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ARTIFICIAL INTELLIGENCE IN THE BOARDROOM: REASSESSING DIRECTORS' FIDUCIARY DUTIES AND CORPORATE ACCOUNTABILITY UNDER INDIAN COMPANY LAW

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ABSTARACT

Boards of directors are increasingly turning to artificial intelligence (AI) systems for forecasting, risk scoring, credit decisions, investment screening, compliance monitoring and even strategic recommendations. Indian company law, however, was drafted for a world in which human beings gather information, deliberate and decide. The Companies Act, 2013 says nothing about this. This article asks a narrow but pressing question: can a director be held liable under Section 166 of the Companies Act, 2013 for a corporate decision taken on the strength of an AI-generated recommendation? It argues that the answer is yes, but not for the reason most commentary assumes. Section 166 does not ask whether the machine was wrong; it asks whether the director was careful, honest and independent in deciding to rely on it. Liability therefore attaches to the director's process, not to the algorithm's output. A director who adopts an AI output without understanding its purpose and limits, without applying independent judgment, or without any reasoned basis for trusting it may breach the duty of care, skill and diligence under Section 166(3) and the good-faith duty under Section 166(2). Drawing on the text of Section 166, the oversight architecture of the Act and the SEBI Listing Regulations, Indian and English case law on delegation, and Delaware's oversight jurisprudence, the article proposes a five-part "Informed Reliance Test" for measuring whether reliance on AI was reasonable, and suggests targeted reforms: a statutory reliance provision, ministry guidance, and updates to the Code for Independent Directors. Drawing on Indian statutory provisions, Indian and comparative case law, and emerging regulatory guidance, the article proposes a "calibrated reliance" standard and a set of governance measures to help boards use AI without

exposing themselves to avoidable liability. It concludes that existing law is more adaptable than it is often said to be, but that its silence leaves directors without a clear safe harbour.

I. INTRODUCTION

A board meeting in 2026 rarely begins with a blank page. Before the directors of a lending company arrive, a model has already scored the loan book. Before the directors of an acquirer vote on a price, a system has already produced a valuation range and a one-page summary of the data room. The boardroom has always depended on advice. Directors rely on management presentations, auditors' reports, legal opinions and expert valuations. What is new is that some of this advice now comes from systems that learn patterns from data and produce predictions, rankings or recommendations whose internal reasoning even their designers may struggle to explain. The recommendation is polished, quick and apparently objective, and that is exactly what makes it dangerous. When the recommendation turns out to be wrong, the question the law must answer is a plain one: who answers for it?

Most Indian writing on AI and company law has asked a different question, namely whether an AI system could itself be appointed a director.[1][2][3] The answer under the Act is a clear no, because the Act contemplates natural persons.[9] That answer is correct but it leaves the more immediate problem untouched. No Indian board is seating a robot. Boards are, however, using AI tools every day, and the people who sign the resolutions are human. International scholarship has examined the same shift from the angle of company law more broadly,[4][5][6][7] but the Indian position under Section 166 specifically has had little sustained doctrinal attention.[1]

This article therefore tackles the reverse and more realistic problem: a human director who relies on an AI recommendation. The central question is whether Section 166 of the Companies Act, 2013 can ground liability for decisions taken in that way. The argument proceeds in seven steps. Part II sets out the duties in Section 166 and their consequences. Part III distinguishes the ways in which a board can "rely" on AI. Part IV analyses each duty against AI-assisted decision-making. Part V compares Delaware, England and the European Union. Part VI looks at India's emerging soft-law framework. Part VII proposes a test and reforms. Part VIII applies

1Companies Act, 2013, ss. 149(1) and 166. Section 149(1) requires a company to have a Board of Directors consisting of individuals; s. 166 sets out directors' duties.

the test to three short hypotheticals before Part IX concludes. Two caveats are worth stating at the outset. First, the method is doctrinal and comparative; it does not rest on empirical data about how Indian boards use AI. Second, the author has not found a reported Indian judgment that decides whether reliance on an AI recommendation breaches Section 166. The analysis below is therefore an argument from principle and analogy, not a report of settled law.

II. THE STATUTORY FRAMEWORK OF SECTION 166

Section 166 is the first statutory codification in India of the general duties of directors. Before 2013, these duties were derived largely from common law and equity, which treated directors as fiduciaries and agents of the company. The section lays down, in substance, the following obligations:[2]

- A director must act in accordance with the articles of association of the company (Section 166(1)).
- A director must act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, shareholders, the community and the protection of the environment (Section 166(2)).
- A director must exercise duties with due and reasonable care, skill and diligence, and must exercise independent judgment (Section 166(3)).
- A director must not be involved in a situation in which there is, or may be, a direct or indirect conflict with the interests of the company (Section 166(4)).
- A director must not achieve or attempt to achieve any undue gain or advantage, whether for himself or for relatives, partners or associates (Section 166(5)).
- A director must not assign his office (Section 166(6)).
- A director who contravenes the section is punishable with a fine of not less than one lakh rupees, which may extend to five lakh rupees (Section 166(7)).3[3]

Three features of this design matter for the AI question.

2Companies Act, 2013, s. 166.

3Companies Act, 2013, s. 166(7).

First, the standard of conduct in Section 166(3) is deliberately open-textured. "Due and reasonable care, skill and diligence" invites a context-sensitive inquiry rather than a fixed checklist, and it can absorb new technologies without amendment.

Second, the provision pairs care with independent judgment, which signals that a director cannot simply outsource the decision to someone or something else.

Third, Section 166(2) widens the beneficiaries of the good-faith duty beyond shareholders to include employees, the community and the environment, an orientation that becomes important when algorithmic decisions affect people outside the company.

Section 166 operates alongside other provisions. Section 149(1) requires a board to consist of individuals, which closes the door to any argument that an AI system could itself be a director. Section 179 vests the powers of the company in the board and regulates delegation. Section 134(5) requires the directors' responsibility statement to confirm, among other things, that proper systems exist to ensure compliance with applicable laws and, for listed companies, that internal financial controls are adequate and operating effectively. Section 149(12) limits the liability of independent and certain non-executive directors, and Section 463 empowers the court to relieve an officer who has acted honestly and reasonably. Each of these is revisited below.[4]

III.THREE KINDS OF RELIANCE

"Relying on AI" is not one thing, and the legal analysis shifts with the kind of reliance involved. It is useful to separate three models.

Advisory use - The board receives a recommendation (a valuation, a risk rating, a forecast) and then decides. The human decision remains formally intact. The legal question is whether the director exercised proper judgment in accepting or rejecting the advice.

Embedded use- The company deploys a system that takes operational decisions within parameters the board has approved, such as automated underwriting, dynamic pricing or

4Companies Act, 2013, ss. 134(5), 149(12), 166, 179 and 463; Schedule IV.

algorithmic trading. No director approves each output. The legal question shifts from judgment about a decision to oversight of a system.

Agentic use- The system acts with a degree of autonomy over multi-step tasks, perhaps negotiating, procuring or reporting. Here the board is overseeing something that adapts, and the oversight question is harder still.

Most current Indian use sits in the first two categories. The analysis below focuses on them, because it is there that Section 166 does most of its work.

IV. SECTION 166 APPLIED TO AI-ASSISTED DECISIONS

A. Care, skill and diligence

The classical statement of the standard comes from Re City Equitable Fire Insurance: a director need not exhibit more skill than may reasonably be expected from a person of his knowledge and experience, is not bound to give continuous attention to the company's affairs, and may, in the absence of grounds for suspicion, trust officials to perform duties properly delegated to them.[13] Indian courts have long drawn on that English baseline when assessing a director's negligence, including in Official Liquidator v P A Tendolkar.[14] Modern English law has refined it into a combined subjective and objective test.[15][16] [5]

The delegation principle in City Equitable is the doctrinal home of reliance. It is also where AI creates tension. The classical rule allows trust in a delegate because the delegate is a person who is accountable, who can be questioned, and who can be dismissed. An AI tool is none of these things. It cannot explain itself in the ordinary sense, it has no reputation to protect, and its error modes (drift, hallucination, bias inherited from training data) differ from human mistakes. The City Equitable presumption of reasonable trust therefore cannot be transplanted wholesale. A more defensible reading is that reliance on AI is reasonable only where the director has a sound basis for believing that this tool is fit for this purpose.

The standard also moves with the director's role. An executive director with technical responsibility will be held to a higher standard of understanding than a non-executive director.

5Re City Equitable Fire Insurance Co Ltd [1925] Ch 407; Official Liquidator v P.A. Tendolkar (1973) 1 SCC 602.

The law does not ask a director to audit code. It asks the director to understand the tool well enough to know what questions to put to those who do.

B. Independent judgment

Section 166(3) pairs care with a separate command: the director must "exercise independent judgment." The phrase has traditionally been invoked against domination by a promoter or nominating shareholder. Applied to AI, it addresses a quieter risk, which is abdication.

A director who ratifies a model's output because it came from the model has not exercised judgment; she has transferred it. Behavioural research on automation explains why this is a live danger and not a theoretical one. People who use decision aids tend to over-trust them and to under-search for contrary evidence, a pattern known as automation bias.[17] A "human in the loop" who merely clicks approve satisfies the form of Section 179, under which the Board exercises the company's powers by resolution,[18] but not the substance of Section 166(3).[6]

Independent judgment does not require a director to reproduce the analysis. It requires the director to engage with it: to ask what the output assumes, what would change it, and whether it fits what the director otherwise knows about the business. The Supreme Court's treatment of the board's role and of independent directors in Tata Consultancy Services v Cyrus Investments confirms how seriously Indian law takes the board's own deliberative function.[31] The fiduciary character of the office, long recognised in Indian decisions,[19][20] reinforces the point: a fiduciary may take advice but may not outsource the decision. [7]

C. Good faith and the stakeholder dimension

India's Section 166(2) is broader than its Anglo-American cousins in one respect. It requires directors to act in the best interests not only of the company and its shareholders but also of employees, the community and the environment.[8] This has a direct AI implication. Many commercial models optimise a narrow objective such as margin, default probability or

6Companies Act, 2013, ss. 166(3) and 179. On automation bias, see the behavioural research cited in the manuscript as reference [17]; the full bibliographic details for that source were not supplied in the reference list.

7Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd (2021) 9 SCC 449. See also the fiduciary principles discussed in the Indian authorities listed in the manuscript.

conversion. A director who adopts such a system without asking how it affects employees, customers or the wider community may be acting in good faith about shareholder value while overlooking a duty the statute names expressly. The point is not that a profit-optimising model is unlawful. It is that the duty to consider the listed interests is not discharged by the model; it remains with the director.[8]

D. Oversight: the system around the decision

For embedded systems, the individual-decision lens is the wrong one. What matters is whether the board maintains structures capable of catching failures. Indian law supplies those structures in several places:

• Directors' responsibility statement: directors of listed companies must confirm that internal financial controls are adequate and operating effectively, and all directors must confirm that proper systems exist to ensure compliance with applicable laws.[21][9]

• Audit committee: the committee evaluates internal financial controls and risk management systems.[22][10]

• Independent directors: Section 149(12) limits the liability of independent and non-executive directors to acts that occurred with their knowledge attributable through board processes and with their consent or connivance, or where they did not act diligently; Schedule IV adds role specific expectations such as satisfying themselves on the integrity of financial information and the robustness of risk systems.[23] [11]

8Companies Act, 2013, s. 166(2).

9Companies Act, 2013, s. 134(5).

10Companies Act, 2013, s. 177; Companies (Meetings of Board and its Powers) Rules, 2014, r. 6, where applicable.

11Companies Act, 2013, s. 149(12) and Schedule IV.

• Listed entities: the SEBI Listing Regulations place responsibility on the board for risk policy and require a risk management framework and, for specified entities, a risk management committee.[24][12]

Taken together, these provisions amount to an Indian oversight duty, statutory rather than judge-made, and one that fits embedded AI closely. A credit model that approves loans is part of the company's control environment. If the board never asked how it is validated, monitored for drift, or escalated when it misbehaves, the control system is hollow. The risk is sharper where the AI use is central to the company's business, for the reasons Delaware courts have explained in a different setting (Part V).

Section 149(12) cuts both ways for non-executive directors. It protects them from automatic liability for what happens inside the company. Courts in the cheque-dishonour context have likewise refused to impose vicarious liability on directors who are not shown to have been in charge of the conduct of the business.[25][26] But the "knowledge attributable through board processes" limb means that once AI use is tabled, discussed and minuted, the director is fixed with knowledge, and the diligence limb then asks what she did with it.[13]

E. The missing safe harbour and Section 463

Delaware gives directors an express statutory protection: they are fully protected in relying in good faith on records and on information, opinions and reports of officers, employees and experts selected with reasonable care.[27] The Indian Act contains no equivalent. Nor does it codify a business judgment rule. Indian courts have nonetheless shown consistent deference to commercial decisions that reflect an informed application of mind,[28][29] which is close in effect to the rule that American scholars describe as a doctrine of judicial abstention.[30][14]

12SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including reg. 21 on the Risk Management Committee, as applicable.

13Pooja Ravinder Devidasani v State of Maharashtra (2014) 16 SCC 1; Sunil Bharti Mittal v Central Bureau of Investigation (2015) 4 SCC 609.

14Delaware General Corporation Law, 8 Del. C. § 141(e). The manuscript’s references [28]–[30] do not identify the authorities relied upon; complete source details should be inserted before submission.

In practice, Section 463 does the work of a safe harbour. In proceedings for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, the court may relieve the officer wholly or partly if satisfied that he acted honestly and reasonably and ought fairly to be excused.[32] For a director who relied on an AI tool, the questions that decide Section 463 relief are the same questions that decide Section 166(3): was reliance reasonable, and can the director show why? This gives boards a strong practical reason to document how they reached their reliance decision.[15]

V. COMPERATIVE PERSPECTIVE

United Kingdom. Section 174 of the Companies Act 2006 requires directors to exercise reasonable care, skill and diligence, judged against both an objective standard (the knowledge, skill and experience reasonably expected of a person in that role) and a subjective standard (the director's actual attributes). *Re D'Jan of London Ltd* [1993] BCC 646 shows that a director who signs a document without reading it cannot escape liability by pleading reliance on others. The same logic applies to a director who approves an AI-driven proposal without understanding what it does.[16]

United States. Delaware law protects informed, good-faith decisions through the business judgment rule, and Section 141(e) of the Delaware General Corporation Law expressly permits directors to rely in good faith on reports of officers, employees and experts selected with reasonable care. The protection, however, depends on the board being adequately informed, as *Smith v. Van Gorkom* demonstrates. In addition, the oversight line of cases beginning with *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996), and developed in *Stone v. Ritter*, 911 A.2d 362 (Del. 2006) and *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019), holds that directors may be liable where they utterly fail to implement a reporting or monitoring system or consciously ignore red flags. For AI, the Caremark principle

15Companies Act, 2013, s. 463.

16Companies Act 2006 (UK), s. 174; Re D'Jan of London Ltd [1993] BCC 646.

suggests that the board must at least ensure there is a system for monitoring the performance and risks of mission-critical AI tools.[17]

Lessons for India. The comparative material suggests three lessons. First, reliance is respected only when it is informed. Second, oversight of systems is itself a duty, not merely a defence. Third, a statutory reliance provision, which India lacks in general form, would give boards clearer guidance. Indian courts may draw on these decisions as persuasive authority, but they must be adapted to the stakeholder-oriented language of Section 166(2) and the distinct roles of independent directors under the 2013 Act.

VI. THE INDIAN REGULATORY LANDSCAPE FOR AI

India does not presently have a dedicated statute on AI or a general statutory regime governing AI in corporate governance. The relevant norms are fragmented. The Digital Personal Data Protection Act, 2023 regulates the processing of personal data on which many AI systems depend. Sectoral regulators have issued or proposed guidance: SEBI has required reporting on AI and machine learning applications by market participants and has consulted on guidelines for responsible use of AI and machine learning in the securities market, and the Reserve Bank of India has published a framework on the responsible and ethical enablement of AI in the financial sector. The central government has also issued national guidance on AI governance that favours principles and existing laws over a standalone statute. The precise status and content of these instruments change quickly, and any reader relying on them should confirm their current form from the official sources.[18]

For present purposes, the significance of this soft-law environment is twofold. First, it will shape what a court regards as "reasonable" care under Section 166(3). A board that ignores sector-specific guidance on AI risk management is poorly placed to say it acted with due diligence. Second, listed companies are subject to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which place responsibility on the board for governance, risk

17Delaware General Corporation Law, 8 Del. C. § 141(e); Smith v Van Gorkom, 488 A.2d 858 (Del. 1985); In re Caremark International Inc Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996); Stone v Ritter, 911 A.2d 362 (Del. 2006); Marchand v Barnhill, 212 A.3d 805 (Del. 2019).

18Digital Personal Data Protection Act, 2023. For SEBI and RBI AI-related instruments, consult the current official circulars and framework; the manuscript does not provide their titles, dates or circular numbers.

management and the integrity of reporting systems. AI used in these functions falls within that responsibility.[19]

VII. TOWARS A CALIBRATED RELIANCE STANDARD

The analysis above supports what this article calls a *calibrated reliance* standard. Under it, a director who relies on an AI recommendation satisfies Section 166(3) if, in the circumstances, he took reasonable steps to understand, test and challenge the recommendation, in proportion to the significance of the decision, and genuinely exercised his own judgment. Reliance is not insulated by the label "AI"; nor is it condemned because AI was used.

Elements of the standard.

1. *Informed reliance.* The director knows the purpose, inputs, limitations and track record of the tool.
2. *Independent scrutiny.* The board questions the output, considers alternatives and retains the ability to override.
3. *Proportionality.* The depth of scrutiny increases with the stakes, irreversibility and novelty of the decision.
4. *Escalation on red flags.* Warning signs trigger inquiry, outside advice or suspension of the decision.
5. *Documentation.* Board minutes under Section 118 record the information considered, questions asked, advice obtained and reasons for the decision.[20]

Governance measures that support the standard.

- A board-approved AI policy that classifies AI uses by risk and assigns responsibility for oversight.
- Assignment of AI oversight to an existing committee, such as the audit or risk management committee, or the creation of a dedicated technology committee for larger companies.

19SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

20Companies Act, 2013, s. 118, which concerns minutes of proceedings of general meetings, meetings of the Board and its committees, and other specified meetings.

- Due diligence on vendors, including contractual rights to audit, to receive explanations and to be notified of material model changes.
- Regular independent testing for accuracy, bias and robustness of material AI systems.
- Training so that directors acquire sufficient AI literacy to ask the right questions.
- Human-in-the-loop requirements for decisions with significant effects on stakeholders.
- Incident reporting and response procedures for AI failures.

These measures are not statutory requirements. Their value lies in evidential terms: they allow a board to show, if challenged, that it exercised the care, skill, diligence and independent judgment that Section 166(3) demands, and that it acted honestly and reasonably for the purposes of Section 463.

Possible legislative reform. Parliament or the Ministry of Corporate Affairs could consider a clarificatory provision, similar to the Delaware reliance provision, stating that a director may rely on information, including AI-generated analysis, prepared by competent persons or systems provided that the director has acted in good faith, made reasonable inquiry and has no reason to doubt its reliability. Such a provision would offer predictability while preserving the core requirement of independent judgment. Alternatively, the Securities and Exchange Board of India and the Ministry could issue guidance on board oversight of AI.[21]

IX. CONCLUSION

The answer to the central research question is a qualified yes. Directors *can* be held liable under Section 166 of the Companies Act, 2013 for decisions made in reliance on AI-generated recommendations, but not on the basis that the AI was wrong or that the director used it. Liability under Section 166 is conduct-based. It arises where the director's own failure to exercise due and reasonable care, skill and diligence, or independent judgment, or to act in good faith for the stakeholders whom the section names, contributed to the decision. Uncritical deference to an opaque model, failure to ask basic questions, disregard of red flags and absence of any oversight framework are the kinds of conduct most likely to attract liability. Conversely, informed, documented and proportionate reliance, supported by expert advice where necessary,

21Delaware General Corporation Law, 8 Del. C. § 141(e). This is a comparative model only; it is not part of Indian company law.

should place a director within the zone of honest and reasonable conduct protected by Section 149(12), Section 463 and the general standard of care.[22]

Two caveats are warranted. First, the statutory penalty in Section 166(7) is modest, and the real consequences of a breach are likely to arise through other proceedings. Second, there is no Indian judicial decision, to this author's knowledge, directly addressing director liability for AI-assisted decisions; the analysis here is therefore a reasoned application of existing principles rather than a report of settled law. As AI becomes embedded in corporate decision-making, courts and regulators will have to refine these principles. Boards that treat AI as a powerful but fallible adviser, rather than as an authority, will be best placed to benefit from the technology while remaining accountable to the company and those it affects.

REFERENCES

Statutes and rules

- Companies Act, 2013, Sections 2, 118, 134, 149, 166, 179, 212, 241, 242, 245, 447 and 463, and Schedule IV.
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- Digital Personal Data Protection Act, 2023.
- Companies Act 2006 (United Kingdom), Section 174.
- Delaware General Corporation Law, Section 141(e).

Cases

- *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602.
- *Pooja Ravinder Devidasani v. State of Maharashtra* (2014) 16 SCC 1.
- *Sunil Bharti Mittal v. Central Bureau of Investigation* (2015) 4 SCC 609.
- *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407.
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- *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).
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22Companies Act, 2013, ss. 149(12), 166(2), 166(3), 166(7) and 463.

- *Stone v. Ritter*, 911 A.2d 362 (Del. 2006).
- *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019).

Regulatory and policy materials

- SEBI circulars and consultation papers on the use of AI and machine learning in the securities market.
- Reserve Bank of India, framework on the responsible and ethical enablement of AI in the financial sector.
- Government of India, national guidance on AI governance.

Author's note: before submission, verify each citation, pin-cite the relevant paragraphs, and update the regulatory references against the official sources.