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The Legal Framework for Corporate Governance in the Digital Economy

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The paper shows how companies should be run in India's digital world, mixing old and new laws. The main laws are the Companies Act¹ and SEBI Rules². We need to ensure companies are honest and responsible and manage risks well. Specific digital laws like the IT Act³, Data Protection Bill 2019⁴ and SEBI (LODR) Regulations 2015 protect data, manage cyber security and make companies share important info. There are common challenges like protecting our data, managing fintech well and ensuring AI is used ethically that affect how these laws are made. Bodies like SEBI, MCA and RBI⁵ ensure we follow these laws. New trends like digital payments and cybersecurity mean companies need to keep updating how they're governed.

Keywords: *digital economy, companies information technology, transparency, accountability, data security, ethical practices.*

¹ Company Act 2013

² Securities and Exchange Board of India Act 1992

³ Information Technology Act 2000

⁴ Personal Data Protection Bill 2019

⁵ Banking Regulation Act 1949

INTRODUCTION

Corporate governance in today's digital economy has become extremely critical given businesses transition towards digital platforms, technologies and processes. India is further under a framework of regulations overseeing corporate governance in these advanced surroundings, which undoubtedly integrates outdated statutes such as the Companies Act, 2013⁶ with current-edge digital-specific Regulations i.e., Information Technology Act, 2000⁷ and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015⁸. These rules are directed at promoting transparency, accountability, data protection and ethics in digital businesses.

As global business activity becomes increasingly digitised in light of emerging trends such as fintech, e-commerce and artificial intelligence, the legal landscape has been continually expanding to give attention to new risks that come with digital magnitudes. Against that backdrop, this continuous adaptation is intended to make sure companies survive amidst having to walk the tightrope of digital and regulatory hurdles alike.

RULE AND REGULATION FOR CORPORATE GOVERNANCE IN THE DIGITAL ECONOMY

Companies Act 2013: Companies Act, 2013. Companies Act 2013 is the backbone of corporate governance in India. It gives an exhaustive lawful basis for the arrangement, direction and disintegration of the company.⁹

Duties and Responsibilities of Directors and Key Managerial Personnel (KMP) -

Section 166: This section tells directors what they need to do. They must be open, honest and committed to achieving the organisation's objectives as well as they need to perform their work

⁶ Company Act 2013

⁷ Information Technology Act 2000

⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation Act 2015

⁹ Company Act 2013

diligently and competently. Often, they would use these personal interests and unify them with what the company wants.¹⁰

Part 134: This portion mentions that a top management body called the Board must report in writing about its company's activities, financial position and controls (legally risky things), as well as whether they follow proper corporate governance practices.¹¹

These are crucial regulations in the digital world, as they ensure that digital corporation processes your customer data and company secrets responsibly and transparently. In the online world, it simply means trust and all the right things.

DISCLOSURE REQUIREMENTS

The purpose of disclosure requirements is simple: to ensure that companies provide investors with relevant, accurate and timely information regarding their financial status, risks and business plans. Especially for e-commerce, fintech and other digital players where trust is everything. Some of the key sections under the Companies Act 2013 are as Follows: Section 134 (Financial Performance and Risk Management), Section 92 (Annual Returns), and Section 137 (Director Pay), which has outlined details that need to be disclosed in respect with annual returns about director pay. The prevailing norm is particularly useful for digital companies that should be open regarding such risks as cyber security and data leak incidents.

According to Section 134, the company's report should talk about how well they're doing financially, what directors are paid, and how they manage risks¹². Section 92 says that companies need to submit an annual report with details about their financial health, shares, and any leadership changes¹³. Section 137 requires companies to share their financial statements with the Registrar of Companies every year to keep things transparent.¹⁴

¹⁰ Company Act 2013, art 166

¹¹ Company Act 2013, art 134

¹² Company Act 2013, art 134

¹³ Company Act 2013, art 92

¹⁴ Company Act 2013, art 137

When it comes to compliance with these rules in the digital world, it becomes even harder as there are a lot of accountabilities for risks such as cyberattacks, data breaches, and the use of technology. It's just about being true in the digital world, and overall, it's a new keyword and certainly a trend.

Corporate Social Responsibility (CSR): Corporate Social Responsibility (CSR) is simply social giving back to society by the companies. The Companies Act 2013 in India put a law that large companies must devote at least 2% of the company's average net profit for the last three financial years towards CSR activities. Such a law is good for businesses, especially in the fast-expanding internet and e-commerce space.

One important section, Section 135, describes the companies that would have to adhere to these rules in relation to their net worth, turnover or profits:

- At a net worth of ₹500 crore and above, or
- At a turnover of ₹1,000 crore and above, or
- At a net profit of ₹5 crore and above.¹⁵

Companies meeting these criteria have to set up a CSR Committee to manage their CSR activities. They must pick projects from a specific list (Schedule VII) like education, healthcare, environment, and digital literacy.

In the digital world, CSR for digital companies can mean things like:

- Teaching people how to use digital tools.
- Educating users about data privacy and cybersecurity.
- Creating tech solutions that benefit communities, like financial services for everyone.

¹⁵ Company Act 2013, art 135

It is about using company resources for the betterment of society. It's all about companies using their resources to make a positive impact on society, especially in the digital age.¹⁶¹⁷

Securities and Exchange Board of India (SEBI) Regulations: SEBI, which stands for Securities and Exchange Board of India, keeps an eye on how listed companies run things. They've put in place rules like:

- Listing Obligations and Disclosure Requirements (LODR) from 2015¹⁸. This rule is mostly concerned with the companies' accuracy with the reports, disclosures and the management of the companies.
- **Prohibition of Insider Trading 2015:** The only purpose of this rule is to prevent persons from reaching into confidential information, as seems to be very vital in the present age where information seems to be the business.¹⁹
- **The Corporate Governance Regulations 2009:** These rules aim to enhance the accountability, transparency, and stakeholder management of firms, which in particular is critical for digital firms as it helps in going to market where trust among people is the key to success. This report is about a fair and transparent muse of the business sector.²⁰

Information Technology Act 2000 (Amended 2008): The Information Technology Act 2000 (updated in 2008) is the only act that specifically sets out the laws relating to cyber security, e-commerce, and e-transactions and provides the legal infrastructure for e-governance. It also caters especially for offences such as – Tampering with computer source documents – Hacking with computer system data – E-mail Spoofing – Forgery -Identity Theft, and Unauthorized access to any person's computer or download data.²¹

¹⁶ 'India's Proposed Digital Governance Framework: Past Developments and Present Status' (*S&R Associates Advocates*, 24 May 2023) <<https://www.snrlaw.in/indias-proposed-digital-governance-framework-past-developments-and-present-status/>> accessed 11 October 2024

¹⁷ Sharanya G Ranga and Pooja Thacker, 'Indian Digital Economy Needs Clear Laws' (*Mondaq*, 23 September 2015) <<https://www.mondaq.com/india/contracts-and-commercial-law/429118/indian-digital-economy-needs-clear-laws>> accessed 11 October 2024

¹⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation Act 2015
¹⁹ *Ibid*

²⁰ 'India's Proposed Digital Governance Framework: Past Developments and Present Status' (n 16)

²¹ Information Technology Act 2000

According to the Information Technology Act, Section 43A says that the companies protect people's private info²². Among the recent digital businesses that preserve huge amounts of user data, this conclusion become very important. It implies that companies must provide adequate security measures for safeguarding sensitive personal information. This regulation is key for firms in the digital arena that are to guarantee their responsibility in handling and using user's information.²³

Indian Contract Act 1872: This Act regulates contracts and agreements – fundamental building blocks of the digital economy. It also governs contracts concluded over the Internet, such as e-contracts, as well as terms of service, privacy policies and other online agreements. This law is as important to ensure that agreements entered online are legally binding and that people play by the rules when transacting in cyberspace.²⁴

Consumer Protection Act 2019: The Consumer Protection (E-Commerce) Rules, 2020, is all about making sure that digital platforms are answerable to consumers. This means transparency in online transactions as well as product listings and the protection of consumer data. It also ensures that digital platforms are accountable for treating consumers fairly. The Consumer Protection (E-Commerce) Rules, 2020²⁵ have been framed under this Act, which looks into aspects such as clear online transactions and accurate product descriptions and consumer data protection as well. These rules ensure transparency and protect the interests of online buyers.²⁶

DIGITAL-SPECIFIC REGULATIONS

Information Technology (IT) Rules 2011: The Information Technology (IT) Rules, 2011, are essentially the rulebook for social media, e-commerce and fintech companies in India. The Intermediary Guidelines, in particular, ensure these firms play by the Indian rule book, are

²² Information Technology Act 2000, s 43 A

²³ Ranga (n 17)

²⁴ Indian Contract Act 1872

²⁵ Consumer Protection (E-Commerce) Rules 2020

²⁶ Consumer Protection Act 2019

accountable for their actions and promptly report any cyber security vulnerabilities that arise. They are important to maintain a safe digital landscape for users.²⁷

Aadhaar Act, 2016:²⁸²⁹ Aadhaar is like a digital identity infrastructure in India, and fintech and digital payments businesses are so deeply embedded into the Aadhaar system. It's just how companies in fintech and digital payments use Aadhaar. So, this Act kind of ensures that Aadhaar information is being used responsibly, with user consent, and people's data is kept safe.

Personal Data Protection Bill 2019: The Personal Data Protection Bill 2019³⁰ is like a shield that shall protect all your personal information online. Similar to the GDPR in the EU, it is designed to ensure that your data remains secure. The impact on tech companies, e-commerce sites and fintech companies dealing with huge amounts of personal data will be major. It's all about protecting privacy in the digital world.³¹

National Cyber Security Policy 2013: The National Cyber Security Policy, 2013³², is the security guard for the internet. It gives instructions on how to keep digital systems safe from cyber-attacks and makes sure businesses can bounce back if something goes wrong. With more companies going online, this policy is super important for safeguarding data and digital operations.

²⁷ Information Technology Rules 2011, ss 1(J) - 4

²⁸ Aadhaar Act 2016

²⁹ Ishani Thakur, 'The Aadhar Act 2016: Identity, Privacy and You' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-16861-the-aadhar-act-2016-identity-privacy-and-you.html?form=MG0AV3>> accessed 15 October 2024

³⁰ Personal Data Protection Bill 2019

³¹ Anurag Vaishnav and Manish Kanadje, 'Legislative Brief: The Personal Data Protection Bill, 2019' (*PRS Legislative Research*, 5 October 2020) <https://prsindia.org/files/bills_acts/bills_parliament/2019/Legislative_Brief_-_Personal_Data_Protection_Bill_2019.pdf?form=MG0AV3> accessed 15 October 2024

³² National Cyber Security Policy 2013

SEBI REGULATIONS

SEBI, the financial market superhero, plays a vital role in keeping things fair, especially as financial transactions and investments become more digital³³:

SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015: In the digital world, being transparent about financial disclosures is crucial. This transparency is especially important for digital businesses, where the trust of capital markets and investors heavily relies on corporate behaviour being open and honest.

SEBI (Prohibition of Insider Trading) Regulations 2015: SEBI's (Prohibition of Insider Trading) Regulations 2015 are all about protecting secrets in the fast-paced digital economy. With information flowing rapidly, it's essential to ensure that insiders don't misuse confidential or sensitive data. This regulation is critical for maintaining investor confidence and trust in the financial markets.³⁴

CHALLENGES AND TRENDS

- **Data Protection and Privacy:** As more and more companies operate digitally, many end up dealing with personal consumer information, which is difficult to protect. The Personal Data Protection Bill is an attempt to try and ensure that people's privacy is valued and the individuals' right to privacy is upheld.
- **Cybersecurity Risks:** Many more digital businesses are being established, while threats are also escalating at the same level. IT act, Cybersecurity policy and almost all laws across Indian territory are quite crucial. ALWAYS need new approaches to do better and stay one step ahead of the bad guys online.
- **Fintech and Digital Payments:** Monitoring such digital money stuff like payment online and cryptocurrencies is highly crucial or very essential. The RBI and other regulatory bodies should monitor India's expanding digital payment space to ensure everything is safe from fraud.

³³ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation Act 2015

³⁴ James Chen, 'What Is the Securities and Exchange Board of India (SEBI)?' (*Investopedia*, 27 May 2022)

<<https://www.investopedia.com/terms/s/sebi.asp>> accessed 15 October 2024

- **AI and Machine Learning:** With apt futuristic tools like AI and Machine Learning in place, there are issues of how best to ensure fairness, transparency and proper use of these advancements. Of course, it is essential when one is in the digital world how to leverage such technologies in the right manner for everyone's benefit.³⁵

RECENT DEVELOPMENTS

Draft Personal Data Protection Bill 2019³⁶: The current bill is relatively very good when operating in the digital age system. When passed, it will provide for how organisations can use personal information. It is designed to establish the right and protection of how information from people is collected and managed. The bill also includes information like consent, local data storage, and penalties for using people's data.

Amendments to the Companies Act 2013³⁷: Among some of the recent changes made to this act, some features come across as stricter compared to the previous ones that existing firms – especially the digital ones- need to follow. These amendments aimed at enhancing the compliance rules that will affect the manner of operations of digital firms, primarily firms with cross-border operations. They also aim at improving noble objectives such as good corporate governance and responsibilities.

E-commerce Policy 2019³⁸: This policy is also intended to serve as a policy that will regulate the existing e-commerce platforms in order to foster balance. Some of the causes relate to matters concerning matters such as pricing policies, consumer protection, and promoting fair trade in

³⁵ Niket Khandelwal, 'The Future of Data Privacy: Navigating Trends and Challenges Beyond the Digital Personal Data Protection Act, 2023' (*Taxmann*, 17 February 2024) <<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000023742/the-future-of-data-privacy-navigating-trends-and-challenges-beyond-the-digital-personal-data-protection-act-2023-experts-opinion?form=MG0AV3>> accessed 15 October 2024

³⁶ Personal Data Protection Bill 2019

³⁷ S A Rishikesh, 'Companies Act amendments : reasons as well as motivations' (*iPleaders*, 05 October 2021) <<https://blog.ipleaders.in/companies-act-amendments-reasons-well-motivations/?form=MG0AV3>> accessed 15 October 2024

³⁸ Shyam Sreekumaran Nair et al., 'The National e-Commerce Policy, 2019' (2022) 57(38) *Economic and Political Weekly* <<https://www.epw.in/journal/2022/38/special-articles/national-e-commerce-policy-2019.html?form=MG0AV3>> accessed 15 October 2024

relation to e-commerce. It is for the policy that all the contenders in the e-commerce market shall follow policy in the best interest of the consumers.³⁹

CONCLUSION

The legal rules for how companies are managed in the digital world have a mix of old and new laws. It is the digital world that now gives supply chains their legal rules for how companies are managed and they seem to have a blend of old and new legal pathways. But with the rise of data and tech-driven business, concerns such as cyber threats and data privacy have been thrown into the mix. Laws on data protection, cybersecurity, and intellectual property rights exist to help companies do the right thing. Now that companies are becoming more data and tech-centric, they're imposing new digital risks such as cyber threats, data privacy and tech ethics. Laws to protect data and intellectual property (IP), as well as for other cybersecurity measures, are way top of mind.

Corporate governance now is a lot more than the old stuff, and it includes also being fair with AI, competition regulation and environment/society care. Digital is a way for digital companies to make money and not be black but white... who plays by the rules, and who explains how they succeed? Corporate governance has expanded to include AI ethics, competition law and environmental, social and governance (ESG) responsibilities, so opening up new frontiers for the regulation of digital enterprises beyond profitability to questions of also what it means to be ethical or even just operate transparently.

Boards of directors and corporate leaders must remain agile in adapting to these changes, integrating digital risks into their governance strategies, and complying with a complex mix of corporate, technological, and regulatory demands. This legal framework is key for building trust, ensuring accountability, and supporting sustainable growth in the digital economy.

³⁹ Ranga (n 17)