Artificial Intelligence (AI) Governance and Corporate Accountability: Board-Level Liability for Algorithmic Decision-Making in India

Niharika Dey[1]

ABSTRACT

Artificial Intelligence (AI) has transformed corporate decision-making through applications such as predictive analytics, automated recruitment, credit assessment, fraud detection, consumer profiling, and corporate governance. AI brings considerable benefits in terms of productivity, but it also presents its own regulatory challenges, including algorithmic discrimination, privacy breaches, unclear decision-making, and disenfranchisement. This raises a central question: To what extent should corporate directors bear liability for harm arising from AI-assisted decision-making? Unlike other types of business decisions, algorithms create results independently, based on data and difficult to trace, making it harder to allocate accountability. India does not presently have a comprehensive, cross-sectoral statute specifically allocating corporate or board-level liability for AI-assisted decision-making. The existing framework therefore relies on general corporate law and sector-specific regulatory instruments, including the Companies Act, 2013 and the Digital Personal Data Protection Act, 2023. The paper argues that India's existing corporate law does not adequately define board-level accountability for AI-assisted decision-making and proposes statutory recognition of a directors' duty of algorithmic oversight.

KEYWORDS

Artificial Intelligence; Corporate Governance; Board Liability; Algorithmic Decision-Making; Business Judgment Rule; Companies Act, 2013.

[1] Student, Sister Nivedita University, Kolkata, West Bengal.

I. INTRODUCTION

Artificial intelligence, or AI, is increasingly influencing information technology and corporate policymaking in India. Businesses in India now incorporate AI into their operations, from credit evaluations to trading in securities, fraud detection, and compliance.[2] Although these technologies can improve corporate efficiency, they also create difficult questions of accountability when companies suffer harm as a result of AI-assisted decisions. In India, regulatory measures like the 2025 Framework for Responsible and Ethical Enablement of AI issued by the Reserve Bank of India and the 2025 policy document of the Securities and Exchange Board of India demonstrate that the risks connected to AI are increasingly recognized by authorities.[3] Nevertheless, there is still no comprehensive legal framework that clarifies the responsibilities of managers regarding the process of decision-making in corporations when the decisions are influenced by AI.

The Companies Act, 2013 imposes statutory duties on directors, including duties relating to care, skill, diligence and independent judgment under Section 166.[4] The legal rules created by courts of India and introducing these concepts were established for people and do not provide sufficient guidance when it comes to making

II. RESEARCH GAP

While there have been numerous studies on artificial intelligence that address ethical issues as well as data protection, financial regulation, and corporate governance, not much attention has been given to the relationship between AI governance and the fiduciary liability of directors in the Indian context. Most studies focus on a specific sector policy or cover the topic of directors' responsibilities, rather than the relationship between the provisions of Section 166 of the Companies Act, 2013, the business judgment rule and AI governance frameworks together. Moreover, the lessons that might be drawn from the Delaware doctrine of board oversight and the European Union Artificial Intelligence Act seem to have been disregarded in Indian corporate governance. The present paper deals with this deficiency in the existing laws by analyzing whether the current regulations in India can adequately impose responsibility for the decision-making process mediated by artificial intelligence and by suggesting changes in the law that would enhance the board's authority in the oversight of technological solutions used in the business environment.

III. RESEARCH OBJECTIVES

1. To examine directors' fiduciary duties under the Companies Act, 2013 in the context of AI-assisted corporate decision-making.
2. To analyze the applicability of the Business Judgment Rule to algorithmic decision-making.
3. To evaluate the adequacy of India's existing AI governance framework.
4. To compare India's legal position with Delaware's oversight doctrine and the EU Artificial Intelligence Act.
5. To recommend reforms for strengthening board-level accountability for AI governance in India.

Accordingly, the paper addresses the following research questions: Whether the existing framework under the Companies Act, 2013 adequately determines board-level liability for AI-assisted corporate decision-making.

1. Does Section 166 sufficiently govern algorithmic decisions?
2. Can the Business Judgment Rule apply to opaque AI systems?
3. What lessons can India draw from Delaware and the EU AI Act?

IV. LITERATURE REVIEW

The relationship between Artificial Intelligence (AI) and corporate governance has gained increasing attention as AI systems assume a greater role in business decision-making. The scholarship on AI and corporate law is young but converging on a common concern. Authors Armour and Eidenmüller have noted that corporate law governed by human actions falls short of the expectations needed to take care of the difficulties brought about by AI governance,

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[2] Reserve Bank of India, *Report of the Committee to Develop a Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) in the Financial Sector* (Aug. 13, 2025).

[3] Reserve Bank of India, *Report of the Committee to Develop a Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) in the Financial Sector* (Aug. 13, 2025); Securities & Exchange Board of India, *Consultation Paper on "Guiding Principles for Responsible Usage of AI/ML in Securities Markets"* (June 20, 2025).

[4] Companies Act, No. 18 of 2013, § 166 (India).

hence the need for tighter regulation.[5] Similar views have been put forward by Cowger, who emphasized that, through AI systems, directors can be assisted in their performance of fiduciary duties, at the same time claiming that blind reliance on AI algorithms violates the core principle of independent judgment.[6] In India, the Responsible AI Policy documents of NITI Aayog,[7] the Reserve Bank of India's Framework on Responsible and Ethical Use of Artificial Intelligence (2025),[8] and the consultation paper of Securities and Exchange Board of India (2025)[9] identify the governance risks of AI, but mostly take a sectoral and policy-oriented approach.

There is, however, not much scholarship on the interaction of directors' fiduciary duties under Section 166 of the Companies Act 2013 with the business judgment rule and fragmented AI governance in India. It seeks to close this doctrinal gap by looking into the issue of liability of directors for algorithmic decision-making and putting forth suggestions for better governance of AI in Indian corporate law.

V. RESEARCH METHODOLOGY

This paper adopts a doctrinal and comparative method. It analyses primary legal sources - the Companies Act, 2013, sectoral regulatory instruments issued by the Reserve Bank of India and the Securities and Exchange Board of India, Delaware case law, and the European Union's Artificial Intelligence Act, alongside secondary academic and policy literature. The comparative analysis is confined to Delaware and the European Union because both jurisdictions have produced the most developed doctrinal responses, respectively judicial and legislative, to board-level algorithmic oversight, making them the most instructive benchmarks for evaluating the adequacy of the Indian position. The paper does not undertake empirical or survey-based research; its claims are normative and doctrinal.

[5] John Armour & Horst Eidenmüller, *Self-Driving Corporations?* 10 Harv. Bus. L. Rev. 87 (2020).
[6] Alfred R. Cowger Jr., *Corporate Fiduciary Duty in the Age of Algorithms*, 14 Case W. Res. J.L. Tech. & Internet 1 (2023).
[7] NITI Aayog, *Approach Document for India: Part 1-Principles for Responsible AI* (Feb. 2021).
[8] Reserve Bank of India, FREE-AI Committee Report: Framework for Responsible and Ethical Enablement of Artificial Intelligence (Aug. 2025).
[9] Securities & Exchange Board of India, Consultation Paper on "Guiding Principles for Responsible Usage of AI/ML in Securities Markets" (June 20, 2025).

VI. LEGAL FRAMEWORK: DIRECTOR DUTIES AND AI UNDER INDIAN LAW

Section 166(3) of the Companies Act, 2013 requires a director to exercise duties with due and reasonable care, skill and diligence and to exercise independent judgment.[10] Section 134(3) requires the board's report to contain a statement on the company's risk management policy, which in principle could be read to capture algorithmic risk, though the provision was not drafted with AI in view.[11] The Companies Act, 2013 does not expressly prescribe duties specifically addressing automated or AI-assisted corporate decision-making. Sectoral regulators have filled part of this vacuum. The RBI's FREE-AI committee report recommends that regulated entities adopt a board-approved AI policy, embed human oversight across the AI lifecycle, and maintain an incident-reporting mechanism, treating the board, not merely management, as the accountable body for algorithmic risk.[12] SEBI's 2025 consultation paper similarly proposes that market participants deploying Artificial Intelligence/Machine Learning (AI/ML) maintain a board-approved AI governance framework, designate senior management with technical expertise for oversight, and disclose model risks, limitations, and accuracy to investors.[13] At the policy level, NITI Aayog's Responsible AI documents articulate broader principles concerning safety, equality, accountability, and responsible AI governance. These policy documents do not, however, create director-specific statutory duties.[14] The resulting framework is fragmented. Sector-specific regulators have begun developing AI-governance expectations for entities within their respective regulatory domains, while the Companies Act, 2013 contains no express, cross-sectoral duty governing board-level oversight of AI-assisted decision-making.

VII. THE BUSINESS JUDGMENT RULE AND THE ALGORITHMIC ACCOUNTABILITY GAP

The business judgment rule ordinarily protects a director who makes an informed decision, in good faith, and in the company's interest, from liability for the outcome of that decision even if it is later proved wrong. When applied to AI-assisted decision-making, the rule may create an accountability gap. A director who relies on an algorithmic recommendation without taking

[10] Companies Act, No. 18 of 2013, § 166(3) (India).
[11] Companies Act, No. 18 of 2013, § 134(3) (India).
[12] *Id.* at 8.
[13] *Id.* at 9.
[14] *Id.* at 7.

reasonable steps to understand its basis, limitations, and material risks may arguably fail to satisfy the requirement of informed and independent judgment, which should defeat the rule's protection; yet in practice, boards routinely approve AI-generated outputs precisely because the volume and complexity of the underlying data make independent verification impractical, a phenomenon scholars term choice overload or analysis paralysis The rule was designed to shield genuine, informed deliberation from hindsight bias; it was not designed to determine whether deference to an opaque model constitutes deliberation at all.

This may produce what can be described as an "algorithmic accountability gap" in the sense that harm may occur through an AI-assisted decision-making process without a clear basis for determining whether an individual director breached an existing duty of care or independent judgment. Commentators have suggested that passive deference to an algorithmic output, without meaningful interrogation, may itself constitute bad faith and therefore fall outside the business judgment rule's protection. Indian courts have not yet directly tested this proposition, and Section 166 does not expressly address directors' reliance on algorithmic systems.

VIII. COMPARATIVE PERSPECTIVE

Delaware's oversight jurisprudence offers one route toward closing this gap. Since *In re Caremark International Inc. Derivative Litigation*,[15] directors have owed a duty to implement and monitor reasonable information and reporting systems, and *Marchand v. Barnhill* confirmed that a board's total failure to establish any such monitoring system, not merely a flawed one, exposes directors to liability.[16] Subsequent Delaware Chancery decisions, including *In re Boeing Co. Derivative Litigation*,[17] have applied this duty of oversight to safety-critical, technologically complex operations, suggesting a doctrinal template readily extendable to algorithmic risk: liability attaches not to the wisdom of any single decision but to the board's failure to build a system capable of surfacing red flags.

The European Union has taken the more explicit legislative route. The Artificial Intelligence Act requires that high-risk AI systems be designed to enable effective human oversight by natural persons during the period the system is in use, and imposes on deployers, which for corporate AI systems will typically be the company acting through its board, obligations to

[15] In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).
[16] Marchand v. Barnhill, 212 A.3d 805 (Del. 2019).
[17] In re Boeing Co. Derivative Litigation, 2021 WL 4059934 (Del. Ch. Sept. 7, 2021).

monitor operation and ensure use in accordance with instructions[18] Unlike the Delaware model, which locates the duty in judge-made oversight jurisprudence triggered after harm occurs, the EU model imposes the human-oversight obligation as a binding, ex ante design requirement. India does not presently have a directly comparable body of director-oversight jurisprudence or a comprehensive cross-sectoral AI statute equivalent to the EU AI Act.

IX. FINDINGS AND RECOMMENDATIONS

Three findings follow from this analysis. Indian company law imposes duties of care and independent judgment on directors,[19] but does not expressly establish a framework for assessing board-level oversight of AI-assisted decision-making comparable to Delaware's Caremark jurisprudence. Second, sectoral guidance from the RBI and SEBI, while substantively useful, binds only regulated financial entities and leaves the vast majority of Indian companies. Manufacturing, technology, retail, and other sectors are increasingly using AI in hiring, pricing, and operational decisions; entirely outside any board-level AI governance requirement. Third, the business judgment rule, applied without modification to algorithmic decisions, risks shielding precisely the boards that have exercised the least independent judgment, since uninterrogated deference to a model's output is easier to characterise as good-faith reliance than active, informed deliberation would be.

Accordingly, this paper recommends: first, amending Section 166 of the Companies Act, 2013, or introducing a dedicated provision, to impose an explicit duty of algorithmic oversight on directors of companies that materially rely on AI in decision-making, modelled on the Caremark standard[20] of establishing and monitoring a reasonable information system; second, extending a cross-sectoral, board-approved AI governance requirement - drawing on the RBI's FREE-AI and SEBI's 2025 consultation paper, through delegated legislation under the Companies Act rather than leaving the obligation sector-bound; third, clarifying, whether by judicial interpretation or statutory note, that the business judgment rule's protection is unavailable where a board cannot demonstrate that it sought an adequate explanation of an algorithmic recommendation before acting on it; and fourth, requiring disclosure of material reliance on AI systems in corporate reporting, including information concerning the nature of

[18] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, 2024 O.J. (L 1689) 1 (EU).
[19] Companies Act, No. 18 of 2013, § 166 (India).
[20] In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (Del. Ch. 1996)

the AI system, the decisions materially affected by its use, and the principal governance and risk-management mechanisms adopted by the company.

X. CONCLUSION

Indian companies are increasingly using AI systems in consequential areas of corporate decision-making, including financial, operational, employment, and compliance-related functions that neither the Companies Act, 2013 nor the business judgment rule was designed to address. Sectoral regulators have begun to respond, but their reach stops at the boundary of the sectors they supervise. Delaware's oversight jurisprudence and the European Union's Artificial Intelligence Act each offer a partial template, judicial in one case, legislative in the other for converting a vague duty of care into a concrete duty to build and monitor systems capable of catching algorithmic failure before it causes harm. In the absence of clearer statutory or judicial standards governing board-level AI oversight, the precise scope of directors' liability for AI-assisted decision-making remains uncertain.