

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

FROM AI- ASSISTED DECISIONS TO AUTONOMOUS CORPORATE ACTION: RECONSIDERING DIRECTORS' DUTY OF CARE, BOARD ACCOUNTABILITY AND LIABILITY UNDER SECTION 166 OF THE COMPANIES ACT, 2013

AUTHORED BY - P. VAISHNAVI & N. SAILESH KUMAR

ABSTRACT:

Artificial Intelligence (AI) is being used more and more in decision- making. This change moves directors from being the decision makers to being supervisors of technology-assisted and more often autonomous decision systems. AI can help directors by looking at amounts of data spotting risks and giving suggestions. There are important questions about human judgment, board accountability and legal liability that arise when AI is selecting and implementing corporate actions. Section 166 of the Companies Act 2013 requires directors to act in faith to use due and reasonable care, skill and diligence and to make independent judgments. The current rules do not say how these duties work when big corporate decisions are largely guided or carried out by AI.

This study investigates whether section 166 can "catch up" with the trend of AI assisting decision making rather than AI making decisions. It considers the impact of the reliance of AI on the director's responsibilities under the duty of care and diligence and independent judgment (IDJ), as well as the possibility that directors might be less likely to fulfil their legal duties if they rely heavily on AI. The research also examines who is responsible if the AI decision makes a loss of money, violates rules, or harms people particularly if the blunder is due to the director, the company, the developer of the AI or the technology provider.

The main issue the research tackles is the gap between technology that acts on its own and the legal duties that still belong to humans. The research is driven by the need to make sure that progress in technology does not leave a hole in accountability in governance. It recommends a way of doing so, one that's based on supervision, thoughtful standards of care that factor in risk, openness, checking, and the continuous supervision of AI systems. The study seeks to determine if section 166 can be read as to accommodate the process of governance by a machine or if it is necessary to develop new laws and rules that will provide a clear system

of accountability in an era where artificial intelligence operates increasingly autonomously.

KEYWORDS: *Artificial intelligence, Technology-assisted, Autonomous decision, Human judgment, duty of care, Board Accountability, Legal Liability, Independent Judgment, director's responsibility, Continuous Supervision, New Laws.*

INTRODUCTION:

Artificial Intelligence is playing an increasing role in the management of corporate decision making, through data analysis, risk assessment, forecasting, and the automated executed of corporate activities. Artificial intelligence can improve efficiency and help make better informed decisions but the increasing independence of AI raises vital questions about directors duties¹, board accountability and legal liability. As corporate decisions shift from AI-assisted recommendations to autonomous execution, the distinction between technological decision making and human responsibility grows wider.

Section 166 of the Companies Act, 2013 provides that the directors shall act in good faith, exercise due and reasonable care, skill and diligence and exercise independent judgment. But there isn't anything specific in it about the issues that arise when artificial intelligence systems are heavily involved in corporate decision making, or in the execution of those decisions. This raises the issue of whether over-reliance on ai could undermine directors' statutory duties and how responsibility should be apportioned where decisions made using ai result in financial loss, regulatory breaches or harms to stakeholders².

This article explores the applicability of section 166 to AI based corporate governance, with specific attention to the duties of directors, human meaningful oversight and the distribution of responsibilities between directors, companies, AI developers and technology providers. It has a doctrinal and analytical approach. It claims that the technological delegation cannot take the place of the legal accountability. It further discusses whether the existing statutory principals are adequate to accommodate the increased autonomy of corporate action or whether additional regulatory safeguards are needed.

¹ Companies Act, no. 18 of 2013, section 166, India Code (2013).

² Companies Act, No.18 of 2013, section 166(1) – (3), India Code.

AI AND THE TRANSFORMATION OF CORPORATE DECISION-MAKING:

The use of AI in corporate decision-making is not so much a new technological development as a slow-moving transformation. The legal implications of using AI in such a manner are therefore largely dependent on the extent of autonomy given to the system³.

At the first level, AI serves as an analysis support mechanisms. The system processes information and provides data-driven insights, but the decision is always left to human directors or officers”. Examples includes predictive financial analysis, identification of fraud risk and analysis of market trends. In such cases, AI is more like a sophisticated decision support tool. The director has broad discretion in making the decision and may, on his own, decide whether to accept the recommendation⁴.

At the second level, AI is a recommender. Here the system does more than order information. Based on programmed objectives, historical data or machine-learning models, it evaluates the available alternatives and recommends a specific course of action. The director may formally retain the decision-making authority but the substantive influence exercised by the AI system becomes greater.

At the third level, artificial intelligence can be an AI – mediated decision system. The organisation sets the objectives and parameters, and the AI system decides how to meet those objectives. Man’s function may be limited to establishing initial conditions or reviewing results. Under this model, the director has legal responsibility for the governance framework within which the AI operates, but may be able to personally review every individual decision.

At the fourth level, AI may assist in the autonomous execution of the corporation. The system can initiate or conduct transactions, modify operating decisions, or respond to changing circumstances within pre-defined parameters, without requiring separate human approval for each action.

These categories are why the legal analysis of artificial intelligence cannot be based simply on whether a corporation “uses AI”. The key question is what part the AI has, how much discretion it has, what risks its operation presents and how much human supervision there is. Hence, the change in the nature of the director’s responsibility is the change from assistance to autonomy. A director who receives an AI-generated recommendation and then reviews it

³ Organisation for Economic Co-operation and Development [OECD], *Recommendation of the Council on Artificial Intelligence*, OECD/LEGAL/0449 (May 3, 2024).

⁴ Nat’l Inst. Of Standards & Tech., *Artificial Intelligence Risk Management Framework (AI RMF 1.0)*, NIST AI 100-1 (2023).

independently is in a different position than a director who allows an AI system to make material decisions without meaningful oversight.

The legal framework should therefore distinguish between the delegation of a task and the abdication of responsibility. If proper safeguards are in place, technological delegation may be legitimate. But delegation does not automatically imply the assumption of the statutory duties of the director.

SECTION 166 OF THE COMPANIES ACT, 2013 AND THE DUTIES OF THE DIRECTORS:

Section 166 of the Companies Act, 2013 lays down the statutory framework relating to duties of directors. This is particularly relevant in the AI context because this provision lays down standards for the exercise of authority by directors, rather than prescribing a particular technological means of decision-making.

Section 166 imposes a duty on directors to act in accordance with the company's articles and in good faith in the promotion of the company's objects in the best interests of the company's members as a whole and to take into account the interests of the company, employees, shareholders, the community and the protection of the environment. Section 166 further requires the directors to act with due and reasonable care, skill and diligence and exercise independent judgment.

Such obligations provide a useful legal framework to analyse AI- assisted governance.

1. DUTY OF GOOD FAITH:

The duty of good faith requires directors to exercise their powers for proper corporate purposes and in the interests contemplated by the statute. AI does not exempt from this obligation. Where the AI system is employed to support corporate decision-making, directors are obliged to take steps to ensure that the application of the system is consistent with legitimate corporate goals. For example, an AI system designed only to maximize short-term financial returns should not be presumed to be a sufficient basis for decision-making where its operation creates significant regulatory, environmental, employee or stakeholder risks⁵.

Thus, the use of artificial intelligence is unable to reduce the corporate goal to a pure algorithmic optimization exercise. Directors remain responsible for ensuring

⁵ *Dale & Carrington Inv. (p) Ltd. v. P.K Prathapan, (2005) 1 SCC 212 (India).*

that the technological objectives are aligned to the legal and governance objectives of the company.

2. DUTY OF CARE, SKILL AND DILIGENCE:

The need for due and reasonable care, skill and diligence is particularly important where directors rely on AI.

The use of AI does not automatically amount to a breach of the duty of care. In contrast, the proper use of sophisticated technological tools may improve the quality of corporate decision-making. The problem of law is that the reliance is unreasonable or uncritical.

Therefore, a director should take into account issues like:

- The purposes for which the AI system is used;
- the reliability and limitations of the system;
- the quality and relevance of the underlying data;
- the consequences of erroneous outputs;
- possibility of bias or systematic error;
- the level of oversight by humans;
- the materiality of the decision;
- the need for independent verification.

The standard of care therefore should be interpreted in a risk- sensitive manner. More technological autonomy and more potential for harm should mean more expectation of oversight.

3. INDEPENDENT JUDGMENT:

One of the biggest challenges in an AI-enabled corporate environment is the issue of independent judgment.

Independent judgment does not necessarily means directors dispel expert opinion or technological advice. Corporate directors regularly call on lawyers, accountants, auditors, financial advisers and other experts. Similarly, directors are entitled to rely on artificial intelligence systems as sources of information or analysis⁶.

The problem is when the director leans too heavily on AI, approving whatever the system recommends, without any real assessment. If a director cannot explain why

⁶ *Companies Act, No. 18 of 2013, section 166(3), India Code (2013).*

an AI recommendation was accepted, ignores the existence of obvious contradictory information or routinely treats algorithmic outputs as determinative then the formal existence of human approval may not in itself reflect true independent judgment.

The rise of AI thus demands a distinction between human approval and meaningful human judgment. A signature, click or automated approval alone should not constitute adequate evidence that the statutory requirement of independent judgment has been satisfied.

FROM AI- ASSISTED DECISION TO AUTONOMOUS CORPORATE ACTION:

The key legal question is what happens when the AI moves from being a tool to help humans make decisions to actually carrying out functions that corporations have traditionally performed themselves.

But autonomy is not a binary concept. Some of these artificial intelligence(AI) systems may function in a more autonomous manner. The correct legal answer should therefore be determined with reference to the system's actual functional autonomy, not to its marketing description or to its technical classification.

A useful framework is to distinguish between four categories:

Human first with AI assistance. After seeing information generated by AI, the director decides,

Second, AI-supported decision making. The AI system analyses options and makes recommendations but the director retains meaningful discretion.

Third, AI decision making based on parameters; the AI systems is designed to operate independently in taking action and performing that action.

The greater the extent to which a corporate system is in the fourth category, the greater the importance of governance mechanisms that can sustain accountability.

Autonomy also raises a significant distinction between responsibility for decision-making and responsibility for execution. A director may establish a policy allowing an AI system to act within defined parameters. If the system then takes an action within those parameters, the director cannot necessarily avoid responsibility might have to be considered in relation to the circumstances of design, deployment, monitoring and control.

Thus, liability should not be automatically determined by the location of the final technical act. Rather, it should be decided by looking at the chain of governance and control

through which the AI system was brought in and operated.

AI RELIANCE AND THE POSSIBILITY OF BREACH OF SECTION 166:

It should not be assumed that reliance on AI is either compliance or breach of section 166. The question is whether the manner of reliance was reasonable in the circumstances.

A director who utilizes AI to analyze a large amount of financial information could arguably be considered to be exercising more diligence than one who ignores available analytical tools. But a director who relies on an AI generated recommendation without knowing its limitations may expose the company to significant risk.

This translates to an integrated process and outcome for assessing the compliance of AI with section 166.

The process approach asks whether the director took reasonable steps prior to reliance on the AI system. This may include assessing the system's purpose, limitations, data quality, reliability, security and risk profile.

The outcome based approach focuses on whether the corporate decision made was consistent with the director's duties and whether foreseeable risks were properly dealt with.

This is especially true for a process-oriented approach, as artificial intelligence systems can generate wrong results, even if the final corporate outcome may be beneficial. Conversely, a reasoned decision may have a negative outcome, even if the standards of governance are reasonable.

So directors should not be judged merely on the basis of an AI-generated decision that later turns out to be wrong. The more relevant question is whether the director was reasonable in adopting, supervising or approving the system.

BOARD ACCOUNTABILITY IN AI-DRIVEN GOVERNANCE:

The traditional assumption of corporate governance is that the board monitors management and major corporate activities. This oversight should be extended to technological systems that are rolled out with the AI that can materially affect corporate decisions.

Hence, the board's accountability should also encompass the oversight of the organisation's AI governance framework.

The board should have a sufficient level of understanding of the purpose and material limitations of the artificial intelligence (AI) systems used in material corporate activities. That is not to say that every director needs to become a technical machine learning expert. Rather,

directors should have enough understanding to be able to identify material risks and ask appropriate questions.

Effective board oversight may involve:

- Material uses of AI within the organisation
- The level of risk attached to each use
- Authority and approval limits
- Requiring human review for decisions with high impact
- Mechanisms for recording significant AI-assisted decisions
- Periodic performance and risk assessments
- Appropriate cybersecurity and data governance
- Procedures for detecting and correcting erroneous outputs
- Responsibility for monitoring the AI system.

The board should also not treat AI as an independent source of authority. In the end, an AI system is deployed as part of a corporate governance structure designed and approved by human actors.

The guiding principle should therefore be human accountability even when delegated to technology.

ATTRIBUTION OF LIABILITY FOR AI-DRIVEN CORPORATE ACTION:

One of the hardest questions is who is liable when a decision made by AI results in loss or damage.

The simple answer would be to blame the person who technically signed off or implemented the decision. But this could be a simplification of the complex chain of actors in the deployment of AI.

- Liability of directors:

Directors may be liable when the harm resulted from failure of appropriate oversight, unreasonable reliance, failure to inquire about material risks or failure to exercise independent judgment⁷.

For example, if directors decide to use an AI system for high-value financial transactions and fail to put appropriate safeguards in place and the system continues to produce

⁷ *Official Liquidator v. P.A. Tendolkar*, (1973) 1 SCC 602 (India).

materially erroneous decisions, the directors' failure to put adequate oversight in place may become relevant to determining compliance with section 166.

The relevant question would not necessarily be whether the AI system had made the mistake, but whether the directors had acted reasonably in creating and maintaining the conditions in which the mistake arose.

- Responsibility of the company

The company's separate legal personality is still relevant. Corporates act through technological systems, and actions performed through technological systems remain corporate actions, even if an algorithm was involved in their execution⁸.

The company must therefore continue to be the main institutional actor concerning transactions and obligations effected through its artificial intelligence (AI) systems, within the applicable statutory and common-law regime.

- AI developers

Developers may be held liable for any damage caused by defects in development, coding, design or other legally recognized forms of fault. The precise basis of liability will depend on the contractual and statutory matrix in which the relationship is set.

This is especially true where the directors reasonably relied on representation as to the system's capabilities or safety.

- Technology and service providers

When companies purchase their artificial intelligence (AI) systems from outside vendors, the contractual arrangements are important. The contracts will define system functionality, performance expectations, data responsibilities, security obligations, incident reporting, audit rights and limitation of liability.

Statutory duties imposed on directors do not necessarily have to be discharged by way of contract allocation.

THE PROBLEM OF BLACK-BOX AI AND INDEPENDENT JUDGMENT:

The very idea of explainability is a special challenge for corporate governance. Some artificial intelligence systems can produce outputs that are hard for users to understand. When directors lack a meaningful understanding of the basis on which a system has produced a significant recommendation, questions arise about the extent to which the recommendation can

⁸ *Salomon v. A. Salomon & Co.*, [1897] A.C. 22 (H.L.).

responsibly from the basis of corporate action.

That doesn't mean every AI system has to be fully transparent, in a technical sense. Instead, the governance requirement should be decision- relevant explainability.

Directors should have access to sufficient information concerning:

- The purpose of the system
- The nature of data being used
- Relevant limitation
- The degree of confidence associated with outputs
- Material risks
- Circumstances in which human intervention is required
- Procedures for challenging or reversing an AI-generated decision.

Where a system cannot provide sufficient information to support a material decision, directors should consider whether some additional human review is needed.

Explainability is therefore linked to the statutory duty of independent judgment. If the director is unable to critically evaluate the information on which the decision is based, then there can be no meaningful exercise of independent judgment.

A RISK-SENSITIVE STANDARD OF DIRECTORIAL OVERSIGHT:

Each type of AI error will have very different consequences, so I don't think one standard for all AI applications would be appropriate.

An AI system that automates routine administrative functions presents a different governance risk than an AI system that makes major investments, financial transactions, employee dismissals or regulatory decisions.

Therefore, a risk sensitive framework should take into account, at a minimum, four things:

- Materiality first. The more important the decision (financial or legal) the more oversight required.
- Second, independence. Stronger governance safeguards must accompany more autonomy.
- Third, reversibility. It is less risky to make a decision that can be reversed than one that cannot be reversed.
- Fourth, possibly injury. Systems that might affect shareholders, employees, consumers, communities or the environment need more scrutiny.

This method keeps section 166 technology neutral, but updates its application to current corporate practices.

PROPOSED FRAMEWORK FOR AI ACCOUNTABILITY UNDER SECTION 166:

A model of interpretation based on human control, risk assessment, verification, transparency and continual monitoring might bolster the existing statutory framework.

- **Individual supervision**

Corporate decisions must be responsible to identifiable human beings. The degree of oversight by humans should be proportionate to the degree of autonomy and potential harm of the AI system.

- **Risk assessment**

Before deploying AI for critical corporate functions, the board should identify potential risks to operations, finances, legal compliance, cybersecurity and stakeholders.

- **Validations**

Recommendations generated by AI should not be assumed to be correct. Verification of material outputs and investigation of unusual or contradictory findings should be subject to directors' procedures.

- **Openness**

The company will maintain adequate records of the use of AI in material corporate decisions. Relevant records may include the system used, the purpose, the decision parameters, the material outputs, the human intervention and the final decision.

- **Continual monitoring**

Artificial intelligence systems are not to be viewed as static tools. Their performance may change as data, models, business conditions and other factors change. So, the board's governance responsibilities must include ongoing monitoring.

- **Escalation process**

There need to be clear conditions when automated decisions in artificial intelligence systems should be escalation to a human decision maker. Any outputs that are high-risk or anomalous are required to undergo human review.

- **Mapping accountability**

Companies should identify in advance who will be responsible for approving, monitoring and reacting to significant artificial intelligence (AI) systems, whether that is an

individual or an organizational body. This decreases the chance of responsibility being spread over a number of actors.

WHETHER SECTION 166 IS SUFFICIENT:

The fact that section 166 does not expressly refer to AI does not necessarily mean that the provision is incapable of dealing with AI-elating governance issues. The statutory language as to care, skill, diligence and independent judgment is sufficiently broad to allow changes in the way the directors exercise their functions.

The duty of care should not be taken to mean that directors must personally perform every analytical function associated with corporate governance. Professional advisers, auditors, financial experts and technological systems are already used in modern corporate decision making. The important point is that directors must exercise their best judgment about whether, and how, to rely on such assistance.

Therefore, section 166 may allow AI-assisted corporate governance via a contextual interpretation of the existing duties.

But there are limits to interpretive flexibility. As artificial intelligence systems become more autonomous, there may be uncertainty about who exactly is responsible (directors, companies, developers or technology providers). There may be a need for more specific regulatory guidance on issues such as algorithmic transparency and auditability, data governance, contractual allocation of risk, and technical standards.

The right response is therefore not necessarily to replace section 166 with AI- specific statutory duties. The basic obligation could instead be included in section 166, with sector-specific rules, corporate governance standards, contractual protections and regulatory guidance on the use high-risk AI added on top.

NEED FOR A HUMAN-ACCOUNTABILITY PRINCIPLE:

The rise of autonomous corporate systems brings with it the risk of what could be characterised as an accountability displacement problem. When a AI system produces an undesirable result, each participant in the technological chain might be able to shift responsibility to another actor. The developer might be trusted by the director. The developer might follow the company's instructions. The technology provider may be restricted by contractual limitations. The company may say the AI system was acting on its own.

Such fragmentation must not create a legal vacuum.

Thus, a fundamental premise must guide AI-enabled corporate governance technological autonomy alone cannot eliminate human or corporate accountability.

The relevant question should be as to the chain of decision-making, authorization, deployment, supervision and control. Responsibility should be related to the function performed by each actor and the nature of the failure.

Thus this approach avoids the two extremes. It prevents directors from ducking responsibility just because AI was involved, but also prevents developers or technology providers from being automatically responsible for every corporate decision that uses their systems.

JUDICIAL AND CORPORATE GOVERNANCE IMPLICATIONS:

As AI becomes more common, courts will likely be asked to assess traditional ideas of reasonable care in technologically different contexts.

Future disputes may raise questions such as: should a reasonable director have used an AI system. Did the director reasonably rely on a particular output, should the director have spotted an obvious mistake, was there enough oversight by humans, and did the company have adequate governance control.

The “reasonable director” may therefore have to become increasingly technologically aware. That does not mean that all directors must be specialist programmers. Instead, directors must understand the material capabilities and limitations of the technologies on which they depend. This could mean that corporate governance standards evolve to expand AI literacy, technological oversight and documented decision making processes.

Boards may also need to consider their committee structures. The responsibility for technology-related risk may be allocated to existing audit, risk, compliance or governance mechanisms rather than creating a new structure, depending on the size and nature of the company.

LIMITATIONS AND CHALLENGES:

The technology neutral approach to section 166 has its limitations but it does have some flexibilities.

Second, over-reliance on judicial interpretation may lead to uncertainty as different courts may interpret conduct regarding AI differently.

Second, the speed of development of artificial intelligence (AI) technology is faster

than the capacity of detailed legislation to keep pace. Technological progress may render prescriptive statutory requirements obsolete.

Third, proving causation in AI-related disputes can be difficult when the decision is the result of many interacting systems and human inputs.

Fourth, the contractual relationship between the companies and the suppliers of artificial intelligence might complicate the allocation of liability.

Fifth, the technical opacity of AI means that it may be difficult for directors, regulators and courts to know precisely why a particular AI system has come to a particular result.

These constraints suggest the need for a flexible framework of statutory duties, standards of governance, technical controls and appropriate regulatory guidance.

RECOMMENDATIONS:

Artificial intelligence can help enhance the corporate governance accountability in the following ways:

- Artificial intelligence governance policy companies whose business activities are materially reliant on artificial intelligence should have formal internal artificial intelligence governance policies.
- Artificial intelligence systems should be classified on the basis of their level of autonomy, materiality and potential harm.
- Board-level oversight any significant deployments of AI should be overseen by the board or the appropriate committee. Human review: use well- designed human-review processes for high-impact decisions.
- AI literacy: directors must be auditable after the fact.
- Documentation: the critical decisions made with the help of AI and human interventions need to be documented.
- Provider due diligence organizations should evaluate the reliability, safety, contractual protections and limitations of third-party AI providers before deployment.
- Incident response companies should have procedures for detecting, reporting and remediating errors related to the AI.
- Regulatory directives. Regulators should issue sector-specific guidance on how to regulate high-risk AI applications, but should not alter the technology-neutral nature of general corporate law.

- They would strengthen section 166, but not make directors technical experts or strictly liable for any mistakes made by an AI system.

CONCLUSION:

Increasing dependence on artificial intelligence in the governance of corporations calls traditional approaches to directors' duties and corporate accountability into question. Artificial intelligence can assist in decision making but over reliance on algorithmic outputs may undermine the duty of care, diligence and independent judgment as per section 166 of the Companies Act, 2013.

This article argues that the use of AI should not be assumed to be a breach of directors' duties, and that the reasonableness of the conduct of the director should be assessed in light of the degree of autonomy of the AI and the risks of the decision. A risk-sensitive approach, including oversight by humans, verification, transparency and ongoing surveillance can help uphold accountability while enabling responsible technological innovation.

Section 166 offers a possible basis for tackling the governance challenge in the AI age, but more explicit regulatory guidance may be required as autonomous corporate systems become more widespread. Ultimately accountability has to be allocated according to role, responsibility and behaviour of the respective actors. You can't get out of legal responsibility by delegating corporate decision-making to technology.