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## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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# **A CRITICAL STUDY ON ALGORITHMIC DECISION MAKING IN MERGERS AND ACQUISITIONS AND ITS IMPACT ON DIRECTORS FIDUCIARY DUTIES AND TRANSACTIONAL LIABILITY**

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## **ABSTRACT**

The increasing integration of algorithmic decision-making and artificial intelligence in corporate transactions has significantly transformed the landscape of mergers and acquisitions (M&A). Companies increasingly rely on data-driven technologies for target identification, valuation analysis, due diligence, risk assessment, and strategic decision-making. While these technologies improve efficiency and accuracy, they also raise complex legal and governance concerns regarding accountability, transparency, and oversight within corporate transactions. This study critically examines the role of algorithmic decision-making in M&A processes and analyses its implications on directors' fiduciary duties and transactional liability. The paper explores whether directors can reasonably rely on algorithmic systems while discharging their duties of care, diligence, loyalty, and good faith under corporate law. It further evaluates the legal risks arising from biased, inaccurate, or opaque algorithmic recommendations that may adversely affect shareholders, investors, and transactional fairness. By analysing existing corporate governance principles, regulatory frameworks, and comparative international approaches, the study identifies significant gaps in the current legal regime governing AI-assisted corporate decisions. The research argues for a balanced regulatory framework that ensures technological innovation while preserving director accountability and corporate transparency. It concludes by recommending governance standards and compliance mechanisms for the responsible use of algorithmic systems in M&A transactions.

**KEYWORDS:** Mergers and Acquisitions (M&A), Algorithmic Decision-Making, Directors' Fiduciary Duties, Transactional Liability, Corporate Governance

## INTRODUCTION

The rapid advancement of artificial intelligence and algorithmic technologies has significantly transformed modern corporate decision-making processes, particularly in the field of mergers and acquisitions (M&A). Traditionally, M&A transactions depended upon human judgment, financial expertise, strategic negotiations, and managerial discretion. However, contemporary corporations increasingly rely on algorithmic systems for target identification, valuation forecasting, due diligence, risk analysis, and transaction structuring. These technologies are capable of processing vast amounts of commercial data within a short period, thereby improving efficiency and reducing operational costs. Despite these advantages, the growing dependence on algorithmic decision-making raises serious concerns regarding accountability, transparency, corporate governance, and legal liability in corporate transactions.

As noted by John McCarthy, “Artificial intelligence is the science and engineering of making intelligent machines<sup>1</sup>.” The integration of such intelligent systems into M&A transactions demonstrates how corporate law is increasingly intersecting with technological innovation. While algorithms may assist directors in making informed commercial decisions, excessive reliance on automated systems may weaken independent managerial judgment and create uncertainty regarding fiduciary accountability.

The fiduciary duties of directors constitute one of the foundational principles of corporate governance. Directors are expected to act in good faith, exercise reasonable care and diligence, avoid conflicts of interest, and protect shareholder interests during corporate transactions. In complex M&A deals, directors often depend upon financial advisors, investment bankers, and legal experts. The introduction of algorithmic systems into this framework raises a crucial legal question: whether directors can escape liability by relying on automated recommendations generated through artificial intelligence tools. As famously observed in the Delaware judgment of *Smith v Van Gorkom*, “A director’s duty to exercise an informed business judgment is in the nature of a duty of care<sup>2</sup>.” This principle becomes increasingly relevant when decisions are influenced by opaque or biased algorithmic systems.

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<sup>1</sup> John Mc Carthy, quoted in Pamela McCorduck, *Machines Who Think* (2nd edn, AK Peters 2004) 423.

<sup>2</sup> *Smith v Van Gorkom* 488 A 2d 858 (Delaware Supreme Court 1985).

Furthermore, algorithmic decision-making may produce discriminatory, inaccurate, or manipulated outcomes due to flawed datasets, hidden biases, or lack of explainability. Such risks become particularly dangerous in high-value M&A transactions where even minor errors may result in shareholder losses, market instability, or regulatory violations. According to Frank Pasquale, “The power of algorithms lies in their invisibility and complexity<sup>3</sup>.” The opaque nature of algorithmic systems creates difficulties in determining liability when corporate decisions adversely affect stakeholders. Consequently, directors may face legal exposure under fiduciary duty principles, securities regulations, and corporate governance norms if algorithmic reliance results in unfair or negligent transactions.

In the Indian context, the legal framework governing directors’ duties is primarily contained under the Companies Act 2013, particularly section 166, which imposes duties of care, skill, diligence, and good faith upon directors. However, the legislation does not specifically address the use of artificial intelligence or algorithmic systems in corporate management and transactional decision-making. Similarly, existing securities regulations under Securities and Exchange Board of India primarily focus on disclosure and investor protection without adequately addressing AI-based corporate governance risks. This regulatory gap creates uncertainty regarding the extent of directors’ accountability in technology-driven transactions.

As observed by Stephen Hawking, “Success in creating AI could be the biggest event in the history of our civilisation<sup>4</sup>.” While artificial intelligence undoubtedly offers substantial benefits to corporate efficiency and strategic planning, its unchecked use may undermine transparency, ethical governance, and shareholder protection. Therefore, there is an urgent need to critically examine the legal implications of algorithmic decision-making in M&A transactions and reassess the traditional understanding of directors’ fiduciary duties and transactional liability in the digital corporate era.

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<sup>3</sup> Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 8.

<sup>4</sup> Stephen Hawking, interview with BBC, ‘Stephen Hawking Warns Artificial Intelligence Could End Mankind’ (BBC News, 2 December 2014).

## REVIEW OF LITERATURE

### ***THE RISE OF ALGORITHMIC GOVERNANCE IN CORPORATE MERGERS AND ACQUISITIONS***

The growing integration of artificial intelligence into mergers and acquisitions has transformed traditional corporate governance structures. Algorithmic systems are increasingly used to conduct due diligence, evaluate acquisition targets, and predict transactional risks.<sup>5</sup> These technologies enable corporations to process large volumes of commercial and financial data with greater speed and efficiency than conventional human analysis.<sup>6</sup> Consequently, modern M&A transactions are becoming increasingly dependent upon predictive analytics and automated governance mechanisms.

The emergence of algorithmic governance also reflects the broader digital transformation of corporate management. AI-driven systems assist corporations in identifying market trends, assessing shareholder behaviour, and estimating post-merger profitability.<sup>7</sup> However, the increasing reliance on algorithmic systems raises significant concerns regarding transparency and accountability. Many automated systems operate through opaque computational processes, making it difficult for directors and shareholders to understand the basis of strategic recommendations.<sup>4</sup> Such opacity may undermine informed decision-making and weaken effective corporate oversight.

Furthermore, algorithmic governance challenges traditional principles of corporate accountability because company law continues to presume that directors exercise independent judgment while approving corporate transactions.<sup>8</sup> Where directors rely excessively on automated recommendations without meaningful supervision, questions arise regarding the adequacy of fiduciary oversight and shareholder protection in technologically driven corporate environments.

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<sup>5</sup> Steven L Schwarcz, 'Artificial Intelligence and the Future of Financial Regulation' (2019) 20 Columbia Business Law Review 1.

<sup>6</sup> Viktor Mayer-Schonberger and Kenneth Cukier, *Big Data: A Revolution That Will Transform How We Live, Work and Think* (John Murray 2013).

<sup>7</sup> Andrew McAfee and Erik Brynjolfsson, *Machine, Platform, Crowd: Harnessing Our Digital Future* (W.W. Norton & Company 2017).

<sup>8</sup> Frank Pasquale, *The Black Box Society* (Harvard University Press 2015); Margaret M Blair and Lynn A Stout, 'A Team Production Theory of Corporate Law' (1999) 85 Virginia Law Review 247.

## ***RE-EXAMINING DIRECTORS' FIDUCIARY DUTIES IN THE ERA OF AUTOMATED DECISION-MAKING***

The integration of artificial intelligence into corporate governance has significantly altered the manner in which directors exercise fiduciary responsibilities during mergers and acquisitions. Directors are traditionally expected to act with due care, loyalty, and good faith while making decisions that protect shareholder interests.<sup>9</sup> However, AI-assisted decision-making increasingly influences valuation assessments, due diligence processes, and strategic corporate planning.<sup>10</sup> As a result, important concerns arise regarding whether directors can continue to satisfy fiduciary standards while relying upon automated systems.

The duty of care requires directors to make informed decisions after exercising reasonable diligence and independent judgment.<sup>11</sup> Excessive dependence on algorithmic recommendations may weaken this obligation if directors approve transactions without understanding the limitations or risks associated with AI-generated outputs. Since algorithmic systems often rely upon historical data and predictive modelling, they may produce inaccurate or biased recommendations capable of affecting corporate transactions and shareholder value.<sup>12</sup> Consequently, directors cannot entirely delegate strategic decision-making authority to automated technologies.

The increasing use of AI systems also raises concerns regarding the continued application of the Business Judgment Rule. Judicial deference is generally granted when directors act honestly and on an informed basis.<sup>13</sup> However, where board decisions are substantially influenced by opaque computational systems, courts may question whether directors genuinely exercised independent judgment. Furthermore, the inability of directors to explain algorithmic reasoning may undermine corporate transparency and accountability. Therefore, fiduciary obligations in the digital era require directors not only to adopt technological innovation but also to ensure meaningful human oversight over automated corporate governance mechanisms.

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<sup>9</sup> Companies Act 2013.

<sup>10</sup> Jill E Fisch, 'Artificial Intelligence and Corporate Governance' (2020) 104 Minnesota Law Review 1881.

<sup>11</sup> Melvin Aron Eisenberg, *Corporations and Other Business Organizations* (Foundation Press 2000).

<sup>12</sup> Sandra Wachter, Brent Mittelstadt and Luciano Floridi, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7 International Data Privacy Law 76.

<sup>13</sup> *Smith v Van Gorkom*, 488 A.2d 858 (Del. 1985).

### **TRANSACTIONAL LIABILITY FOR AI-ASSISTED CORPORATE DECISIONS**

The increasing use of artificial intelligence in mergers and acquisitions has created new dimensions of transactional liability within corporate law. AI-assisted systems are frequently used for predictive valuation, compliance analysis, and due diligence during corporate acquisitions.<sup>14</sup> Although these technologies improve efficiency and reduce transactional costs, they also generate substantial legal risks when algorithmic outputs are inaccurate or misleading. Corporate transactions based upon defective AI recommendations may result in financial losses, shareholder disputes, and regulatory violations.

One major concern involves liability arising from algorithmic errors in due diligence procedures. Where automated systems fail to identify contractual liabilities, financial irregularities, or regulatory non-compliance, directors and corporations may face allegations of negligence and breach of fiduciary obligations.<sup>15</sup> Since AI systems are incapable of bearing independent legal responsibility, accountability continues to rest primarily upon directors and corporate entities. This creates uncertainty regarding the extent to which reliance on automated technologies can excuse or mitigate corporate liability.

Furthermore, AI-assisted transactions raise significant concerns regarding disclosure obligations and shareholder protection. Securities regulations increasingly require corporations to maintain transparency in strategic decision-making and risk management practices.<sup>16</sup> Failure to disclose the risks associated with algorithmic decision-making may expose corporations to claims of misrepresentation or corporate misconduct. Additionally, algorithmic bias and data inaccuracies may disproportionately affect market competition and investor confidence.

The growing dependence on AI technologies therefore demonstrates the urgent need for clearer liability standards and regulatory safeguards governing automated corporate transactions. Effective legal frameworks must ensure accountability, transparency, and meaningful human supervision in technologically driven M&A practices.<sup>17</sup>

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<sup>14</sup> John Armour and Horst Eidenmüller, 'Self-Driving Corporations?' (2020) 48 *Georgetown Journal of International Law* 139.

<sup>15</sup> Donald C Langevoort, 'Selling Hope, Selling Risk: Corporations, Wall Street and the Dilemmas of Investor Protection' (Oxford University Press 2016).

<sup>16</sup> Organisation for Economic Co-operation and Development (OECD), *OECD Principles of Corporate Governance* (2015).

<sup>17</sup> Guido Noto La Diega, 'Against the Dehumanisation of Decision-Making: Algorithmic Decisions at the Crossroads of Intellectual Property, Data Protection, and Freedom of Information' (2018) 9 *JIPITEC* 3.

## **REGULATORY GAPS IN GOVERNING AI-DRIVEN CORPORATE TRANSACTIONS**

The rapid expansion of artificial intelligence in corporate mergers and acquisitions has exposed significant regulatory gaps within existing corporate governance frameworks. Present company law regulations were primarily designed to govern decisions made by human directors and corporate officers rather than automated systems capable of influencing strategic business transactions.<sup>18</sup> As corporations increasingly depend upon AI-assisted technologies for valuation analysis, risk assessment, and due diligence, concerns arise regarding whether existing legal frameworks are capable of effectively regulating algorithmic corporate behaviour.

One major challenge relates to the absence of uniform legal standards governing algorithmic accountability in corporate transactions. While several jurisdictions have introduced broad AI governance initiatives, there remains limited regulatory clarity regarding the obligations of directors and corporations using automated decision-making systems in M&A activities.<sup>19</sup> This regulatory uncertainty creates difficulties in determining liability for algorithmic errors, disclosure obligations, and standards of oversight. Furthermore, the opaque nature of many AI systems complicates regulatory supervision because authorities may struggle to assess the fairness, reliability, and transparency of automated recommendations.

Another important concern involves data governance and shareholder protection. AI systems depend heavily upon large datasets that may contain inaccuracies, discriminatory patterns, or confidential corporate information.<sup>20</sup> Without effective legal safeguards, algorithmic governance may compromise market integrity and investor confidence. Existing securities and corporate governance regulations therefore require modernization to address technological risks associated with automated transactions.

Consequently, policymakers increasingly advocate for explainable AI systems, mandatory human oversight, and ethical governance principles capable of ensuring accountability in AI-driven corporate environments. The emergence of algorithmic governance thus necessitates

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<sup>18</sup> Cary Coglianese and David Lehr, 'Regulating by Robot: Administrative Decision Making in the Machine-Learning Era' (2017) 105 *Georgetown Law Journal* 1147.

<sup>19</sup> European Parliament Resolution on Civil Liability Regime for Artificial Intelligence [2020] 2020/2014(INL).

<sup>20</sup> Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press 2019).

comprehensive legal reforms capable of balancing technological innovation with corporate responsibility and shareholder protection.<sup>21</sup>

## FINDINGS AND CRITICAL ANALYSIS

The study finds that algorithmic decision-making and artificial intelligence are increasingly influencing mergers and acquisitions (M&A) by transforming traditional corporate decision-making processes. Corporations now rely on AI-assisted systems for due diligence, valuation analysis, predictive risk assessment, market evaluation, and strategic planning. These technologies enhance efficiency, reduce operational costs, and enable companies to process large volumes of financial and commercial data within a shorter period.<sup>22</sup> However, the growing dependence on algorithmic systems also creates substantial legal and governance concerns relating to transparency, accountability, and fiduciary responsibility.

One of the major findings of the study is that algorithmic systems often function through opaque and non-transparent mechanisms, making it difficult for directors, regulators, and shareholders to fully understand the basis of automated recommendations. This creates a challenge in determining accountability when flawed or biased algorithms contribute to negligent corporate transactions or shareholder losses. The research identifies that directors cannot completely avoid fiduciary liability merely because decisions were based on AI-generated recommendations. Under the Companies Act 2013, directors remain legally obligated to exercise due care, diligence, good faith, and independent judgment while making corporate decisions.<sup>23</sup> Therefore, excessive reliance on automated systems without meaningful human oversight may amount to breach of fiduciary duties. The study further finds that the existing Indian legal framework does not specifically regulate AI-assisted corporate governance or algorithmic decision-making in M&A transactions. Although SEBI regulations and company law provisions address disclosure obligations and investor protection, they do not adequately deal with issues such as algorithmic bias, explainability, accountability, and liability arising from AI-driven commercial decisions.<sup>24</sup> This regulatory gap

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<sup>21</sup> Roberta Romano, 'Regulating in the Dark' (2014) 1 *Journal of Financial Regulation* 1.

<sup>22</sup> Thomas H Davenport and Rajeev Ronanki, 'Artificial Intelligence for the Real World' (2018) 96(1) *Harvard Business Review* 108–116.

<sup>23</sup> Companies Act 2013, s 166.

<sup>24</sup> Securities and Exchange Board of India, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011.

creates uncertainty regarding the allocation of liability between corporations, directors, technology developers, and advisory firms when algorithmic errors adversely affect corporate transactions.

A critical analysis of international developments demonstrates that jurisdictions such as the European Union are gradually introducing regulatory frameworks to govern high-risk AI systems through transparency obligations and human oversight requirements. The study therefore concludes that India requires a specialised regulatory framework addressing AI governance in corporate transactions. Such a framework should establish mandatory human supervision, disclosure standards, algorithmic auditing mechanisms, and accountability principles for directors relying on AI systems during M&A transactions.

The research ultimately concludes that while artificial intelligence offers significant commercial advantages in mergers and acquisitions, technological efficiency cannot replace directors' fiduciary responsibilities and ethical corporate governance obligations. Effective regulation and responsible corporate oversight are therefore necessary to balance innovation with accountability in the evolving digital corporate environment.<sup>25</sup>

## **RECOMMENDATIONS AND SUGGESTIONS**

The study recommends the introduction of a specialised legal and regulatory framework governing the use of artificial intelligence and algorithmic decision-making in mergers and acquisitions (M&A). Since existing corporate laws in India do not specifically regulate AI-assisted corporate transactions, there is a need for a comprehensive governance mechanism ensuring accountability, transparency, and ethical compliance in technology-driven decision-making processes.

### ***1. ESTABLISHMENT OF AN "AI GOVERNANCE FRAMEWORK FOR CORPORATE TRANSACTIONS"***

The Government of India, in consultation with the Securities and Exchange Board of India and the Ministry of Corporate Affairs, should formulate a dedicated AI Governance Framework

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<sup>25</sup> European Commission, Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) COM/2021/206 final.

specifically applicable to mergers and acquisitions. The framework should regulate the use of algorithmic systems in due diligence, valuation, risk assessment, and strategic corporate decisions.

The proposed framework should include:

- a) Mandatory human oversight over AI-generated recommendations;
- b) Transparency and explainability requirements for algorithmic systems;
- c) Periodic algorithmic audits and compliance assessments;
- d) Disclosure obligations regarding the use of AI in M&A transactions;
- e) Accountability standards for directors relying on automated systems.

## ***2. INTRODUCTION OF “ALGORITHMIC FIDUCIARY RESPONSIBILITY” PRINCIPLES***

The research recommends the recognition of a new fiduciary standard known as “Algorithmic Fiduciary Responsibility.” Under this principle, directors should remain legally responsible for verifying and independently evaluating AI-generated recommendations before approving mergers or acquisitions. Reliance on technology should not replace directors’ duties of care, diligence, and good faith under the Companies Act 2013.

## ***3. MANDATORY AI RISK ASSESSMENT MECHANISM***

Corporations engaging in high-value M&A transactions should be required to conduct AI Risk Assessment Reports before relying on algorithmic systems. Such reports should evaluate:

- Bias and discrimination risks;
- Data reliability and accuracy;
- Cybersecurity vulnerabilities;
- Transparency and explainability standards;
- Potential impact on shareholders and stakeholders.

This mechanism would improve corporate accountability and reduce transactional risks arising from flawed or opaque AI systems.

## ***4. CREATION OF AN INDEPENDENT REGULATORY OVERSIGHT BODY***

The study further suggests establishing a specialised AI oversight authority under the joint supervision of the Ministry of Corporate Affairs and Securities and Exchange Board of India. This body should monitor AI usage in corporate transactions, issue compliance guidelines, investigate

governance failures, and impose penalties in cases involving negligent or harmful algorithmic practices.

### **5. STRENGTHENING CORPORATE GOVERNANCE AND DIRECTOR TRAINING**

Corporate entities should adopt internal AI governance policies and provide mandatory training programmes for directors and senior executives regarding algorithmic accountability, ethical AI usage, and regulatory compliance. Directors must possess sufficient understanding of technological systems before relying upon them in strategic corporate transactions.

### **6. ADOPTION OF INTERNATIONAL BEST PRACTICES**

India may adopt comparative regulatory principles from the European Commission AI Act and Organisation for Economic Co-operation and Development AI Governance Principles to strengthen domestic regulation. International standards relating to transparency, explainability, and human oversight can assist in developing an effective Indian regulatory framework for AI-driven corporate governance.

## **CONCLUSION**

The increasing use of artificial intelligence and algorithmic decision-making in mergers and acquisitions has significantly transformed modern corporate transactions by improving efficiency, accuracy, and strategic analysis. However, the study concludes that excessive reliance on automated systems also creates serious concerns relating to transparency, accountability, fiduciary duties, and transactional liability. Directors cannot avoid their legal responsibilities merely by depending on AI-generated recommendations, as fiduciary obligations under the Companies Act 2013 continue to require due care, diligence, good faith, and independent judgment in corporate decision-making.

The research further finds that the existing Indian legal and regulatory framework lacks specific provisions governing AI-assisted corporate transactions and algorithmic accountability. Therefore, there is a pressing need for a specialised regulatory framework ensuring transparency, human oversight, and ethical governance in AI-driven M&A activities. The study ultimately concludes

that technological innovation must operate alongside effective corporate governance and legal accountability to protect shareholder interests and maintain market integrity.

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