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**ALGORITHMIC GOVERNANCE AND THE ACCOUNTABILITY
VACUUM UNDER SECTION 166 OF THE COMPANIES ACT, 2013**- Jewel Jacob¹**ABSTRACT**

Corporate laws like any other existing laws were formulated with the ultimate idea and quiet assumption that the chain of command is a human being. This is evidently highlighted under Section 166 of the Companies Act, 2013 which enforces obligations on directors. Each duty presupposes a mind capable of intention, a will capable of corruption, and a person capable of being called to account. However, Artificial Intelligence is a threat to all the three concerns. In Indian boardrooms, the line between human judgment and machine logic has blurred. Algorithms have transitioned from silent assistants to the primary architects of corporate strategy, leaving directors to simply rubber-stamp complex decisions. This shift exposes a critical flaw in Section 166 of the Companies Act, 2013. This paper explores the "accountability vacuum" created when biased, opaque systems shape statutory disclosures and board deliberations. When AI obscures a material fact or distorts a risk assessment, the resulting legal harm is real, but the "responsible mind" required for fiduciary liability is nowhere to be found. By synthesizing global governance standards with India's evolving regulatory landscape, this paper maps the "accountability vacuum" in algorithmic boardrooms and proposes a reform framework that mandates human oversight, algorithmic transparency, and specialized board literacy as prerequisites for fulfilling fiduciary duties.

Keywords: *Section 166, Companies Act 2013, Fiduciary Duty, Artificial Intelligence, Algorithmic Governance, Corporate Accountability.*

1. INTRODUCTION

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There is a scene, increasingly common in Indian corporate life, that the law has not yet learned to read. A board of directors convenes to approve a significant business decision an acquisition, a credit extension, a workforce restructuring. The recommendation before them is precise, data-rich, and confident. It has been generated by an algorithm. The directors deliberate and approve. The minutes record a human decision. The reasoning, however, belongs to a machine. Section 166 of the Companies Act, 2013 does not know what to do with this scene.

Corporate governance in India underwent a significant transformation with the enactment of the Companies Act, 2013, as it marked the first instance of formally codifying directors' fiduciary duties under Section 166. director is required to act in "good faith" for the benefit of members, staff, shareholders, the community, and the environment, as provided under Section 166(2).² A director must use "due and reasonable care, skill and diligence" in addition to independent judgment, according to Section 166(3).³ These duties are not procedural formalities. They are the law's answer to a fundamental question: when a company is harmed by a decision made at the top, who is responsible, and why? Section 166's answer is structural and deeply human responsibility attaches to the director because the director decided, because a human mind weighed, chose, and acted.

AI's evolution from "advisory roles to proactive execution" marks a fundamental shift, with agentic AI systems now capable of autonomously pursuing long-term goals, making complex decisions, and orchestrating multi-stage workflows without continuous human oversight.⁴ Crucially, these systems do not arrive as neutral instruments. They carry within them the biases that are opaque, self-reinforcing, and capable of distorting deliberations, corrupting disclosures, and producing regulatory harm without leaving a traceable human fingerprint. The director who approves the output neither authored the reasoning nor, in most cases, can meaningfully interrogate it.

This paper terms the resulting legal condition the accountability vacuum, where fiduciary responsibility rests with a human director while substantive reasoning is performed by a machine lacking legal personhood and duties. Through a comparative analysis of Delaware's

²The Companies Act, 2013, § 166(2) (India).

³The Companies Act, 2013, § 166(3) (India).

⁴Mukherjee & Hannah Hanwen Chang, *Agentic AI: Autonomy, Accountability, and the Algorithmic Society*, arXiv:2502.00289v3 (Feb. 2025), <https://arxiv.org/pdf/2502.00289v3>.

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Caremark doctrine, the UK Companies Act 2006, the EU AI Act, SEBI's LODR Regulations, and the DPDP Act, 2023, it proposes reforms including a human oversight standard, algorithmic impact disclosures, and revised board composition requirements under Section 149.

2. THE FIDUCIARY BLUEPRINT UNDER SECTION 166 OF THE COMPANIES ACT, 2013

2.1 The Five Fiduciary Duties and Their Common Law Roots

Section 166 of the Companies Act, 2013 codifies fiduciary principles developed by English equity courts, inherited through colonial law, refined by judicial interpretation, and now governing all directors of companies registered in India. The provision imposes five distinct but interrelated obligations, each shaped by its common law lineage.

(i.) The Duty of Good Faith

Good faith requires conduct that meets the standard of a reasonable and responsible director acting in the company's interest. Section 166(2) requires directors to act in good faith to promote the company's objects and the interests of the company, its members, employees, shareholders, the community, and the environment. This duty derives from *Aberdeen Railway Co v Blaikie Brothers*⁵, which established that fiduciaries must act in the beneficiary's interest, and was affirmed in *Dale & Carrington Inv. (P) Ltd. v P.K. Prathapan*⁶, where the Supreme Court recognised directors as fiduciaries who must exercise their powers honestly and in the company's interest.

(ii.) Duty of Due Diligence and Independent Judgment

Section 166(3) mandates that a director act with due and reasonable care, skill, and diligence, and exercise independent judgment. The common law standard for this duty was authoritatively stated in *Re City Equitable Fire Insurance Co*⁷, which established that a director need not exhibit a greater degree of skill than may reasonably be expected from a person of their knowledge and experience. This subjective standard was subsequently

⁵*Aberdeen Ry. Co. v. Blaikie Bros.*, (1854) 1 Macq. 461 (H.L.).

⁶*Dale & Carrington Inv. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212 (India).

⁷*Re City Equitable Fire Ins. Co.*, [1925] Ch. 407 (C.A.).

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tightened by the objective overlay introduced in *Re D'Jan of London Ltd*⁸, where Hoffmann LJ held that the duty of care owed by a director is the same as that set out in section 214 of the Insolvency Act 1986 requiring the conduct of a reasonably diligent person with both the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of a director, and the actual knowledge, skill and experience that the particular director has. Indian courts have broadly absorbed this dual standard. The NCLT in *Miheer H. Mafatlal v Mafatlal Industries Ltd*⁹ recognised that directors cannot escape liability by pleading ignorance where reasonable diligence would have revealed the relevant facts. The requirement of independent judgment that a director must not simply rubber-stamp management or external recommendations are equally rooted in equity, traceable to *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame*¹⁰, which established that the board's powers of management are fiduciary powers that cannot be surrendered to others.

(iii.) The Duty to Avoid Conflicts of Interest

Section 166(4) prohibits a director from engaging in any business or activity that conflicts with the interests of the company, without prior disclosure to the board. This duty has its clearest common law expression in *Bray v Ford*¹¹, where Lord Herschell stated the inflexible rule that a person in a fiduciary position is not, unless otherwise expressly provided, entitled to make a profit; they are not allowed to put themselves in a position where their interest and duty conflict. In Indian corporate law, this principle found early expression in *Cook v Deeks*¹², a Privy Council decision that directly influenced Indian courts, holding that directors who diverted a corporate opportunity to themselves held the resulting profits on constructive trust for the company. The Companies Act, 2013 extends this duty into a disclosure-based framework, requiring under §184 that directors with a material interest in a transaction formally declare it a procedural safeguard whose efficacy depends entirely on the director's knowledge of, and honesty about, their own conflicts.

(iv.) The Duty to Refrain from Undue Gain

⁸*Re D'Jan of London Ltd.*, [1994] 1 BCLC 561 (Ch. D.).

⁹*Miheer H. Mafatlal v. Mafatlal Indus. Ltd.*, (1996) 87 Comp. Cas. 792 (Bombay H.C.).

¹⁰*Automatic Self-Cleansing Filter Syndicate Co. Ltd. v. Cuninghame*, [1906] 2 Ch. 34 (C.A.).

¹¹*Bray v. Ford*, [1896] AC 44 (H.L.).

¹²*Cook v. Deeks*, [1916] 1 AC 554 (P.C.).

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Section 166(5) provides that a director shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates. If found guilty of making any undue gain, the director shall be liable to pay an amount equal to that gain to the company. This duty is the statutory expression of the no-profit rule most famously articulated in *Keech v Sandford*¹³, where the court held that a fiduciary who makes a profit from their position regardless of whether the beneficiary suffered loss must account for that profit. The rule is strict: motive is irrelevant. Its Indian reception is visible in *MS Madhusoodhanan v Kerala Kaumudi Pvt Ltd*¹⁴, where the Supreme Court emphasised that directors cannot use their position to extract personal advantage at the company's expense.

(v.) The Duty Not to Assign Office

Section 166(6) renders void any assignment by a director of their office to another person, reinforcing the personal and non-delegable character of directorial duty. This provision reflects the common law principle that fiduciary obligations are personal a director cannot outsource the exercise of their fiduciary mind to another human being, let alone to a machine. The significance of this provision for the algorithmic governance debate will become apparent in subsequent sections.

2.2 The Business Judgment Rule and Its Judicial Reception in India

The business judgment rule operates as the law's recognition that commercial decision-making is inherently uncertain, and that courts are ill-equipped to second-guess managerial choices made in good faith on the basis of adequate information. Its clearest American articulation is in *Smith v Van Gorkom*¹⁵, where the Delaware Supreme Court held that the rule protects directors from liability for informed, good faith business decisions made in the honest belief that the action taken was in the best interests of the company. In the United Kingdom, the principle operates less as a formal rule and more as a judicial disposition toward deference, evident in *Shuttleworth v Cox Brothers & Co*¹⁶ and confirmed in the post-2006 Companies Act jurisprudence.

While other jurisdictions have only started to regulate the use of AI, the evolution and advancement of AI have not stopped. In 2017, the European parliament has emphasized the

¹³*Keech v. Sandford*, (1726) Sel. Cas. Ch. 61.

¹⁴*M.S. Madhusoodhanan v. Kerala Kaumudi Pvt. Ltd.*, (2004) 9 SCC 204 (India).

¹⁵*Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).

¹⁶*Shuttleworth v. Cox Bros. & Co.*, [1927] 2 KB 9 (C.A.).

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need to create a robust legal framework to oversee the formation and evolution of AI.¹⁷ The US legal system has taken a step ahead by instilling the business judgement rule which is a basic liability rule that safeguards the board of directors against frivolous legal allegations as to the way it conducts business. Directors shall not incur any liability towards their decisions if it was an informed decision; there was no conflict of interest; and lastly if the directors acted in good faith.¹⁸

Although, Indian law does not have an express 'business judgement rule', the CA provides exemptions to directors from penalties in cases of negligence, default, breach of duty, misfeasance or breach of trust, if the director can prove he acted honestly and reasonably, and had regard towards all the circumstances presented.¹⁹ It is also important to note that this doctrine has been accepted by Indian courts for example, the Supreme Court in the case of *Miheer Mafatlal*, held that courts shall not interfere if the conduct was "*just, fair and reasonable from the point of prudent men of business taking a commercial decision beneficial to the class represented by them.*"²⁰ The decision of the apex court was indeed a welcome move towards adoption of the business judgement rule. It can be inferred that in case the board of directors use AI tools for limited purpose of data collection to support their judgment, such decisions should also be included under this 'business judgment rule'. The SEBI Whole Time Member's order in *Sahara India Real Estate Corporation Ltd*²¹ acknowledged that regulatory and judicial bodies should be slow to interfere with commercial decisions taken by boards acting in good faith. The NCLT and NCLAT have similarly applied a deferential standard in oppression and mismanagement proceedings under Sections 241-242 of the Companies Act, 2013, holding in cases such as *Tata Consultancy Services Ltd v Cyrus Investments Pvt Ltd*²² that courts will not substitute their commercial judgment for that of the board where the board has acted within its powers, in good faith, and on a reasonable basis.

The business judgment rule protects informed human judgment from judicial hindsight, assuming that a human decision is based on assessment of available information and traceable reasoning. However, where a director approves an algorithmic recommendation

¹⁷Samuel Gibbs, *Give Robots 'Personhood' Status, EU Committee Argues*, The Guardian (Jan. 12, 2017), <https://www.theguardian.com/technology/2017/jan/12/give-robots-personhood-status-eu-committee-argues>

¹⁸*Aronson v. Lewis*, 473 A.2d 805 (Del. 1984).

¹⁹The Companies Act, 2013, § 463(1)

²⁰*Miheer H. Mafatlal*, *supra* note 8.

²¹*Sahara India Real Estate Corp. Ltd. v. Securities & Exch. Bd. of India*, (2012) 10 SCC 603 (India).

²²*Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd.*, (2021) 9 SCC 449 (India).

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without the capacity to interrogate its reasoning, the conditions of informed deliberation, genuine assessment, and independent judgment may not be met, making the rule's protection unavailable.

The Law Commission of India's Report No. 58 (1974)²³ on the Companies Act had already flagged the risk of passive directors who attend meetings without genuine engagement as a structural weakness in corporate governance. The algorithmic boardroom presents a more sophisticated version of the same problem where directors are present, attentive, and formally deliberative, but whose deliberation is shaped by reasoning they cannot access, verify, or meaningfully challenge.

3. DEFINING THE PHENOMENON OF ALGORITHMIC GOVERNANCE

3.1 The shift from decision support to decision delegation

Algorithmic governance does not replace human decision-making at once; AI gradually assumes a larger role, making it harder to distinguish between assistance and substitution. Identifying the extent of AI involvement is essential to determining when Section 166 becomes ineffective. At one end of the spectrum is decision-support, where algorithms provide data and recommendations, but directors remain the decision-makers. Since directors continue to evaluate information independently, existing fiduciary principles and the business judgment rule adequately govern this model.

The spectrum shifts, however, as systems move from presenting options to ranking them, from ranking them to recommending one, and from recommending one to implementing it automatically subject only to a formal override that is rarely, if ever, exercised. At this end of the spectrum sits decision-delegation: algorithmic systems that effectively determine the outcome, leaving the director's role as ratification rather than deliberation. It is in this middle ground that Section 166 begins to fail, and it is here that the accountability vacuum opens.²⁴

3.2 AI in Boardroom

The deployment of artificial intelligence in Indian corporate governance has accelerated substantially over the past decade, driven by digital infrastructure investment, regulatory

²³LAW COMM'N OF INDIA, REP. NO. 58, FIFTY-EIGHTH REPORT ON THE COMPANIES ACT, 1956 (1974).

²⁴Umakanth Varottil, *Board Governance in India: From Compliance to Performance*, Indian L. Rev. 1 (2019).

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pressure toward data-driven compliance, and the competitive adoption of efficiency technologies across sectors.²⁵

Indian listed companies, particularly in the financial services, technology, and pharmaceutical sectors, are deploying algorithmic systems across four broad governance functions. First, in risk identification and credit assessment: banks and non-banking financial companies regulated by the Reserve Bank of India increasingly rely on machine learning models to assess credit risk, flag potential defaults, and recommend lending decisions. The RBI's Guidelines on Model Risk Management (2023)²⁶ acknowledged this trend while noting significant gaps in explainability and human oversight standards. Second, in compliance monitoring. Algorithmic systems now screen transactions for regulatory compliance, generate suspicious transaction reports under the Prevention of Money Laundering Act, 2002, and produce automated alerts that are placed before boards and audit committees as material information requiring directorial attention. Third, in strategic advisory functions. Investment banks and financial advisors serving Indian listed companies use algorithmic valuation models and deal-screening tools whose outputs directly inform board-level decisions on mergers, acquisitions, and capital allocation. Fourth, in board information systems: the filtering, prioritisation, and presentation of information to boards are the very material on which directors base their deliberations and is increasingly mediated by algorithmic systems that determine what directors see before they decide.²⁷

Each of these deployments sits at a different point on the decision-support to decision-delegation spectrum. Each raises distinct questions under Section 166. And none of them is currently addressed by any specific provision of Indian corporate law.

3.3 The Black-Box Problem and the Explainability Deficit

The feature that distinguishes artificial intelligence from earlier forms of decision-support technology and that gives rise to the accountability vacuum is not its speed, its scale, or its sophistication. It is its opacity.²⁸ The black-box problem is the condition in which an algorithmic system produces outputs whose relationship to their inputs cannot be traced,

²⁵Ministry of Elecs. & Info. Tech., Nat'l Strategy for Artificial Intelligence (NITI Aayog 2018).

²⁶Reserve Bank of India, Guidelines on Model Risk Mgmt. (2023).

²⁷Sec. & Exch. Bd. of India, Consultation Paper on Algorithmic Trading (2016, updated 2021).

²⁸Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harv. Univ. Press 2015).

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explained, or verified by any person outside the system and, in many cases, by any person at all. This opacity conflicts with the duty of care articulated in *Smith v Van Gorkom*²⁹, which requires directors to make informed decisions. Blind reliance on AI outputs may compromise the ability of boards to demonstrate due diligence.

Classical computing systems such as spreadsheets, database queries, and rules-based compliance tools are transparent because their outputs can be traced to identifiable inputs and logical operations. This traceability makes them compatible with Section 166, as directors can explain the basis of a recommendation and assume genuine responsibility for decisions made in reliance on it.

Algorithms are often assumed to be neutral, yet they can reproduce historical biases embedded in data. Such biases may expose companies to liability under anti-discrimination and regulatory laws, even where no human intent to discriminate exists.³⁰ Here, the problem lies in the architecture of the technology rather than in managerial intent.³¹ Corporate law typically attributes responsibility to individuals within a company under the identification doctrine. AI, however, lacks legal personality, complicating the assignment of accountability for decisions or errors generated by algorithms. Directors cannot disclaim responsibility for systems they deploy, but their ability to control autonomous AI processes is limited. This challenge is reminiscent of earlier debates over automated financial systems. Under the Caremark standard *In re Caremark International Inc. Derivative Litigation* (1996)³² a failure to understand or supervise corporate operations may constitute a breach of the duty of oversight. Similarly, directors relying on AI without adequate understanding or monitoring may be exposed to liability.³³

Modern machine learning systems operate differently in kind, not merely in degree. They are trained on vast datasets to identify patterns that produce accurate outputs, but the relationship between input and output runs through millions of weighted parameters that resist human interpretation. The system does not apply a rule but rather applies a mathematical

²⁹*Smith v. Van Gorkom*, *supra* note 14.

³⁰Ravi Shankar, *Implications of Black Box Dilemma in the Indian Legal System*, 4 J. Legal Rsch. & Juridical Sci. 1265 (2025).

³¹Suryanshu Dutta & Sakshi Shah, *AI Bias, Liability and Corporate Accountability*, Inst. of Co. Sec'ys of India (Oct. 1, 2025).

³²*In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996).

³³*Legal Personality for Artificial Intelligence with Special Reference to Corporate Personhood in India*, 6 Shakuntla Sangam Indian J.L. & Hum. Behav. 20 (2020).

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transformation whose logic no human analyst can fully reconstruct. When such a system recommends an acquisition target, flags a credit risk, or generates a compliance disclosure, the basis of that recommendation is not available to the director who reviews it. They can see what the system concluded. They cannot see why.³⁴

This is the explainability deficitthe structural gap between the output an algorithmic system produces and the reasoning a director needs to genuinely evaluate, adopt, and take personal responsibility for that output.³⁵This is not a temporary technical limitation but an inherent feature of the most powerful and widely used machine learning systems. For the purposes of Section 166, a director approving such an algorithmic recommendation is not merely unable to understand its reasoning but is structurally incapable of doing so. Consequently, duties of care, good faith, and independent judgment that cannot be meaningfully discharged due to the nature of the technology become a formality rather than a safeguard.

4.THE ACCOUNTABILITY VACUUM UNDER SECTION 166

4.1 Good Faith without a human mind

Section 166(2) requires a director to act in good faith in order to promote the objects of the company for the benefit of its members as a whole. Good faith, as understood in Indian corporate law, carries both a subjective and an objective dimension — it requires not merely that the director believed they were acting in the company's interest, but that their conduct is capable of withstanding scrutiny against the standard of a reasonable, responsible director genuinely promoting the company's welfare³⁶ The good faith duty presupposes, at its foundation, a mind capable of intention. A director cannot act in good faith without having formed a genuine intention — without having considered the company's interests, weighed the available options, and chosen a course of action that they genuinely believed served those interests. Intention, in this sense, is not a legal technicality. It is the moral substance of the duty.³⁷

³⁴Finale Doshi-Velez & Been Kim, *Towards a Rigorous Science of Interpretable Machine Learning*, arXiv:1702.08608 (2017), <https://arxiv.org/abs/1702.08608>.

³⁵Cynthia Rudin, *Stop Explaining Black Box Machine Learning Models for High Stakes Decisions and Use Interpretable Models Instead*, 1 Nature Mach. Intelligence 206 (2019).

³⁶*Dale & Carrington Inv't.*, *supra* note 5.

³⁷*Aberdeen Ry. Co.*, *supra* note 4.

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Algorithmic systems cannot form intentions. They optimise for objectives defined in their training parameters objectives that may approximate, but can never replicate, the genuine consideration of the company's interests that §166(2) demands. More dangerously, they may optimise for objectives that systematically diverge from those interests in ways that are invisible to the directors who rely on their outputs.³⁸ A credit risk algorithm trained on biased data may exclude creditworthy borrowers, while a strategic advisory algorithm focused on short-term returns may recommend acquisitions that harm long-term stakeholder value. In both cases, although the director formally approves the recommendation, they have not meaningfully intended the outcome, as the reasoning originates from the algorithm, which possesses no intention of its own.

The good faith duty under §166(2) is further complicated by the problem of algorithmic bias. Where an algorithmic system generates biased recommendations that the board adopts without scrutiny, the resulting harm to stakeholders may constitute a breach of §166(2) but the causal chain runs through a system that the law cannot reach, and the director's subjective belief in the recommendation's soundness may provide a good faith defence that the statute, in its current form, cannot displace.³⁹

4.2 Due diligence in Algorithmic decision making

Section 166(3) requires a director to act with due and reasonable care, skill, and diligence, and to exercise independent judgment. The standard, as absorbed into Indian law from the dual objective-subjective test in *Re D'Jan of London Ltd*⁴⁰ demands that the director bring genuine cognitive engagement to every significant decision and not merely formal participation in its approval. The requirement of independent judgment is particularly significant.⁴¹

A director who defers entirely to an algorithmic recommendation who treats the system's output as conclusive without genuine personal evaluation has not exercised independent judgment. They have abdicated it. The abdication may be imperceptible: the director attends the meeting, reviews the presentation, and votes to approve. But if the vote was determined by an algorithmic recommendation that the director neither understood nor questioned, the

³⁸Pasquale, *supra* note 27.

³⁹Sec. & Exch. Bd. of India, Master Circular on Corporate Governance for Listed Entities (2023).

⁴⁰*Re D'Jan of London Ltd.*, *supra* note 7.

⁴¹*Automatic Self-Cleansing Filter Syndicate*, *supra* note 9

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independence that §166(3) demands was never exercised.⁴² The *Barings* standard creates an acute problem for AI-assisted governance. Due diligence, in the traditional sense, requires that the director interrogate the basis of a recommendation like ask questions, request supporting analysis, and satisfy themselves that the recommendation is sound. Where the recommendation is generated by a machine learning system whose reasoning is technically inaccessible, the interrogation that due diligence demands cannot be meaningfully performed. The director can ask questions. The system cannot answer them in terms that discharge the duty.⁴³

4.3 Structural Conflicts Beyond the Scope of the Statute

Section 166(4) prohibits directors from engaging in activities that create direct or indirect conflicts with the company's interests, while Section 184 requires disclosure of material interests in transactions. Together, these provisions form a conflict-of-interest regime based on the assumption that conflicts are identifiable, attributable to individuals, and manageable through disclosure and procedural safeguards.

Algorithmic governance creates a category of structural conflict that this regime cannot see.⁴⁴ Consider the following configurations, each of which is currently unaddressed by §166(4). An AI vendor who supplies a strategic advisory algorithm to a company's board may simultaneously hold equity in, or advisory relationships with, competing entities whose interests the algorithm's recommendations may systematically favour. The algorithm's bias toward those interests may be structural embedded in its training data or objective function rather than intentional, meaning that no individual director has formed a conflicting intention that §166(4) can capture.⁴⁵ The disclosure architecture of §166(4) and §184 was designed for conflicts that human directors could identify and declare. It has no mechanism for conflicts that are embedded in the architecture of the systems those directors have adopted.

4.4 Undue Gain at Algorithmic Speed

Section 166(5) prohibits a director from achieving or attempting to achieve any undue gain or advantage, whether for themselves or for their relatives, partners, or associates. The provision

⁴²*Re Barings plc (No. 5)*, [1999] 1 BCLC 433 (Ch. D.).

⁴³Rudin, *supra* note 34.

⁴⁴*Bray v. Ford*, *supra* note 10.

⁴⁵Varottil, *supra* note 23.

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reflects the foundational equitable no-profit rule in,⁴⁶ which holds that a fiduciary who profits from their position must account for that profit regardless of good faith or absence of harm to the beneficiary.

Algorithmic governance exposes the temporal and informational limitations of this provision with particular sharpness. High-frequency trading algorithms and AI-driven investment advisory systems can channel information advantages to insiders at speeds that human regulatory frameworks cannot match.⁴⁷ A director with access to an algorithmic system that processes material non-public information embedded in board information systems, compliance alerts, or strategic advisory tools may extract informational advantages that constitute undue gain under §166(5) before any human regulator has identified the transaction as suspicious.

Section 166(5) requires that the gain be achieved by the director and that person be the attributable agent of the advantage obtained. Where the advantage is extracted by an algorithm operating autonomously within a system the director has authorised but does not directly control, the attribution required by §166(5) may be legally unavailable. The gain occurs. The algorithm executes it. The director authorised the system. The provision has no vocabulary for this chain of causation.⁴⁸

4.5 The Delegation Doctrine and the Irreducible Fiduciary Mind

The delegation doctrine in fiduciary law is based on the principle that the fiduciary's reasoning function—the exercise of judgment in the beneficiary's interest—is personal and non-transferable. A trustee cannot delegate discretion, and a director cannot delegate their mind. Section 166(6) reflects this principle by rendering void any assignment of a director's office, confirming that directorial duties are personal and cannot be transferred.

The critical question for algorithmic governance is whether the adoption of an AI system for governance functions constitutes, in substance if not in form, a delegation of the director's reasoning function.⁴⁹ The answer turns on the degree of effective displacement. Where a director uses an algorithmic tool as one input among several, retaining genuine evaluative control over the ultimate decision, no delegation has occurred. Where a director

⁴⁶*Keech v. Sandford*, *supra* note 12.

⁴⁷Sec. & Exch. Bd. of India, *supra* note 38.

⁴⁸Council Regulation 2024/1689, arts. 13–14, 2024 O.J. (L 1689) (EU).

⁴⁹*Re Barings plc (No. 5)*, *supra* note 41.

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systematically defers to algorithmic recommendations without genuine independent evaluation, treating the system's output as effectively determinative, the substance of delegation has occurred, even if its form has not.⁵⁰

The J.J. Irani Committee Report (2005), whose recommendations directly informed the Companies Act, 2013, emphasised that the personal accountability of directors was the cornerstone of the Act's governance philosophy.⁵¹ The algorithmic boardroom, where key reasoning is performed by systems beyond legal accountability and directorial scrutiny, fundamentally undermines the assumptions of Section 166. The provision currently lacks a mechanism to detect effective delegation, assess its extent, or address the resulting accountability vacuum.

5. COMPARITIVE PERSPECTIVE

5.1 The Caremark Oversight Duty and Artificial Intelligence

Delaware corporate law has, over the past three decades, developed the most sophisticated judicial framework for director oversight obligations in the common law world. Its relevance to the Indian algorithmic governance problem is not merely persuasive but is instructive, because Delaware courts have begun, more directly than any other jurisdiction, to confront the question of what oversight means when the systems being overseen are algorithmic.

The foundational authority is *In Re Caremark International Inc Derivative Litigation*⁵², Chancellor Allen's formulation established two limbs of director oversight liability: first, a failure to implement any reporting system at all; and second, a conscious failure to monitor a system known to be inadequate. Both limbs presuppose that the directors are capable of understanding and evaluating the systems they are obliged to oversee which is a presupposition that algorithmic governance directly undermines.

The *Caremark* framework was significantly developed in *Stone v Ritter*⁵³ where the Delaware Supreme Court held that *Caremark* liability is grounded in the duty of loyalty and requires a showing of bad faith which is a conscious disregard of known risks. Applied to algorithmic governance, a director who is aware that an AI system is generating governance

⁵⁰*Bishopsgate Inv. Mgmt. Ltd. v. Maxwell (No. 2)*, [1994] 1 All ER 261 (C.A.).

⁵¹J.J. Irani Comm., Report of the Expert Comm. on Co. Law (Ministry of Corporate Affairs 2005).

⁵²*In re Caremark Int'l Inc.*, *supra* note 31.

⁵³*Stone v. Ritter*, 911 A.2d 362 (Del. 2006).

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recommendations they cannot interrogate, and who continues to approve those recommendations without seeking adequate oversight mechanisms, may satisfy the bad faith standard that *Stone v Ritter* requires.

Most recently, *In Re Boeing Co Derivative Litigation*⁵⁴ demonstrated that Delaware courts are prepared to apply *Caremark* to technology-driven governance failures. The Boeing litigation concerned directors who allegedly failed to oversee the MCAS flight control software implicated in two fatal crashes. The court's analysis (examining what the directors knew about the algorithmic system, when they knew it, and what oversight mechanisms they implemented) is structurally identical to the analysis that Indian courts would need to perform in an algorithmic governance liability case under Section 166. The difference is that Delaware has a developed framework for performing that analysis. India does not.⁵⁵

5.2 The UK Companies Act 2006 and the §174 Skill Standard

The UK Companies Act 2006 is the closest statutory comparator to Section 166 of the Indian Companies Act, 2013, due to their shared common law heritage and the influence of English company law on Indian legislation. Section 174 requires directors to exercise reasonable care, skill, and diligence, assessed against both the standard of a reasonably diligent person and any higher standard arising from the director's actual knowledge, skill, or experience.

The dual standard is significant for algorithmic governance because it raises a question that neither the UK nor Indian statute directly answers: what level of AI literacy is reasonably expected of a person performing the functions of a director in 2024? If AI literacy is now a component of the general standard, then a director who approves algorithmic recommendations without any understanding of how such systems operate may fall below the objective limb of the §174 standard regardless of their personal technical background.

The UK's Financial Reporting Council has addressed this gap more directly than any equivalent Indian body.⁵⁶ The 2024 revision of the UK Corporate Governance Code explicitly requires boards to understand and oversee the use of technology in the company's operations, including algorithmic systems, as a component of the director's skill and oversight obligations. This represents a soft-law bridge between the existing statutory standard and the

⁵⁴*In re Boeing Co. Derivative Litig.*, No. 2019-0907-MTZ (Del. Ch. Aug. 2021).

⁵⁵Lawrence Hamermesh & Michael Wachter, *The Fair Value of Cornfields in Delaware Appraisal Law*, 31 J. Corp. L. 119 (2005).

⁵⁶Fin. Reporting Council, UK Corporate Governance Code (2024).

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demands of algorithmic governance one that India's equivalent instruments, including SEBI's LODR Regulations, have not yet crossed.⁵⁷

5.3 The EU AI Act's Governance Obligations

The European Union's AI Act, which entered into force in 2024, is the most comprehensive binding legal framework for AI governance. Although primarily a product safety and fundamental rights regulation rather than a corporate law instrument, its governance obligations are directly relevant to the accountability vacuum.

In particular, Articles 13 and 14 require transparency and human oversight for high-risk AI systems, ensuring that human operators can understand, monitor, and, where necessary, override their outputs. Applied to boardroom AI, these provisions would require algorithmic governance tools used in significant corporate decisions to be sufficiently explainable, enabling directors to discharge their oversight obligations and addressing the structural incapacity identified under Section 166(3).

Second, Article 22 addresses the specific problem of automated decision-making in high-risk contexts, requiring that consequential decisions involving AI systems be subject to meaningful human review before taking effect.⁵⁸ This distinction between formal approval and meaningful review is precisely the distinction that Section 166 currently fails to draw, and that the reform framework proposed in Section VII seeks to introduce into Indian law.

Third, the EU AI Act's conformity assessment and documentation requirements impose obligations to maintain records of AI system design, training data, and operational parameters sufficient to enable post-hoc reconstruction of the system's reasoning in regulatory proceedings.⁵⁹

5.4 Limits of Transplanting Foreign Frameworks to India

Delaware's *Caremark* doctrine creates oversight liability for directors who fail to monitor algorithmic systems. The UK's evolving skill standard and Corporate Governance Code create AI literacy obligations. The EU AI Act creates transparency, traceability, and human oversight requirements. None of these frameworks is complete. None directly addresses the

⁵⁷Paul Davies, Introduction to Company Law (3d ed., Oxford Univ. Press 2020).

⁵⁸Council Regulation 2024/1689, art. 22, 2024 O.J. (L 1689) (EU).

⁵⁹Council Regulation 2024/1689, arts. 11–12, 2024 O.J. (L 1689) (EU).

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full range of problems that §166 presents. But each offers a component of the reform architecture that India needs.⁶⁰

The transplantation of foreign frameworks into Indian corporate law carries well-documented risks. Indian courts operate within institutional constraints caseload pressures, evidentiary limitations, and technical capacity gaps that affect the enforceability of standards designed for the Delaware Court of Chancery or the UK High Court.⁶¹

The EU AI Act's detailed conformity assessment and documentation requirements, for instance, presuppose a regulatory infrastructure including technical auditors, certification bodies, enforcement agencies with AI expertise that India's current regulatory landscape does not yet possess. Delaware's *Caremark* doctrine presupposes a sophisticated derivative litigation mechanism that India's shareholder enforcement framework, while improving, has not yet fully developed.

These are not arguments against reform. They are arguments for reform that is calibrated to Indian institutional conditions reform that adopts the principles established by comparative analysis while designing mechanisms suited to the courts, regulators, and companies that must apply them.⁶²

6.EXSISTING REMEDIES AND LACUNAS

6.1 SEBI LODR Regulations and Disclosure Obligations

The Securities and Exchange Board of India's Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015 are the primary regulatory framework governing corporate governance in listed companies. They impose comprehensive obligations relating to disclosure, board composition, audit committee oversight, and related party transactions, representing Indian law's most developed effort to operationalise director accountability in the listed company context.

The LODR Regulations require that boards of listed companies receive adequate information before making significant decisions, that audit committees oversee financial reporting and

⁶⁰Umakanth Varottil, *The Evolution of Corporate Law in Post-Colonial India: From Transplant to Autochthony*, 31 Am. U. Int'l L. Rev. 253 (2016).

⁶¹Afra Afsharipour, *Directors as Trustees of the Nation? India's Reformulated Corporate Purpose*, 76 Md. L. Rev. 927 (2017).

⁶²L.C.B. Gower, *Gower's Principles of Modern Company Law* (Paul L. Davies & Sarah Worthington eds., 10th ed., Sweet & Maxwell 2016).

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internal controls, and that related party transactions be disclosed and approved through specified procedures. These requirements are directly relevant to algorithmic governance i.e. a board that receives algorithmically filtered information before deliberating, or that approves algorithmically generated compliance disclosures without independent verification, is potentially in breach of the LODR framework's substantive governance obligations.⁶³

A key gap in the LODR framework is that it does not require boards to identify, assess, disclose, or explain the use of AI and algorithmic systems in governance. SEBI's disclosure framework focuses on decision outcomes rather than decision-making processes, and therefore does not examine how recommendations were generated, what data was used, or whether bias or errors influenced the results. While this outcome-oriented approach was effective in an era of human decision-making, it is inadequate for algorithmic governance. Consequently, a board may fully comply with LODR requirements while relying on opaque AI systems to determine materiality, thereby undermining the accountability the framework seeks to ensure.

6.2 The Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 is India's first comprehensive framework for data governance, imposing obligations on data fiduciaries regarding the collection, use, and protection of personal data. Although not a corporate governance instrument, its interaction with boardroom algorithmic governance creates a parallel accountability framework that is relevant to, yet distinct from, the Section 166 analysis.

Many algorithmic systems deployed in Indian boardrooms like credit risk models, compliance screening tools, strategic advisory systems process personal data as a core input. The DPDP Act's obligations regarding accuracy, purpose limitation, and data minimisation apply to such systems, creating a regulatory floor for the quality of algorithmic governance tools that process personal data. A board that adopts an algorithmic system processing personal data in ways that violate the DPDP Act may face liability not only under the Act itself but potentially under §166(2) for failing to act in good faith toward the employees, customers, and other stakeholders whose data has been misused.⁶⁴

⁶³Sec. & Exch. Bd. of India, *supra* note 38.

⁶⁴Justice B.N. Srikrishna Comm., Report of the Comm. of Experts on a Data Protection Framework for India (2018).

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The DPDP Act introduces the concept of the data fiduciary which is structurally analogous to the fiduciary director under Section 166. The parallel between data fiduciary and corporate fiduciary is not merely metaphorical: both frameworks rest on the principle that persons entrusted with consequential decisions affecting others bear personal accountability for the quality and integrity of those decisions.⁶⁵ The DPDP Act does not specifically regulate the use of personal data in board-level algorithmic governance tools. Its provisions apply generally to data processing and do not connect with Section 166 to address algorithmic accountability. As a result, the DPDP Act and Section 166 operate in separate legal spheres, leaving a gap where failures in algorithmic governance can occur without clear accountability.

6.3 NCLT Jurisprudence

The National Company Law Tribunal, exercising jurisdiction under Sections 241-242 of the Companies Act, 2013, provides the primary judicial forum for shareholder complaints of oppression and mismanagement against company directors. The NCLT's jurisdiction is potentially relevant to algorithmic governance failures because a board that systematically relies on a biased or defective algorithmic system to make decisions that harm minority shareholders or other stakeholders may be engaging in conduct that satisfies the mismanagement standard under §241.⁶⁶

The difficulty with the NCLT as a vehicle for algorithmic governance accountability is evidentiary and definitional. Establishing that a specific algorithmic governance failure constitutes prejudicial mismanagement requires the complainant to demonstrate not merely that the board's decision was wrong, but that the reliance on an algorithmic system in reaching that decision was itself the operative cause of the prejudice.

The NCLT's jurisprudence on mismanagement has not yet addressed algorithmic governance cases, and its existing framework is not equipped to analyse the governance failures such systems produce. There is no precedent for examining an algorithm's design, training data, or operational parameters as evidence of mismanagement, no established standard for adequate human oversight, and no remedy specifically tailored to algorithmic governance failures.

6.4 Failure of existing framework

⁶⁵Rahul Matthan, *Privacy 3.0: Unlocking Our Data Driven Future* (HarperCollins India 2018).

⁶⁶*Tata Consultancy Servs.*, *supra* note 21.

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The analysis in the preceding sub-sections reveals a consistent pattern across India's existing regulatory and judicial landscape: each available framework addresses a portion of the algorithmic governance problem while leaving its structural core unresolved. Together, these frameworks constitute a partial and fragmented response to a structural and systematic problem.

The fundamental reason why existing Indian frameworks do not close the accountability vacuum is that none of them was designed to address it. The LODR Regulations were designed to ensure disclosure of outcomes. The DPDP Act was designed to protect personal data. The NCLT's jurisdiction was designed to remedy oppression and mismanagement in their traditional forms. Each framework rests on the same foundational assumption that Section 166 itself rests on: the decisions being regulated are made by identifiable human agents whose reasoning is, in principle, recoverable and attributable.⁶⁷

The case for reform rests not on the general inadequacy of existing Indian law, but on the structural incompatibility between its underlying assumptions and the reality of algorithmic governance. Closing the accountability vacuum requires new frameworks that recognise that, in the algorithmic boardroom, the director who reasons and the director who signs are no longer the same person.

7. REFORMS AND SUGGESTIONS

7.1 Establishing Meaningful Human Oversight as a Statutory Duty

The most important reform needed to address the accountability vacuum is the codification of a meaningful human oversight standard under Section 166. While the provision requires directors to exercise judgment and act responsibly, it does not regulate how they engage with algorithmic recommendations. As a result, directors may satisfy the formal requirements of Section 166 by approving AI-generated outputs without genuinely evaluating them. A codified oversight standard would require directors to actively assess algorithmic recommendations rather than merely endorse them.

The EU AI Act offers a useful model. Articles 13 and 14 require high-risk AI systems to be transparent enough for human operators to understand, monitor, and, where necessary, override their outputs. The Act emphasises meaningful rather than merely formal human

⁶⁷Doshi-Velez & Kim, *supra* note 33.

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oversight. A director who cannot understand, question, or override an algorithmic recommendation cannot be said to have exercised genuine oversight.

In India, a meaningful human oversight standard under Section 166 could require:

- (i) evaluation of algorithmic recommendations by at least one technically competent director;
- (ii) provision of a plain-language explanation of the system's assumptions, data inputs, and limitations; and
- (iii) recording in board minutes of the oversight process used to assess the recommendation before adoption.

7.2 Algorithmic Impact Disclosures in Board Resolutions

When algorithmic systems perform the substantive reasoning behind board decisions, recording only the final decision in board minutes removes the evidentiary basis for accountability. Algorithmic impact disclosures would restore this by creating a legally recoverable record of the reasoning influencing significant board decisions. Board resolutions materially influenced by algorithmic recommendations should therefore include an algorithmic impact statement identifying the system used, its key inputs, outputs, limitations, and the human oversight process applied. Drawing on the EU AI Act, which requires documentation enabling post hoc reconstruction of AI reasoning, the Ministry of Corporate Affairs should prescribe disclosure requirements calibrated to the materiality and risk of the decision involved.

7.3 The AI-Literate Director: Amending §149 on Board Composition

The meaningful human oversight and algorithmic impact disclosure reforms depend on the presence of at least one director with sufficient technical competence to evaluate algorithmic systems. Without such expertise, oversight becomes a formality and disclosures remain unreviewed. Accordingly, Section 149 should be amended to require at least one AI-literate independent director on boards that use algorithmic systems in specified governance functions.

An AI-literate director need not be a machine learning expert but must possess sufficient understanding of algorithmic systems, their outputs, and limitations to exercise genuine oversight and critically evaluate algorithmic recommendations.

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The reform should be implemented in two phases. First, for listed companies and companies above a specified asset threshold, it should operate on a comply-or-explain basis, requiring companies that do not appoint an AI-literate independent director to explain how board competence is otherwise ensured. After a transitional period, the requirement should become mandatory for companies using algorithmic systems in specified high-risk governance functions.

7.4 Vendor Liability and Extending §166 to Promoter-Designers

Under current Indian law, AI vendors are not liable under the Companies Act, 2013 for governance failures caused by defective, biased, or non-explainable systems. Their liability is generally limited to contractual obligations. Likewise, promoters who structure governance systems around algorithmic decision-making bear no fiduciary responsibility under Section 166 for the accountability gaps such structures create.

The proposed reform extends Section 166's accountability framework in two ways. First, AI vendors supplying governance tools would be subject to a statutory duty of care requiring minimum standards of explainability, documentation, and bias assessment. Vendors whose systems cause governance harm would be jointly and severally liable with the directors who adopted them.

Second, the reform would extend personal accountability to promoters who design governance-by-algorithm structures that systematically displace directorial judgment, recognising their effective influence over corporate decision-making.

7.5 A SEBI-NCLT Coordination Mechanism for Listed Companies

Director accountability in listed companies is currently divided between SEBI and the NCLT. This creates a coordination gap, particularly where algorithmic governance failures involve both disclosure violations and fiduciary breaches, potentially leaving neither body able to provide an effective remedy.

To address this, a joint SEBI–NCLT Algorithmic Governance Panel should be established. The Panel would coordinate investigations, provide access to accredited technical experts for assessing algorithmic systems, and develop standardised remedies such as algorithmic impact assessments, human oversight protocols, and system audits. This would ensure coherent enforcement and effective accountability for algorithmic governance failures.

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8.CONCLUSION

Section 166 of the Companies Act, 2013 is not a flawed provision. It is a fiduciary framework built on three assumptions that were true when the statute was enacted: that the director is the reasoner, that the director's reasoning is traceable, and that responsibility and reasoning are co-located in the same human being. Algorithmic governance has rendered these assumptions progressively unreliable. The director still signs, the minutes still record a human decision, and accountability still points to the person at the top. But the reasoning has migrated to a system that the law cannot reach, interrogate, or hold accountable.

The accountability vacuum is now an operational reality in Indian boardrooms, where algorithmic systems already perform governance functions such as generating compliance disclosures, recommending acquisitions, and structuring risk assessments without an adequate legal framework to govern their use or attribute their consequences. Every day that Section 166 remains silent on this reality is a day on which the accountability it promises is, in practice, undeliverable.

The fiduciary mind that Section 166 presupposes, acting in good faith, exercising independent judgment, avoiding conflicts, and refraining from personal gain, is the foundation of corporate accountability. What is required is not its abandonment but its adaptation to a world where consequential boardroom reasoning is increasingly performed by machines. Indian corporate law must recognise this reality if the accountability promised by Section 166 is to remain meaningful for companies, shareholders, employees, and communities.