
THE SILICON SHADOW: CAN AUTONOMOUS ALGORITHMIC SYSTEMS BE DEEMED SHADOW DIRECTORS WITHIN SECTION 2(59) OF INDIA'S COMPANIES ACT, 2013?

Divyansh Singh & Nitu Kumari, Mumbai University (Thakur Ramnarayan College of Law)

ABSTRACT

Indian company law does not use the expression “shadow director”. What it has instead is a definitional device. Under section 2(59) of the 2013 Act, the word “officer” extends to anyone whose directions or instructions the Board habitually follows. The formula was drafted for people who influence boards from outside the boardroom. This article asks whether it can be applied to an autonomous algorithmic system whose outputs a board adopts as a matter of course, and concludes that it cannot. The obstacles are structural rather than technological. “Person” in the Act takes its meaning from section 3(42) of the 1897 General Clauses Act; “directions or instructions” presuppose a source capable of issuing them; and the definition exists to identify someone against whom a penalty can run. The 2026 Bill amending the corporate laws reworked a number of section 2 definitions but did not touch this one. The workable route is the one India’s securities regulator, SEBI, has already chosen for the intermediaries it supervises: treat algorithmic output as the responsibility of those who deploy the system and rely on it.

I. Introduction

A credit committee that approves what a scoring model has ranked, an investment committee that adopts the allocation an optimiser proposes, a board that receives recommendations generated by a system nobody in the room can fully explain: none of this is speculative in Indian companies, and none of it involves appointing anyone to the Board. The Companies Act, 2013 fixes responsibility on people who hold office and, separately, on people who do not. Section 2(59) belongs to the second group. Its net catches anyone whose directions or instructions are habitually acted on by the Board, or even by a single director or a few of them.¹ The test is behavioural. It asks what the Board habitually does, not what any register records.

That is what makes the question worth asking. If habitual deference is the trigger, a system to which a board habitually defers appears, at first sight, to satisfy the central condition. It is not appointed, which section 2(59) does not require. It produces outputs that the Board follows, which is what the provision is about. Scholarship on algorithmic governance has

¹ Companies Act, 2013, § 2(59), INDIA CODE (No. 18 of 2013).

circled this problem for a decade, usually by asking whether an autonomous system can be placed inside or behind a corporate form,² and the practical stakes have grown as automated systems have moved from analysis into decision.

This article argues that section 2(59) does not reach the machine, and that the reasons are worth setting out carefully, because they indicate what should be done instead. Part II examines the deeming device and its English parentage. Part III separates the settings in which automated systems actually operate, since only one of them raises the question at all. Part IV states three obstacles to treating an algorithmic system as an officer and answers the strongest arguments the other way. Part V considers the 2026 amending Bill, which reworked parts of section 2 and left this definition as it was. Part VI argues for attribution to deployers and suggests three targeted reforms.

II. The Deeming Device in Section 2(59)

Section 2(59) is an inclusive definition. Alongside the obvious office-holders (directors, managers and key managerial personnel), it captures one further figure: someone from whom the Board habitually takes its directions or instructions. Three elements must be established: a person; directions or instructions traceable to that person; and a board that is accustomed to acting on them. The third element carries most of the weight, because it asks for a pattern rather than an episode.

The Act keeps this concept apart from office. Section 2(34) ties the meaning of “director” to appointment on the Board,³ and section 149(1) allows only individuals to sit on a company’s Board.⁴ Appointment is therefore closed to anything that is not a natural person, and section 2(59) exists so that this formal closure does not become an escape route. Its operative bite appears in section 2(60)(v), which makes the same person an “officer who is in default” but spares anyone who advises the Board only in a professional role.⁵ The test for promoters in section 2(69)(c) is drafted in almost the same words.⁶ Read together, the provisions show a

2 Lynn M. LoPucki, *Algorithmic Entities*, 95 WASH. U. L. REV. 887 (2018); Shawn Bayern, *The Implications of Modern Business-Entity Law for the Regulation of Autonomous Systems*, 7 EUR. J. RISK REG. 297 (2016).

3 Companies Act, § 2(34).

4 Companies Act, § 149(1). The requirement of individuality is express, so a body corporate cannot be appointed to a Board under the Act.

5 Companies Act, § 2(60)(v).

6 Companies Act, § 2(69)(c).

legislature that was thinking about influence exercised without office, and thinking about it as something people do.

The Indian wording has an English source. Section 251 of the UK's 2006 Act contains the parent formula, which, like section 2(59), turns on directors who habitually act on someone else's directions or instructions.⁷ The English courts then refined the test across two decisions. In *Re Hydrodam (Corby) Ltd*, Millett J. required proof that identified directors had acted on the defendant's directions, and had done so habitually.⁸ In *Deverell*, the Court of Appeal would not make the board's abdication of its own discretion a precondition; what mattered was whether the person in fact shaped the conduct of the company's affairs.⁹ Parliament later extended the general duties of directors to shadow directors, though only so far as those duties are capable of applying to them.¹⁰

The Indian and English provisions are close in wording and different in function, and the difference matters here. The English statute pulls the shadow director towards the office so that fiduciary duties can attach. Section 2(59) pulls the same figure towards enforcement so that penalties can attach. A label that exists in order to identify a defendant is worth applying only to something that can be proceeded against.

Indian judicial engagement with the concept is thin. The most prominent occasion was the Tata litigation, where the argument that two individuals had acted as shadow directors superimposing their wishes on the company was rejected on the evidence, a conclusion the Supreme Court reproduced when it set out the tribunal's findings.¹¹ That outcome turned on what particular people did, so it settles little of principle. It does confirm that the inquiry under section 2(59) is an inquiry into identified persons and their conduct.

III. What the System Is Actually Doing

"Autonomous" covers too much ground to be useful without division. Three settings should be separated, because only one of them produces anything resembling the pattern section 2(59) describes.

7 Companies Act 2006, c. 46, § 251 (UK). The carve-outs in subsection (2) protect professional advisers, guidance issued in the exercise of statutory functions, and ministerial advice.

8 *Re Hydrodam (Corby) Ltd*, [1994] 2 B.C.L.C. 180 (Ch.) (Eng.).

9 *Secretary of State for Trade & Indus. v. Deverell*, [2001] Ch. 340 (C.A.) (Eng.).

10 Companies Act 2006, c. 46, § 170(5) (UK), as substituted by § 89 of the Small Business, Enterprise and Employment Act 2015 (c. 26) (UK).

11 *Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd.*, (2021) 9 SCC 449, ¶ 7.2(vii).

The first is decision support. A model ranks borrowers, flags anomalies, forecasts demand or summarises diligence material, and the output enters the papers placed before a board or committee. The directors evaluate it alongside everything else. Nothing here strains existing doctrine, because the decision remains an act of judgment by identified people.

The second is delegated execution within parameters the board has fixed. Algorithmic order routing, automated sanction of small credit exposures and dynamic pricing all work this way. The board settles the policy and the system applies it at a speed no human could match. Company law has long dealt with delegation of implementation; what changes is the volume of decisions and the difficulty of reconstructing any individual one.

The third setting is habitual adoption. The output is not evaluated in substance because nobody in the room is equipped to evaluate it. The question the Board answers is whether the system approved the proposal, not whether the proposal deserves approval. This is where the shadow director analogy bites, and it is also where the analogy starts to show its seams. Deference of this kind is real, but it is deference to an artefact that someone chose, configured, trained and placed in the workflow.

The best known illustration of the outer case remains the appointment of an analytical system named VITAL to the board of a Hong Kong venture capital firm in 2014, an arrangement that attracted attention precisely because it was novel, and which did not confer directorship on the software under the applicable corporate law.¹² More than a decade later, no jurisdiction examined for this article permits a system to hold the office.

Indian law already contains a partial answer to habitual adoption, though it is addressed to directors rather than to machines. Under section 166(3), a director's judgment must be independent.¹³ A director who adopts an output without being able to say why it is sound has not exercised judgment; the director has recorded a preference formed elsewhere. Regulators outside company law have identified the same risk in plainer terms. The EU's AI Act requires that the people charged with overseeing high risk systems be put in a position to recognise automation bias, the habit of trusting machine output by default, and to set aside, override or undo what the system produces.¹⁴

12 Florian Möslin, *Robots in the Boardroom: Artificial Intelligence and Corporate Law*, OXFORD BUS. L. BLOG (Nov. 16, 2017), <https://blogs.law.ox.ac.uk/business-law-blog/blog/2017/11/robots-boardroom-artificial-intelligence-and-corporate-law>.

13 Companies Act, § 166(3).

14 Artificial Intelligence Act, Regulation (EU) 2024/1689, art. 14(4)(b), (d), 2024 O.J. (L 2024/1689) (July 12, 2024).

IV. Three Obstacles, and the Arguments Against Them

A person. The Companies Act has no definition of “person”, so the one in section 3(42) of the General Clauses Act governs. That provision extends the word to companies and to associations or bodies of individuals, incorporated or unincorporated.¹⁵ The list is open-ended, yet each item on it is a human being or a grouping of human beings that the law recognises. No Indian statute confers legal personality on software, and personality in Indian law has been extended only by legislative or judicial act, never by inference from function. The scholarship that argues most ambitiously for algorithmic autonomy in corporate law accepts this and works around it, by housing the system inside a business entity whose members have withdrawn.¹⁶ The workaround proves the point. What the law reaches is the entity, not the code.

Directions or instructions. These are relational words. Someone directs; someone is instructed. *Deverell* loosened the requirement that a board be subservient, but it did not loosen the requirement that the influence be traceable to a person whose communications could be assessed as directions. A model output is an input into a decision. It turns into a direction only if somebody has made it one: by drafting a policy that adopts it, fixing a threshold, or deleting the point at which a human could refuse. That arrangement is the act of the person who made it.

A bearer of consequences. Section 2(59) does not stand alone. It matters because section 2(60)(v) carries the same person into the definition of an officer in default, and because the penalty provisions then operate. The 2026 Bill makes the point sharper. Under its proposals, a breach of directors’ duties would remain criminal only where the director has made an undue gain, and the court could direct that the gain be paid over to the company.¹⁷ Disgorgement assumes a gain and a person who holds it. A system holds nothing, gains nothing and cannot be disqualified from anything. Applying the label would produce a defendant that no order could reach.

Three arguments run the other way and deserve an answer. First, it may be said that the *Deverell* test is objective, so the absence of any intention to control the board is irrelevant. That is right as far as it goes, but the test is objective about the effect of a person’s conduct; it does

15 The General Clauses Act, No. 10 of 1897, INDIA CODE (1897), § 3(42).

16 Bayern, *supra* note 2 (discussing how an LLC with no members could serve as the legal shell for an autonomous system); LoPucki, *supra* note 2.

17 Corporate Laws (Amendment) Bill, 2026, cl. 56 (Bill No. 85 of 2026, introduced in Lok Sabha on Mar. 23, 2026) (India).

not dispense with the person. Second, it may be said that section 2(59) is an inclusive definition and should be read expansively. Inclusive definitions expand the class of officers; they do not expand the meaning of “person”, which is supplied by a different statute. Third, it may be said that a purposive reading is needed to close an accountability gap. A reading that produced an unenforceable designation would widen the gap rather than close it, because it would allow the humans behind the system to point at the system.

The more productive question is one that section 2(59) can already answer. Suppose the Board habitually acts on outputs from a system supplied, specified and tuned by a controlling shareholder, a group company or a vendor. The person behind the system may then satisfy the definition in its own right. The software is then evidence of influence rather than the source of it, and the inquiry becomes tractable: who set the parameters, who chose to remove the override, and whose commercial interest does the configuration serve.

V. The Corporate Laws (Amendment) Bill, 2026

After its introduction in the Lok Sabha on 23 March 2026, the Bill went to a Joint Committee, whose report was presented on 3 August 2026.¹⁸ Its amendments cover both the 2013 Act and the LLP Act of 2008, and its declared aim is to ease procedural compliance and to scale enforcement to risk.

Clause 18 reopens section 2. It substitutes a professional body’s name, allows realignment of the financial year on application, inserts definitions of “Regional Director” and “registered valuer”, and raises the paid up capital and turnover thresholds for a small company.¹⁹ Clauses 32 and 34 place general meetings held in physical, virtual or hybrid form on a permanent statutory footing, subject to at least one physical annual general meeting every three years.²⁰ Clause 54 adds an assessment of fitness and propriety to the disqualifications for appointment as a director.²¹ Clause 56 rewrites the consequences of breaching section 166, as described above.

Two features of this package are worth noticing together. The Bill is attentive to where directors and shareholders physically are, and it is attentive to what a breach of duty costs. It says nothing about what decides. A statute can permit a board to meet entirely by video, tighten

18 Bill No. 85 of 2026 (introduced Mar. 23, 2026) (India); Joint Comm. on the Corp. Laws (Amend.) Bill, 2026, Report (Aug. 3, 2026) (India).

19 Corp. Laws (Amend.) Bill, 2026, cl. 18.

20 *Id.* cls. 32, 34.

21 *Id.* cl. 54.

the personal fitness of the people who sit on it, and still leave unaddressed the possibility that the substance of a decision was produced by a system none of them examined. The silence is not necessarily an oversight. It fits the position MeitY took in its AI governance guidelines of November 2025: on that view, laws already in force can handle much of the risk that AI creates, and amendments are needed only where specific gaps turn up.²² If that view is accepted, the question becomes which existing provisions do the work, and the answer is unlikely to be section 2(59).

VI. Attribution, Not Personality

Indian financial regulators have already answered a version of this question, and they answered it by attribution. Since 6 February 2025, every entity regulated by the Securities and Exchange Board of India (SEBI) that relies on AI or machine learning tools bears sole responsibility for what those tools produce, whether it built them itself or bought them from a vendor. The same provision makes the entity answerable for keeping investor data private, secure and intact, and for the legal compliance of the arrangement as a whole.²³ Brief as it is, the rule leaves no doubt about where the output sits: with the deployer. A consultation paper issued later in 2025 builds on it by proposing a board approved governance framework for such systems.²⁴ The Reserve Bank of India's committee on the responsible enablement of artificial intelligence took a similar line for regulated entities, and its survey found board level oversight of these systems in only about a third of the institutions it examined.²⁵

Attribution also fits how Indian law handles the reverse problem of moving liability between a company and the people behind it. The leading authority is *Sunil Bharti Mittal*, where the Supreme Court refused to let a company's criminal liability pass to its officers by default. An individual can be arraigned with the company only on material showing his own active role and criminal intent, or where a statute makes him vicariously liable.²⁶ Liability

22 MINISTRY OF ELECS. & INFO. TECH., GOV'T OF INDIA, INDIA AI GOVERNANCE GUIDELINES (Nov. 5, 2025). The Guidelines accept that the autonomy of these systems makes liability harder to assign, and favour keeping a human in the loop at critical decision points.

23 SEBI (Intermediaries) (Amendment) Regulations, 2025, reg. 16C (notified Feb. 6, 2025 as No. SEBI/LAD-NRO/GN/2025/226) (India).

24 SEBI, CONSULTATION PAPER ON GUIDELINES FOR RESPONSIBLE USAGE OF AI/ML IN INDIAN SECURITIES MARKETS (June 20, 2025).

25 RESERVE BANK OF INDIA, FREE-AI COMMITTEE REPORT (Aug. 13, 2025) (Framework for Responsible and Ethical Enablement of AI).

26 *Sunil Bharti Mittal v. Central Bureau of Investigation*, (2015) 4 SCC 609.

does not travel on its own. If directors are to answer for decisions produced by systems they deployed, the statute has to say so.

Three amendments would do the necessary work without inventing a new legal person.

First, section 2(59) could carry an explanation: where the Board habitually acts on what an automated system produces, whoever authorised the use of that system for the relevant class of decisions would be deemed the person whose directions the Board follows. This keeps the machine outside the definition and puts identifiable names inside it, which is what the provision was always for.

Second, the board's report under section 134(3) could be required to state the classes of board or committee decisions that materially depend on automated systems, and the oversight arrangements for them.²⁷ Disclosure is cheaper than supervision and it creates the record that any later proceeding will need.

Third, section 166(3) can be read now, without amendment, to mean that adopting an algorithmic recommendation the director cannot explain is a failure to exercise independent judgment. The 2026 Bill would make this reading easier to apply, since most breaches of section 166 would then carry a fixed civil penalty instead of prosecution, and courts enforce a standard of conduct more readily when the sanction fits the breach.

VII. Conclusion

The question in the title answers itself once one asks what the label is for. Section 2(59) is not a description of importance; it is a device for finding someone answerable when the register does not name them. An autonomous system cannot be that someone, because it is not a person under the General Clauses Act, because directions presuppose a source that issues them, and because no order the Act contemplates could reach it. Parliament reopened the definitions in section 2 in 2026 and left this one as it stood, which at least suggests that the drafters did not think the formula was straining.

The pressure on corporate accountability is nevertheless real, and it will increase as boards act on outputs they cannot reconstruct. The response should take the course SEBI has already set for intermediaries and place responsibility for the output on the people who chose

27 Companies Act, § 134(3).

to rely on it. A machine that a board obeys does not need to be called an officer. The people who arranged for the board to obey it already are.