2581-8503

AI IN CORPORATE BOARDROOMS: EVALUATING GLOBAL LEGAL FRAMEWORKS

AUTHORED BY: KHUSHI GARG[1]

ABSTRACT

This paper explores the growing role of Artificial Intelligence in corporate governance, focusing on future prospects implementing Artificial Intelligence (AI) Directors and the required legal frameworks to ensure accountability, transparency, and ethically sound decision-making. A comparative analysis is then carried out on the various regulations, such as the European Union AI Act, Canada's Artificial Intelligence and Data Act, and the algorithm management provisions of China, identifying critical gaps and challenges in existing accountability measures. This work, while advocating for strengthened liability definitions, robust compliance frameworks, and accountable AI decision-making, sheds light on the issues of integrating AI into governance structures without compromising the interest of the stakeholders. More fundamentally, it underlines the urgency of dynamic reforms that are capable of matching the increasing speed of technology advancements in AI, for responsible and fair corporate governance in an AI era.

Keywords: Artificial Intelligence (AI), Directors, Board, Accountable

INTRODUCTION

The 21st century has been dedicated towards developing and incorporating Artificial Intelligence (hereinafter referred to as 'AI') in various fields. This rapid advancement of AI has revolutionized various sectors, including corporate governance. The trend has been extended to corporate boardrooms[2], with initially adopting AI to assist in daily operations such as data analysis followed by constant efforts to incorporate AI in the Boardroom as a full-fledged Director[3]. AI has been seen as a tool that not only assists but may even replace

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[2] Kolbjornsrud, V., Amico, R., & Thomas, R. J., *How Artificial Intelligence Will Redefine Management*, HARVARD BUSINESS REVIEW (Nov.02, 2016), https://hbr.org/2016/11/how-artificial-intelligence-will-redefine-management.

[3] Rob Wile, *A Venture Capital Firm Just Named An Algorithm To Its Board of Directors- Here's What It Actually Does*, BUSINESS INSIDER (May 13, 2014) http://www.businsider.com/vital-named-to-board-2014-5 .

humans from corporate leadership in future. There are numerous instances of companies claiming to have appointed AI machines to managerial or board positions.

Despite massive adoption of AI in various fields, legal mechanisms to regulate ethical use have been lacking. The European Parliament in 2017, recommended to propose general principles and regulations on robotics and AI and it emphasized on use of AI 'that benefits people and society as a whole'.[4]

This paper begins with analysing the need of specific legal framework and corporate governance guidelines to regulate the use of AI in boardrooms by ensuring accountability mechanisms for decisions undertaken by AI. This section will analyse the adequacy of existing frameworks to regulate AI directors. It will also examine efforts across various jurisdictions to establish AI accountability mechanisms, particularly from perspective of corporate boardrooms.

The European Union AI Act, being 'the world's first comprehensive AI Law'[5] will be thoroughly studied from corporate perspective with a purpose of establishing accountability mechanisms. Sufficiency of comprehensive solutions in the Act to the risks associated after appointing AI as a full-fledged director in boardroom would form an integral part this process. Thereafter, recommendations for improving these mechanisms will be proposed, addressing the subject matter effectively.

STATEMENT OF PROBLEM

Rapid integration of AI into corporate governance, especially in corporate boardrooms with the purpose of enhancing decision-making, efficiency and innovation has come into picture in recent times.[6] However, this integration also poses some complex challenges that need thorough considerations related to accountability, transparency and ethics.[7]

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[4] Eleanore Hickman & Martin Petrin, *Trustworthy AI and Corporate Governance: The EU's ethics guidelines for Trustworthy Artificial Intelligence from a company law perspective*, 22 EUR. BUS. ORG. LAW. REV. 593, 594-596 (2021).

[5] European Commission. (2021). Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. COM/2021/206 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206.

[6] *Supra* note 3.

[7] Martin Petrin, *The Impact of AI and New technology on Corporate Governance and Regulation*, SING. JLS. 90, 96,99 (2024).

One of the challenges is related to accountability of the decisions taken or suggestions given by AI directors in the Boardroom, which lacks a proper legal framework at present and, legislatures from around the world have been working on the same.[8]

Currently, the corporate governance system is designed to primarily integrate human directors, having the legal capacity, moral judgement and ability to be held accountable. AI systems, lack these attributes and their decisions are purely based on the algorithms and prompts that raise fundamental questions about how to ensure responsibility for AI-driven decisions.[9]

Assigning responsibility for decisions in corporate is a crucial element of law. AI decisions lack moral and legal capacity multiplying disinformation, manipulation, vulnerabilities etc. Questions surrounding the allocation of liability- whether it falls on the AI developers, users, or the corporations themselves-remain unresolved.

Hence, the problem lies in the existing framework which is inadequate to regulate accountability of AI in Boardrooms. This paper will highlight the need for comprehensive legal reforms and governance models ensuring AI accountability and recommendations regarding establishment of clear liability mechanisms to mitigate risks associated with AI-drive governance.

RESEARCH QUESTIONS

1. Why legal reforms are necessary to ensure transparency and accountability in AI-driven governance models?
2. Whether the current legal framework and corporate governance guidelines are sufficient to establish accountability mechanisms of AI Directors?
3. Whether the European Union AI Act adequately reflects upon the potential risks associated with AI in corporate governance and propose comprehensive solutions?

[8] PTI, *A world first law in Europe is targeting AI. Other countries can learn from it*, ECONOMIC TIMES (Aug.15, 2024) https://economictimes.indiatimes.com/tech/artificial-intelligence/a-world-first-law-in-europe-is-targeting-ai-other-countries-can-learn-from-it/articleshow/112546075.cms?from=mdr .
[9] Sergio Alberto Gramitto Ricci, *Artificial Agents in Corporate Boardrooms*, 105 CORNELL L. REV. 869, 871 (2020).

RESEARCH OBJECTIVES

The primary objective of this study is to examine the current and potential legal frameworks governing AI accountability from perspective of corporate boardrooms. A critical evaluation of the existing corporate governance frameworks will be undertaken to assess their guidelines in regulating AI systems, especially in terms of assigning accountability.

Though, at present, AI has not completely taken the role of a Director in the Boardroom, but it has been automating clerical and operational tasks which are routine in nature. An increased effort has been constantly sought in corporates to appoint AI as Directors[10] as it is capable of analysing large volumes of data and simplifying complex tasks, making it an attractive option for enhancing decision-making efficiency and reducing human error. Failure to consider various factors such as legal and moral capacity, impact of decisions, accountability in law might lead to unexpected repercussions. Hence, this paper will emphasize on improvements in current legal framework for AI and corporate governance guidelines to ensure inclusivity of a comprehensive system of liability and accountability for decisions undertaken by AI Directors and their impact.

RESEARCH METHODOLOGY

This study emphasizes on the necessity for comprehensive legal reforms addressing AI accountability. It will also identify inadequacy in existing legal frameworks which requires a thorough understanding of established doctrine. This paper will include Doctrinal research methodology which is conducted through analysis of existing legal provisions, cases, judicial pronouncements, articles, journals, reports and others to reach a valid conclusion. It can be said that it is a library-based study to gather relevant information and data on a particular problem.

This method is adopted as the purpose of Doctrinal research aligns with the objectives of this study by providing a systematic framework for examining existing legal principles and identifying gaps in them which require a thorough understanding of established doctrines. Hence, doctrinal research will serve as a critical foundation for this study, enabling a deeper analysis of the legal challenges surrounding AI in corporate governance. By identifying gaps

[10] Press Release, International Holding Company, IHC's Aiden Insight sets a new benchmark for the integration of artificial intelligence in high-level corporate strategy (May 7, 2024) https://www.ihcuae.com/photo/plugin/article/2024/1715086662_file_1.pdf .

and emphasizing on reforms, this study aims to contribute meaningfully to the development of a more accountable and transparent AI governance framework.

CORPORATE AI RISKS: WHY LEGAL SAFEGUARDS ARE ESSENTIAL?

Traditionally, decision making was particularly relied on human judgement and through limited sets of data. But AI has been emerged as a tool taking up such roles more efficiently and accurately using larger sets of data, especially in corporate boardrooms wherein compilation of universal data is always preferred to design the policies of the company and making a profitable business. For example, JP Morgan Chase, a worldwide leader in banking and financial services, is adopting AI for operational works such as fraud detection, algorithmic training etc. through methods such as deep learning, neutral networks, computer vision etc.[11].

However, when discussing about the role of AI particularly in corporates, one of the first attempts incorporating AI in boardrooms was by Hong Kong-based venture capital firm Deep Knowledge Ventures in 2014. It appointed AI program named "VITAL" to its board having voting rights to analyse large datasets to predict investment opportunities and potential risks, providing recommendations to human board members[12]. Similarly, Japan's largest investment bank, Nomura applied AI in asset management industry, assisting portfolio managers in deciding for investments by monitoring market conditions, identify potential risks, and provide strategic recommendations[13]. Even Hitachi has been solving difficult problems through the use of AI[14].

Beyond these early adopters, several corporations have recognised AI's potential such as Bridgewater Associates, a major American hedge fund's launch of fund that uses machine learning as the primary basis of its decision making. It will analyse market trends and manage employee relations, forming part of its overall decision making[15].

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[11] K Tulsi & A.D., *Transforming Financial Services: The Impact of AI on JP Morgan Chase's Operational Efficiency and Decision-making*, 10(1) IJSRET 207, 208-209 (2024).
[12] *Algorithm appointed board director*, BBC (May 16, 2024) https://www.bbc.com/news/technology-27426942 .
[13] *Nomura Asset Management trials AI for investment decision making*, FINEXTRA (June 26, 2017).
[14] Chetan Gupta, et al., *Taking decision-making to a whole new level*, HITACHI (June 28, 2018) https://www.hitachi.com/rd/sc/insightslab/insightslab2.html .
[15] Sonali Basak & Bloomberg, *Bridgewater starts $2 billion fund that uses machine learning for decision-making and will include models from OpenAI, Anthropic and Perplexity*, FORTUNE (July 1, 2024) https://fortune.com/2024/07/01/bridgewater-2-billion-fund-machine-learning-decision-making-openai-anthropic-perplexity/ .

While these are some examples illustrating AI's rapid integration in corporate strategy, but they also pose crucial legal and ethical issues. This integration of AI at board level for decision making process raises various accountability concerns in law. As AI systems gain influence in decisions undertaken by the board, it is important to revisit and reevaluate the traditional corporate governance guidelines that lack mechanisms for AI governance, as these decisions impact stakeholders- shareholders, employees, customers etc.

Accountability refers to the processes, norms and structures holding persons legally responsible for their actions and imposing sanctions if they violate the law[16]. In corporate governance it ensures that individuals and organisations are held responsible for their actions and decisions to promote transparency, trust and ethical behaviour, particularly directed towards the stakeholders that include- shareholders, employees, customers and public at large. Stakeholder accountability is increasingly intertwined with corporate governance as it includes groups who affect or are affected by a company's operations. (Niamh M. Brennan, 2008).

The need of accountability mechanisms arises from this impact of corporate decisions on diverse groups of stakeholders. Accountability mechanisms such as governance regulations, financial reporting, board accountability plays a crucial role in aligning the interests of management with other stakeholders, thereby fostering trust and confidence in corporate operations[17]. (Niamh M. Brennan, 2008)

Rapid integration of AI in boardrooms because of their ability to process huge data sets and extract actionable insights into critical sectors, without adequate ethical frameworks poses risks such as unintended consequences, biases in decision making algorithms and concerns over data privacy[18].

For corporate governance to fully realize the advantages of AI, it will require robust legal reforms to respond to the ethical, social, and legal implications arising from its integration. The more that decision-making is ceded to AI systems, the less that traditional structures of

[16] *Accountability to the Law*, UNITED STATES INSTITUTE OF PEACE HTTPS://WWW.USIP.ORG/GUIDING-PRINCIPLES-STABILIZATION-AND-RECONSTRUCTION-THE-WEB-VERSION/RULE-LAW/ACCOUNTABILITY-THE-LAW .
[17] Niamh M. Brennan & J.F., *Corporate Governance, Accountability and Mechanisms of Accountability: An Overview*, 21 ACCOUNT. AUDIT. ACCOUNT. J. 885, 896-898 (2008).
[18] Luciano Floridi et al., An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations, 28 Minds & Machines 689, 690-692 (2018)

corporate governance are sufficient because they were founded on human accountability. For instance, whereas generative AI seeks patterns in large datasets, they reinforce biases embedded in the dataset. This leads to unjust decisions contrary to equality and non-discrimination laws. This problem of bias coming from an algorithm explains why laws have taken to making machines fair and unbiased, applying rules of equity within their judgments. Companies can audit AI models for latent biases through algorithms audited by law for ethical AI usage and proper protection of stakeholders' rights.

Privacy concerns also call for legal reforms, as generative AI is based on huge chunks of data that contain critical personal information. Even though stringent data protection standards are drawn in Europe by the rules of General Data Protection regulation (GDPR), most jurisdictions do not have its counterpart, leaving personal information vulnerable to misuse. Legal reforms should protect individual privacy rights by mandating strict data management practices by AI systems, involving data collection and storage, processing, and deletion. Such legal reforms would require corporations to undertake regular data practice audits to ensure the AI system respects the individual's right to privacy and follows the boundaries of the law. The clear legal obligations of data protection would provide accountability mechanisms that enhance stakeholders' trust in AI-powered corporate governance.

Moreover, the opaqueness of AI decision-making has also been challenging in terms of transparency, one of the cornerstones of effective corporate governance. As human board members have intuitive explainability, it makes it challenging for stakeholders to understand why a particular decision was taken. For instance, a legal requirement may make a company explainable and accountable in the use of AI models by the requirement of interpretation. In this way, such regulations may encourage transparency, trust, and stakeholder value as they make a firm to explain what decisions were made by an AI model in a clear and specific manner. This highlights the need for legal reforms to enhance accountability in AI governance, ensuring that stakeholders are well-informed about the impact of AI decisions. Such reforms would align AI governance with principles of accountability and stakeholder engagement.

The rising AI-generated content also brings up issues of Intellectual Property Rights and accountability, which are not addressed by existing laws. This raises the traditional concepts of authorship and ownership, challenging the notion of whether IPR should extend to AI-generated works. There is also the very complex question of liability resulting from damage or

loss caused by decisions based on AI. In such matters, legal frameworks might have to adjust such that responsibility gets clearly defined upon the developers, users, or companies implementing AI in corporate contexts. These reforms redefine liability standards for AI-generated content and actions, securing intellectual property rights in the face of clarification of the recourse options of affected parties in the name of AI-driven decision-making.

Lastly, because AI technologies are changing at such an incredible pace, their regulation also become a significant challenge. Such rapid-paced AI, tends to run beyond the traditional legal framework, creating compliance risks for these confused corporations in knowing which part of the outdated regulations could apply to new AI capabilities. Therefore, legal reforms can lead to dynamic regulatory frameworks to catch up with the latest trends of AI. This would mean that in the event of regulatory frameworks that integrate voluntary and mandatory audits, corporations might have clear channels to follow in their quests for compliance. This way, corporations can innovate while still being held accountable for ethical and legal standards.

The implementation of AI in corporate governance is a transformational change requiring far-reaching legal reforms. These reforms would then deal with algorithmic bias, data privacy, and issues of transparency and intellectual property as well as the ethical implications on AI-driven governance models. This embrace would make more than mere shielding for stakeholders, thus setting a framework for AI's responsible and ethical development while ensuring corporate goals mesh with society's expectations. Such reforms can ensure that AI is applied as a tool that enhances corporate governance and not undermines it.

COMPARING AI ACCOUNTABILITY LAWS: A CROSS-BORDER EXAMINATION

As the countries worldwide develop AI legal frameworks, their primary focus remains broad, covering various aspects of AI governance. Amid this, the intersection of company law with AI is still an evolving area. This section will examine whether existing and emerging AI frameworks effectively establish accountability for AI- driven decision making in corporate governance through a comparative analysis of key AI regulatory models across different jurisdictions.

To begin with the analysis, the ***Algorithmic Accountability Act of 2022***,[19] which was introduced in the Senate of the **United States of America** is a leading jurisdiction in the AI regulations. It mandates the Federal Trade Commissions (FTC) to establish regulations requiring large companies to conduct impact assessments[20] on automated decision systems (ADS) and augmented critical decision processes. The Act provides a procedural framework mandating conduct of impact assessments of 'critical decisions'[21] by automated decision systems (ADS) and augmented critical decision processes under Section 3 to address potential biases, maintain documents, submit annual summary reports and initial summary reports and mitigate negative impacts of such decisions on consumers timely. However, independent audits are not mandated by the Act rather it is required 'if necessary' and 'if possible, to an extent', leaving a scope for entities to avoid the same, which by default limits external oversight over an entity's self-assessment, thereby reducing the Act's effectiveness in ensuring accountability. This implies that the responsibility lies on companies deploying AI, however genuine accountability remains undermined due to absence of mandated external audits. Furthermore, while establishing Bureau of Technology as an advisory and oversight body, the Bureau's authority is limited to enforcement of standards only. Despite these procedural and oversight frameworks, the question of accountability remained unanswered. The Act doesn't explicitly establish liability for the harm caused by automated decisions, nor does it outline who is accountable if an AI system's decisions lead to adverse consequences. This oversight combined with the lack of third-party audits, creates a loophole for companies enabling them to refusal of accountability if AI decisions cause in Board harm.

As AI regulation evolves globally, Singapore's model gives a different perspective, particularly in its approach to corporate governance and accountability via government led initiatives as compared to private sector led by USA, making Singapore a relevant jurisdiction for the analysis. The ***Model AI Governance Framework for Generative AI***[22] released by **Singapore** in May 2024 seeks to set forth a systematic and balanced approach to address generative AI concerns while continuing to facilitate innovation. It proposes for an inclusive mechanism to

[19] S. 3572, 117th Cong. (2022) https://www.congress.gov/bill/117th-congress/senate-bill/3572/text .
[20] S. 3572, 117th Cong., § 2(12) (2022) – [2(12) IMPACT ASSESSMENT.—The term "impact assessment" means the ongoing study and evaluation of an automated decision system or augmented critical decision process and its impact on consumers.]. https://www.congress.gov/bill/117thcongress/senatebill/3572/text#idb623d65993b349c088a413a1457f1547
[21] S. 3572, 117th Cong., § 2(8) (2022).
[22] AI Verify Foundation & IMDA, *Model AI Governance Framework for Generative AI*, AI Verify Foundation, 7-8 (May 30, 2024) https://aiverifyfoundation.sg/wp-content/uploads/2024/05/Model-AI-Governance-Framework-for-Generative-AI-May-2024-1-1.pdf .

determine accountability, comprising of model developers, those deploying applications, and cloud service providers to ensure that users are protected.

The framework suggests dividing responsibility into two key stages- ex-ante (planning stage) and ex-post (redressal after issue arise). At the planning stage (i.e., AI creation process), shared-responsibility approach is suggested to manage risks with each stakeholder having a role based on their level of control to protect end-users by taking necessary actions. Also, those deploying these models are advised to download these from official and trusted sources to avoid security risks and model developers should ensure issuance of proper guidelines and instructions. After the issue has arisen, such shared-responsibility mechanisms do provide a basis for accountability, but it is practically challenging to allocate responsibility in new or unanticipated issues.

It further emphasizes for a more comprehensive and systematic approach to ensure safe evaluation for trusted development and deployment of models. Evaluation through benchmarking tests assessing performance and safety; and red teaming lack focus on back-end safety. The model framework, while looking ahead to draw provisions from European Union proposed AI Liability Directive, suggests that unforeseen impacts on society (from generative AI) leaves a room for evolution of existing laws.

This could probably mean that companies planning to employ AI in their boardrooms for decision-making must ensure that it is sourced from a trusted entity which must provide thorough guide for its use and application and their decisions should be reevaluated through human intervention. The Singaporean model divides accountability at different stages with AI developers ensuring compliance before deployment and corporate entity ensuring post-deployment oversight, requiring such companies to establish internal review mechanisms to ensure accountability.

While Singapore's framework emphasizes on shared-responsibility approach by distributing accountability through a chain, it still lacks post-deployment accountability measure for AI-driven decision making. Similarly, the framework proposed by **China** ensures compliance and national security, but do not define accountability mechanisms for AI in corporate governance. The **Chinese** ***Provisions on the Administration of Algorithm Recommendations for Internet***

Information Services of 2022[23], though not targeting every aspect of AI in autonomous decision-making, is setting foundational guidelines in scenarios where AI take up its role in decision making on algorithm-based recommendations. The provisions require algorithm recommendation service providers to give options to disable personalization when AI algorithm significantly affect users' choices to ensure transparency and user control and consent. It also prohibits algorithmic AI decision making systems from engaging in manipulative, addictive or discriminatory practices and mandating regular security assessments for algorithms with significant public impact or those handling sensitive data, but it is silent on AI fairness audits. Non-compliance in cases where such AI decisions cause harm or leading to adverse outcomes will be followed by penalties including fines and potential criminal charges as given in Chapter V- Legal Liability. These rules are specifically targeted towards the AI algorithm recommendation service providers and not directly towards autonomous decision making of AI in corporate boardrooms.

The **Chinese** Government also issued ***Measures for the Management of Generative Artificial Intelligence Services (Draft for Comment) in 2023***[24], that lays down comprehensive accountability standards for generative AI providers wherein it is duty of providers to ensure that content generated by AI avoids subversive or socially destabilizing information or false or misleading content or harmful or discriminatory content (Article 4 and 12). Providers are responsible to prevent harmful content from being generated again through optimization training on receiving complaints. Non-compliance under Chinese cybersecurity and personal data law may lead to penalties for providers. The sole responsibility on service providers, ignoring the chain of developers and users also pose questions on this framework. The primary focus is on controlling generative AI content rather than establishing clear accountability mechanisms by ensuring AI's compliance with Socialist core values and national security concerns instead of comprehensiveness.

[23] Provisions on the Administration of Algorithm Recommendation for Internet Information Services (promulgated by Cyberspace Administration of China Ministry of Industry and Information Technology of Public Security State Administration for Market Regulation, Dec. 31, 2021, effective Mar. 01, 2022) Cyberspace Administration of China website at Document no. 9, https://www.gov.cn/zhengce/zhengceku/2022-01/04/content_5666429.htm (China).

[24] Translated source- Seaton Huang et al. Measures for the Management of Generative Artificial Intelligence Services (Draft for Comment) (promulgated by Cyberspace Administration of China Ministry of Industry and Information Technology of Public Security State Administration for Market Regulation, Apr. 12, 2023) https://digichina.stanford.edu/work/translation-measures-for-the-management-of-generative-artificial-intelligence-services-draft-for-comment-april-2023/ .

While China's regulatory framework focuses on regulating service providers rather than ensuring accountability through the entire AI lifecycle. There is a limited clarity on accountability scrutinization for AI- driven decisions, particularly in corporate boardrooms. Some of these key gaps of Chinese framework have been addressed by the United Kingdom's regulatory framework through a more structured and proactive approach by advocating for accountability mechanisms that extend across AI lifecycle- AI development, deployment, and operational stages.

As per **United Kingdom's** proposed ***AI regulatory framework***[25], AI systems having high levels of autonomy, tend to make decisions or provide outcomes which may not be explicitly foreseen or programmed sometimes, justifying the need for assurance techniques like impact assessments to help identify potential risks. While advocating for accountable AI (having significant impact on people's lives), it emphasizes that accountability shall flow from clear responsibility in the whole AI lifecycle process-the development, deployment, etc., and the responsible involvement of each actor-the developers, operators, and deployers-by holding each actor to his part. Each is then held accountable for such aspects and obliged to carry out very thorough documentation, impact assessment, and audit that create traceable decisions in full transparency with accountability and compliance. Besides these, standards for reliability and security based on technical consensus are implemented with focused guidelines from relevant regulators to allow stakeholders toward the achievement of accountability requirements. Collaboration of agencies across the industry with other participants is also urged to generate best practices to protect the public trust in line with balancing responsible innovations with robust accountability. However, the framework's effectiveness depends largely upon its enforcement, as ensuring full compliance with impact assessments and documentation requirements might pose operational challenges for business integrating AI at the board level.

In contrast to the UK's regulatory framework extending accountability across AI-lifecycle, Canada's framework suggests for a risk-based approach, focusing on the regulatory scrutiny of high-impact AI systems, particularly those affecting health, safety, and human rights through explicit documentation and human oversight.

[25] DEPARTMENT FOR SCIENCE, INNOVATION & TECHNOLOGY & OFFICE FOR ARTIFICIAL INTELLIGENCE, A PRO-INNOVATION APPROACH TO AI REGULATION, 2023, Cm. 815 (UK) https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper .

The Artificial Intelligence and Data Act (AIDA)[26], introduced by the **Canadian** Government in 2022 as a part of Bill C-27, aims to establish a regulatory framework for AI in Canada. The Act introduces a risk-based framework, where high impact AI systems[27] having significant effect on health, safety or human rights, are subjected to heightened regulatory scrutiny holding organizations accountable based on the risk level of their AI systems. AIDA also mandates such high impact AI systems to document processes undertaken by for making decisions and inform its level of involvement along with human intervention ensuring availability of avenue for review and appeal. It also requires organisations deploying decision-making systems are required to conduct impact assessments to analyse potential consequences of such decisions. The AI and Data Commissioner oversees the compliance and adherence to regulations and standards as per the Act thereby promoting accountability. This implies that AIDA formulate an accountability system for AI systems when such systems are used under human control. It can be inferred that even if AI is employed in the Board for decision making, human intervention is required to ensure accountability and mitigate risks associated with AI decision-making[28].

Current legal frameworks and corporate governance guidelines have much to be said about establishing accountability mechanisms for AI Directors-a highly complex issue with far-reaching implications. With more decision-making participants of corporate governance, AI systems like generative AI give both transformative benefits and risks. The Algorithmic Accountability Act introduced in the U.S.; is a procedural assessment but lacks mandated external audits and clear liability for harm, creating gaps in true accountability. Instead, the shared-responsibility model applied by Singapore's Model AI Governance Framework may precede more profound accountability issues, but a practical worry there is that these rules are not so easily administered equally.

On similar premises are the algorithms which China promises will be controlled based on transparencies in getting consent from users while lack of providing clear steps regarding self-decision over highly stake able corporate cases of self. A risk-based model for accountability

[26] C-27, Digital Charter Implementation Act, 1st Sess, 4th Parl, 202 (Canada).
[27] Decision making AI systems are likely to fall under the "high-impact" classification due to their direct influence on individuals' rights, safety, or welfare.
[28] Innovation, Science and Economic Development Canada, Artificial Intelligence and Data Act (AIDA) Companion Document (2023), online: ISED Canada https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document .

presented to Canada AIDA but as for U.K., the framework is more orientated towards lifecycle responsibility. However, both still depend entirely on human oversight and cannot be said to be the best for truly autonomous AI systems. With AI directors, accountability mechanisms will necessitate defined liability and dynamic frameworks that account for the increasingly changing role of AI in decision-making. While promising, dependency on human input combined with existing regulatory constraints suggests that it will still not be all-inclusive to ensure holistic accountability when corporate governance decisions are made with the support of AI. This piece will form the basis of further analysis in determining if existing regulations are adequate or leave gaps regarding the capability or inability of such measures to adequately address accountability in an AI-directed environment.

THE EUROPEAN UNION AI ACT

As AI governance evolves globally, different jurisdictions have taken varied approaches to balance innovation with regulation. Countries like United Kingdom and Singapore have adopted principles-based frameworks that emphasize on responsibility of actors across AI lifecycle, whereas the United States relied on sector-specific guidelines and voluntary compliance mechanisms. Adaptability to rapid technological advancements and stringent regulations to ensure AI accountability in corporate boardrooms are the common challenges reflected by these ongoing approaches.

In this landscape, the European Union has come up with a comprehensive AI regulation with its European Union AI Act as the world's first binding legal framework specifically tailored to AI governance. The Act raises critical questions about effectiveness in addressing AI's impact on corporate decision-making and accountability.

The ***European Union AI Act***[29] (EU AI Act: first regulation on artificial intelligence, 2023), ambitious in scope, raises questions about whether it is adequate to deal with[30] the unique risks AI poses in corporate governance. With artificial intelligence increasingly impacting decision-making in corporate settings, its impact on accountability, transparency, and regulatory compliance becomes critical. Corporate governance AI, particularly when used in boardrooms

[29] European Commission. (2021). Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. COM/2021/206 final https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206.

or to inform executive-level decision-making, creates challenging, high-risk situations that have unique regulatory, ethical, and operational risks. The EU AI Act has put in place various accountability measures to mitigate the risks of AI, such as provider accountability, risk management, transparency, data protection, and legal liability. However, whether the measures adopted are completely comprehensive in terms of responding to the complex issues surrounding AI in corporate governance, only time will tell. Scrutiny of the Act's provisions in conjunction with suggested solutions seems to raise issues and open up space for improvement on how the Act can address corporate governance applications better.

1. Accountability Measures for Corporate Governance AI:

   What these multi-faceted accountability mechanisms brought into the European AI Act was a multipronged system of provider liability for the design, development, and use of AI, including measures of risk control and mitigation, as well as requirements for data protection and liability in the pursuit of establishing a general basis with regard to the ethics surrounding responsible development of artificial intelligence. However, for AI in corporate governance, and especially in the high-risk applications which reach all the way to top-tier decision-making processes, the Act may have gaps regarding oversight, tracing of decisions made, and accountability at an executive level. Such inadequacies are likely to present serious conflicts when the AI influence bleeds into finance, strategies, or ethics in governance, which necessitates more traditional accountability rules to assure corporate integrity and stakeholder trust.

   As seen in jurisdictions like the UK and Singapore, integrating accountability in corporate AI governance involves clearer definitions through accountability across AI lifecycle at different stages. Similarly, as per multipronged system of EU framework, for instance, accountability may be ensured by assigning roles like Chief AI Officer or Compliance officer to mitigate risk.

2. Vendor Accountability and Risks With Corporate AI

   The EU AI Act puts more responsibility on AI providers by mandating compliance standards, conformity assessment, and monitoring high-risk AI systems on a constant basis. In corporate governance AI, however, AI often operates within complex dynamic environments, within which AI might be woven into decision-making systems not directly visible from providers. Corporate governance applications, especially the

generative AI used in the assessment of risk, planning, or financial predictions, can be unpredictable because it is driven by autonomous decision-making. This means provider distance and the difficulty of responsibility assignment to external providers, and not internal corporate actors, may require a revisit in accountability measures to cover up to entities that actually deploy and operate the AI system within corporate settings.

This gap calls for defined roles of internal functions, like a Chief AI officer or a compliance officer, who would be assigned to ensure the on-going governance of AI systems within the corporation. Such internal roles would assist in aligning corporate policies and broader regulatory frameworks.

3. Risk Management: The Evolving Need for Corporate-Specific Standards

The Act requires thorough risk assessment and mitigation measures for high-risk applications of AI. These measures, while effective in theory, might not apply to the specific risks that AI poses to corporate governance. Standards on managing risk may not encompass the possibility of AI having an influence on high-stakes decisions involving investments, mergers and acquisitions, or regulatory compliance. Under these conditions, AI-based decisions may unwittingly compromise corporate clarity, produce data biases, or expose cybersecurity vulnerabilities.

To tackle these issues, the EU can choose Boardroom AI-specific corporate-risk management standards by emphasizing financial misjudgement, stakeholder biases and data misinterpretation in the boardrooms of its corporations. Periodic and independent audits of corporate AI system applications in corporate settings could ensure that such systems meet at least the acceptable requirements and standards for the good conducts of corporate governance.

4. Obligation Towards Transparency and Decisibility:

Transparency is the hallmark of the EU AI Act, requiring information about functionality, design, and risks associated with AI systems from AI providers. However, in the contexts of corporate governance, transparency must be more than just a matter of documentation; rather, it includes real-time traceability of the decisions generated by AI allowing corporate boards to review, understand, and, if necessary,

then override decisions that lack human insight. The most significant application of AI in corporate governance typically occurs in high-stakes and confidential settings where the decision of the AI has a direct bearing on the shareholder value, regulatory compliance, and the organization's strategic direction. Therefore, the Act's provisions must be developed to incorporate traceability of decisions so that all the stakeholders of the corporation would understand the reasoning and underlying bias in the AI-generated outputs.

For example, introducing an AI "black box" testing system that would capture and validate AI decisions in core enterprise applications, either through self-regulation by companies or through external third-party audits may enhance transparency and deepen confidence in AI's governance mandate, thereby ensuring accountability.

5. Data Protection and Bias Mitigation

A second area of congruence between the Act and the GDPR are the data protection and data governance provisions, where data quality, accuracy, and the requirement to minimize bias are among the principles aligned with each other. However, most predictive or recommendation capabilities for AI in corporate governance are developed using large datasets and risk perpetuating existing biases into the executive decision-making process-for example, if an AI is determining personnel performance or recruiting metrics with inadequate auditing. The data governance requirements by the Act could be extended to focus on the mitigations of bias in a corporate environment, where biases based on AI are prone to discrimination, market misjudgement, or affect diversity within the workforce, questioning the accountability of such decisions.

Ensuring mandatory bias testing and impact assessments for the deployment of corporate AI could be employed to mitigate those risks while ensuring data integrity and fairness. (Jim Holdsworth, Matthew Kosinski, 2024)

6. Legal Liability and Penalties: Corporate Accountability

The provisions on liability and penalties under the EU AI Act ensure that accountability is there, even bringing in hefty fines in case of noncompliance. Corporate governance is not an easy affair when it involves AI and human actor interaction in decision-

making. The current act primarily assigns liability to providers and deployers, but corporate decision-making usually involves a lot of parties from the board of directors to the executive managers who should also bear some responsibility.

This would make the Act more precise in dealing with accountability in corporate contexts, providing more defined grounds for distributing accountability between AI providers and corporate decision-makers. Further liability provisions may also be needed to extend to require corporations to develop internal AI accountability frameworks to encourage organizations to self-regulate and reduce risks proactively rather than through punishment.

CONCLUSION

While such introduction of AI Directors to the corporate governance setting offers huge potential for transformation, this poses unprecedented challenges to the existing legal framework. The exercise of corporate powers must help them align AI decision-making processes with accountability standards through a twin approach in the establishment of human oversight and compliance through established regulatory standards. This could be done based on an understanding of how the AI system might go through large data sets for a better decision-making outcome, still being under human board of directors with a consideration of legal and ethical checks against the output that an AI might provide. In this sense, frameworks developed for AIDA, such as in the case of the Canadian Artificial Intelligence and Data Act, actually strengthen this notion of human-centric involvement in AI-driven decisions.

Including such measures within corporate governance will ensure that AI is used for efficiency but under human control for significant decisions. The model in Singapore's Model AI Governance Framework is one of shared responsibility, specifying responsibilities by model developers, operators, and end-users. It helps promote openness and responsible use of AI by establishing clear standards of accountability and periodic review of AI systems to better instill trust among all stakeholders while mitigating potential bias and data privacy violation risks. The powers of AI Directors should be well extended through effective legal reforms by filling gaps in present laws.

For instance, the U.S.'s Algorithmic Accountability Act of 2022 requires impact assessments

but also requires independent audits to make it even more accountable. Liability definitions must also be defined for AI-driven decisions such that when AI systems cause harm, corporations can protect their stakeholders and maintain the standards of ethics. Transparency has to be the cornerstone of any expanded framework governing AI Directors. Making transparent and understandable AI decision making in a way that stakeholders get such explanations through mandatory explainability requirements, which build their trust and allow them to make inclusive decisions. Internal accountability frameworks for AI use, as mandated by the law, would be quite helpful to the corporate governance landscape. Such frameworks will allow AI Directors to pursue best practices, encouraging active risk mitigation and adherence to guidelines that are ethically sound. This would not only fortify accountability but also a responsible culture of AI use within organizations. Legal frameworks over AI have to keep abreast with the pace of evolution in AI technologies.

AI Directors should be granted the powers to engage in the debate of policy related to the legal framework of AI and its involvement in shaping new rules and regulations while striving for the creation of proper frameworks that ensure the effective governance of AI. Sustained involvement of regulators, corporations, and technologists in debate will be important for ensuring the development of a proper regulatory climate that adequately addresses the special challenges that AI poses. This will, therefore, ensure that accountability mechanisms will evolve along with the emergence of technology. In conclusion, the powers of AI Directors can be exercised within existing legal frameworks but would require a comprehensive approach toward robust accountability mechanisms, clear liability definitions, and increased transparency for effective expansion.

Such a regulatory environment would allow corporations to use the capabilities of AI responsibly and ethically, making their corporate governance more informed and equitable. In case the AI Directors are well embedded within the corporate structure with proper compliance measures and ethical commitment to AI, not only would it safeguard stakeholder interests but also deploy AI technologies against legal and ethical imperatives, making corporations more intact and trusted.