

FEMALE REPRESENTATION IN COMPANY
BOARDROOMS

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Abstract

In this research project, we will study the female representation in the company board and their impact upon the overall performance of the company. India has ranked very low in the female-to-male ratio of the workforce in the corporate sector in the past few years. This made it crucial to include provisions in the company laws regarding the appointment of women directors. However, this provision was restricted only to certain classes of companies. Moreover, there were many companies that did not comply with such provisions. The companies which did were mostly found to be appointing their family members to the board and that too, not in positions that required a certain degree of expertise. These loopholes make the whole purpose behind introducing such feminist concepts meaningless and renders them ineffective. In this research project, we will analyse in detail how this situation can be improved.

INTRODUCTION

The representation of women in companies and their overall impact on the performance of the company has always drawn keen attention. The company boardroom can be known as the brain of the company, as all the important decisions are taken here. Therefore, it is very crucial that the board comprises an optimum ratio of both men and women so that the perspectives are better understood and yield better results. However, in India, women are allotted adequate seats in the company boardroom as compared to the rest of the world. The survey conducted by World Economic Forum in 2016 shows that the female-to-male ratio in the Top Management Teams (TMTs) is only 0.11. the research conducted by Economic Times, Intelligence

Group in 2016 shows that just 3% of the companies' chief executive officers are women. Moreover, these surveys were conducted after the Companies Act, 2013, under Section 149(1), mandated "*the appointment of women directors*" in the board of "*every listed company with paid-up share capital of 100 crore rupees or turnover of 300 crore rupees or more*" (Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014) to encourage better gender inclusion. Women have a varied skillset and perspective as compared to men and their inclusion in the company boardroom would enhance and improve the efficiency of the company in various trade-related aspects.¹³⁶

Despite this provision, we see that it is not complied with wholeheartedly by the companies. The companies merely appoint women directors for the sake of formality. When it comes to the actual implication of the jurisprudence behind this provision, many of the companies fail to observe it and miss the whole point behind such a mandate. In this research project, we are going to analyse the various rules and regulations regarding women directors and how far have these provisions proved to be effective in the corporate world.

REVIEW OF LITERATURE

The literature reviewed for this research project are as follows:

- **Avtar Singh, Company Law, (Eastern Book Company 2018).**

This book is a comprehensive study of the various aspects of the Companies Act, 2013. This book explains Section 149 of the Act which deals with the appointment of women directors. It also elucidates other provisions from related statutes that deal with the same aspect.

¹³⁶ Sangeeta Mittal et al Lavina, *Females' Representation in the Boardroom and Their Impact on Financial Distress: An Evidence from Family Businesses in India*, Indian 11(1) Journal of Corporate Governance, 35, 35-44, (2018).

- **Sangeeta Mittal et al Lavina, *Females' Representation in the Boardroom and Their Impact on Financial Distress: An Evidence from Family Businesses in India (2018)*.**

This paper explores the mandatory recruitment of women directors, its true precept, how it is implemented in the various companies of India and finally, how far have these provisions proved to be helpful and effective in abolishing gender biasedness and creating a safer and better work environment for women.

- **Gayathri Balasubramanian, *Mandatory Appointment of Woman Director under Companies Act, 2013: A Feminist Critique, Academike (2021)*.**

This research paper discusses how our country lags behind inadequate gender representation in the corporate world. It also discusses the global perspective of women being included in the higher levels of directorship. It explores the various changes in the company laws of India for better gender inclusion, their compliance by the Indian companies and the aftermath of the legislation.

RESEARCH OBJECTIVES

The main objectives of this research project are:

- To understand the importance of including women in the company boardroom.
- To study the various provisions introduced in India regarding the recruitment of women directors.
- To study its implementation by the Indian companies.
- To analyse the loopholes in the laws that are responsible for the ineffectiveness of the provisions and certain recommendations for the filling up of such lacunae.

RESEARCH QUESTIONS

The research questions which are covered in this research project are:

- How do women impact and influence the company's growth?
- What are the provisions introduced in India regarding women directors?
- How have the Indian companies responded to such provisions?
- Have these provisions proved to be successful and if not, then why?
- How can these gaps be filled?

METHODOLOGY

The study is analytical and descriptive. It is non-empirical. The sources for the research are secondary sources consisting of books, journals and online articles. The mode of citation used is Harvard Bluebook (20th edition).

DISCUSSION

The Gender Diversity in Company Boardrooms

India ranked 120th out of 131 countries as per the International Labour Organisation in 2013 in female workforce involvement. There are plenty of researches that have revealed that when women are included in the directorship of corporations, they contribute significantly towards the betterment of the company's performance, better corporate governance and produces greater outputs. This cause is adequate to encourage companies to include more women in the company boards. It may also be perceived as a strategic step to enhance the employee statistics, which makes the keeps up the goodwill and image

of the company. However, these grounds for incentivisation are not fundamentally correct as then women would be appointed only for the improvement of profits and women would be used to attract investors rather than for their aptitude. These factors do not contain any solid basis and are variable according to the setting of each company.

Catharine MacKinnon, in her book, “*Feminism Unmodified: Discourses on Life and Law*” says, The gender equality approach does not take into account the experiences of women. These experiences are made of patriarchal oppression often exerted under the garb of ‘difference’... The ubiquitous problem of ‘leaking pipeline’ forestalls the growth and accomplishments of women. ‘Leaking pipeline’ explains the short-lived professional growth of women as they have to subscribe to the social norm of becoming the primary caregivers to the family and children.

Women are also exposed to unequal wages for the same work, job insecurities due to marriage or pregnancy among others.

Hilaire Barnett says, To demand that women demonstrate that their abilities and capabilities are identical to men’s is to privilege men over women; to make man the superior standard which must be reached before entry into the public sphere can be justified, without any consideration of the reality of most women’s lives.

Women are mostly undermined due to the stereotypical attitude shown towards them. Their true abilities are not often manifested because of the prejudiced perspective of the society which demands women should be caged within the thresholds of her home. Women who work are seen as bold and outspoken, often in a negative way. We must also keep in mind that a working woman has to put in twice as much effort as a man because, in India, women are severely criticised if they cannot maintain a proper work-life balance. They are often emotionally and physically exploited. Some people consider women to be a distraction at the workplace. The mistakes made by a woman are often highlighted as their shortcoming for their various

commitments as compared to those of a man. Such biased treatment can never be changed through mandates but only through a change of heart.

These issues were amplified in the American case, *Equal Employment Opportunity Commission v. Sears, Roebuck & Co.*¹³⁷. The United States Equal Employment Opportunity Commission filed a suit against Sears & Co. for not complying with Title VII that mandates by offering unequal treatment towards men and women. The defendant backed the inadequate representation of women by amplifying typecasting women. Such arguments were further backed by the statements provided by the male managers of the company saying that there were not properly qualified women fit for the position. However, they could not substantiate these statements at the Court. The Court gave the judgment in favour of the defendant company establishing the fact that sometimes, the Judiciary, itself, is at fault for reasserting such gender biasedness in the corporate world.

Affirmative Action Or Preferential Treatment?

The necessity of the provision for the appointment of women directors has been questioned by many. That is why we need to comprehend the effect of patriarchy in our personal life and our workplaces.

The State usually avoids interfering with an individual’s private life but there are aspects in women’s lives where they are discriminated against and oppressed, and their opinions are drowned by mere chauvinism and misogyny. So, if no laws are made specifically for women, then there are chances that their voices would never be heard and they would continue being controlled by the male-dominated social norms.

Women have always been tools for giving birth to young ones and taking care of the household. This is why when they step out of the stereotypical norms to enter the corporate world, they are faced with innumerable obstacles. They are always prejudiced for their gender and hardly there are instances when people notice them because of

¹³⁷ 111 F.R.D. 385 (N.D. Ill. 1986).

their talent and intelligence rather than their outward appearance. A woman has to work twice as hard as a man to prove her worth. On top of it, they are in constant fear of being sexually harassed by their male colleagues. Such social inequalities which are still present in our society made it absolutely necessary for a provision to compulsorily include women in the company boardroom. Thus, it is not a preferential treatment or an undue advantage given to women but an affirmative action to uplift them to the same pedestal as given to a man in the corporate world, so that women do not have to go out of the way to get what they actually deserve.¹³⁸

Mandatory Appointment Of Women Directors and Related Legal Provisions

Section 149(1) of the Companies Act, 2013 reads as: “*such class or classes of companies as may be prescribed, shall have at least one woman director*”.

This section should be read with clause 49 of the Securities and Exchange Board of India (SEBI) Listing Agreement which talks about certain aspects of corporate governance.

Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 reads as: “**Woman director on the Board.—**

The following class of companies shall appoint at least one woman director-

- *every listed company;*
- *every other public company having –*
- *paid-up share capital of one hundred crore rupees or more; or*
- *turnover of three hundred crore rupees or more:*

Provided that a company, which has been incorporated under the Act and is covered under provisions of the second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.— *For this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.”*

The Securities and Exchange Board of India gave an allowance to the companies of six months till April 2015 to appoint a woman director to their board. However, in March 2015, only 180 out of 1456 National Stock Exchange companies had complied with this norm. As per the census conducted by Catalyst in 2014, there were only 9.5% of the total seats for board members in 200 Bombay Stock Exchange companies who were women.

Apart from the public listed companies who have not complied with this provision, we should also pay attention to those companies who have appointed women directors.

Out of the few companies who have adhered to the provision, 278 companies (as of March 2014), appointed women directors just for the sake of following the norm and not to comply with the jurisprudence behind such appointment. There were more than 50% of such women who were appointed as executive directors. Among them, there were women who were previously the promoters of the company as they belonged to the family or friend circle. Such instances were seen in bug companies like Reliance Industries, Videocon Industries, JK Tyre and Industries, Bajaj Corp, TVS Motor Corp, Godfrey Phillips India to name a few.

Those companies who did not comply with the regulation gave the reason that they could not find any suitable female

¹³⁸ Gayathri Balasubramanian, *Mandatory Appointment of Woman Director under Companies Act, 2013: A Feminist Critique*, ACADEMIKE, (Mar. 17, 2021), <https://www.lawctopus.com/academike/women-director-ca/>.

candidate with the requisite skill set required for directorship in such companies. However, the true pretext was the appointment process involved. The Nomination Committees usually avoid affirmative actions in counselling women or keeping a record for the same.

As per the Global Gender Gap Index, 2011, India ranked 113 out of 135 countries as only 29% of the total workforce consisted of women. This data is pretty indicative of the pathetic reality of the social inequalities still existing in the 21st-century corporate sector in India. Simply making a provision that mandates the appointment of women directors is not enough the companies which do not comply with it comes up with many reasons for not doing so and those which comply do it for the sake of following the rule. Therefore, the Nomination Committees must be reformed to participate in recruitment via affirmative actions and also to provide the necessary training for women to hold managerial positions in the companies.¹³⁹

Check The Box Attitude Portrayed by the Companies

The scarcity of women directors in companies is very concerning which increases the gender gap in the company boardroom. During the years between 2002-2012, women in the executive ranks were only 8% in the listed companies in the National Stock Exchange, out of which just 4.79% were in important posts like directorship. Since men form the majority of the board members in a company, naturally they have a greater say than women. Therefore, certain researches reveal that the board must include at least three women for optimisation and better gender inclusion. Also, being the sole female member on the board is not very favourable as it makes the workspace not very constructive.

As of 2020, studies show that the representation of women in the company boardroom has increased to 17.3% from a mere 6% in 2014. However, the numbers are not very appalling when the statistics are compared at a global level.

¹³⁹ Ibid.

The new provisions seem to be a bit ambiguous as to what kind of directorship should women have, which tends to deviate from the main objective of creating such a provision in the first place. Moreover, limiting the application only to a certain class of companies creates a scope for non-compliance to the norm in recruiting women directors.

This is why certain procedures should be brought in so that more and more women can be recruited and at higher positions on the board. The requirement of at least one women director is not the solution for the huge gender gap in company boardrooms because there are many aspects that should be taken into consideration when there is inadequate gender representation.¹⁴⁰

SUMMARY OF FINDINGS

In the above discussion, we have seen the importance of including women in the company boardrooms and the steps the Government in India has taken to ensure that there is proper gender representation in the company. Given below are the various major findings of this research project, through which we have tried to find the solutions to our research questions:

- Women have time and again proved to be valuable assets for the company due to their perspective and creative ideas. This has helped in improving the overall efficiency and the turnover of the company.
- However, the multiple research works conducted over the years have all shown that India is pretty backwards when it comes to the female-to-male ratio in the corporate workforce. This made it necessary to include a provision in the Companies Act, 2013 and other related statutes for the mandatory recruitment of women directors in the Board of the notified class of companies.
- This provision was complied with by a very percentage of companies while the rest cited various excuses for not doing so. Even the

¹⁴⁰ Ibid.

companies which seem to have followed the rule happens to do that just for the sake of doing so and not wholeheartedly.

- There should be proper legal provisions that would mandate the appointment of women directors in higher levels of directorships. Also, the minimum number of women directors should be increased from one to a proportionate number.

We must keep in mind the various obstacles a woman faces to do a job other than her household chores. She has to undergo a lot of mental pressure because of the constant demand from society to prove her worth and capabilities. This is the reason that the company laws should start making provisions for better gender inclusion as it is not a sign for impeccable corporate governance but also a progressive nation.

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