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# Gender Inclusion in Corporate Boards: An Indian Perspective

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PADMAKSHI SHARMA<sup>1</sup>

## ABSTRACT

*This paper critically analyses the provision of Companies' Act, 2013 which provides with a mandate of having one woman director on the board of directors of certain classes of companies. The author provides with a detailed reading of the said provision and lists out the benefits and drawbacks of its viability from the point of view of a company. It also focuses on the presence of similar provisions in other countries and compares India's standing as against the same. Further, the paper examines the major deficiencies of this provision and scrutinizes the reasons behind the object of the provision not being fulfilled. Lastly, the author provides suggestions to tackle the deficiencies of the provision and help reduce gender disparity in the corporate sector by ensuring that women come at par with their male counterparts.*

**Keywords:** Women Directors, Corporate Governance, Quota, Companies Act.

## I. INTRODUCTION

Fundamental India is no stranger to the deeply-rooted gender bias prevalent in each and every sphere of life in the present day. Employment opportunities and workplace ethics makes for a significant part of a modern Indian woman's life and needless to say, these aspects are also affected by the patriarchal set up of the Indian society. Despite economic growth of the country, India continues to perform poorly in matters related to gender equality and the same can be established by looking at India's ranking in the Gender Development Index.<sup>2</sup> Further, even though there has been a substantial rise in women joining the workforce, women continue to constitute a dismal minority in senior positions in a majority of nations, despite having sufficient qualifications for the same.<sup>3</sup> This holds true even for the position of director in a company. According to a report prepared by Deloitte on around 7,000 companies in 60

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<sup>1</sup> Author is a student at Symbiosis Law School, Pune, India.

<sup>2</sup> United Nations Development Programme, Gender Development Index, 2019, <http://hdr.undp.org/en/content/gender-development-index-gdi>.

<sup>3</sup> Ayushi Agarwal, *India's 'One Woman Quota' on Board of Directors fails to bring about Gender Equality*, OXFORD HUMAN RIGHTS HUB, (28<sup>th</sup> Feb, 2018), <https://ohrh.law.ox.ac.uk/indias-one-woman-quota-on-board-of-directors-fails-to-bring-about-gender-equality/>.

countries, women held only 15% of all board seats globally in 2017.<sup>4</sup>

Article 11 of the United Nations Convention on Elimination of All Forms of Discrimination Against Women, to which India is a signatory to, states that women must be provided equal employment opportunities as their male counterparts.<sup>5</sup> Further, Article 15 of the Indian Constitution requires the state to prevent discrimination on the basis of sex<sup>6</sup> and make special provisions for the upliftment of women.<sup>7</sup> Hence, it becomes the state's responsibility to actively ensure equality by bringing women at par with men.

## II. THE MANDATORY QUOTA AND ITS VIABILITY

Acknowledging the need to boost the involvement of women in the senior positions in business sector, the Companies' Act, 2013 brought in a major change in the composition of a company. Section 149(1)(b) was introduced to mandate one seat on the board of directors of a listed company or a public company with a paid-up share capital of Rs. 100 crore or more, or a public company with a turnover of Rs. 300 crore or more.<sup>8</sup> The rationale behind the addition of this proviso was to ensure gender diversity on the previously homogenous boards. There are both benefits and drawbacks of the said proviso and the same have been discussed below.

### (A) Advantages

#### 1. Difference in perspective and fostering of innovation

Women on boards bring different and innovative ideas and hence, a change in the perspective of an otherwise homogenous board.<sup>9</sup> Women directors are associated with non-conformist and non-traditional approaches which can do wonders to a company.<sup>10</sup> There is also a shift to an increase in importance being given to the welfare of the employees of the said organization which more often than not, results in employees working harder for the company and benefitting it in ways previously unknown to an all-male homogenous board.<sup>11</sup> Along with

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<sup>4</sup> Global Centre for Corporate Governance, *Women in the Boardroom: A global Perspective*, DELOITTE, Fifth Edn., <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/risk/deloitte-cn-ra-ccg-e1-women-in-the-boardroom-a-global-perspective-fifth-edition.pdf>.

<sup>5</sup> United Nations Convention on Elimination of All Forms of Discrimination Against Women, Art. 11, 34/180, 1979.

<sup>6</sup> INDIA CONST., art. 15.

<sup>7</sup> *Indira Sawhney v Union of India*, AIR 1993 SC 477.

<sup>8</sup> Companies' Act, 2013, No. 18, Acts of Parliament, 2013, (India), Art. 149(1)(b).

<sup>9</sup> Siri Terjesen, Ruth H.V. Sealy, Val Singh, *Women Directors on Corporate Boards: A Review and Research Agenda*, CORPORATE GOVERNANCE: AN INTERNATIONAL REVIEW 17(3):320-337, May, 2009; See also, C.L. Pass, *Corporate Governance and the Role of Non-executive Directors in Large UK Companies: An Empirical Study*, CORPORATE GOVERNANCE INTERNATIONAL JOURNAL OF BUSINESS IN SOCIETY 4(2):52-63 · June 2004.

<sup>10</sup> DELOITTE, *supra* note 4.

<sup>11</sup> AARON A. DHIR, CHALLENGING BOARDROOM HOMOGENEITY: CORPORATE LAW, GOVERNANCE, AND DIVERSITY, 36-48.

boosting employees' morale, women also boost innovation and growth according to various studies.<sup>12</sup>

## **2. Effective Crisis Management due to enhanced dialogue**

Gender diversity causes different perspectives, experiences and points of views, as has been established above. This causes an increase in dialogue in the company and not only stimulates creative thinking but also results in effective crisis management due to this enhanced dialogue.<sup>13</sup> Further, women tend to have a risk-aversion behavior which reduces crisis faced by the company from a significant degree.<sup>14</sup> Therefore, women on boards make for a great addition.

## **3. Systematic Board governance**

Various studies have concluded that boards with women on it spend more on research and development as a per cent of annual sales.<sup>15</sup> This, in addition to an orderly welfare-based approach by female directors' results in a systematic board governance. Women directors are more likely to ask more questions and get a deeper understanding of an issue than their male counterparts.<sup>16</sup> Women also were seen to have a higher level of monitoring the employees. Further, they are associated with seeking opinions of others and ensuring equal participation in a board room meeting.<sup>17</sup> This expands the social bonds employees have with the high-level management and eventually results in systematic board governance.

## **4. Increase in investment efficiency**

Female directors are associated with investment efficiency and eventually, as someone fundamental in increasing financial returns. This association stems from the fact that female board members are instrumental in curbing inefficiencies in companies that tend to over invest.<sup>18</sup> Female directors' conservatism and risk-aversion tendencies hence, have a positive impact on the company.<sup>19</sup>

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<sup>12</sup> *Id.* at 53.

<sup>13</sup> DELOITTE, *supra* note 4.

<sup>14</sup> Margarethe Wiersema & Marie Louise Mors, *What Board Directors really think of Gender Quotas*, HARVARD BUSINESS REVIEW, (14<sup>th</sup> Nov, 2016), <https://hbr.org/2016/11/what-board-directors-really-think-of-gender-quotas>.

<sup>15</sup> Laura Liswood, *Women Directors Change how Boards work*, HARVARD BUSINESS REVIEW, (17<sup>th</sup> Feb, 2015), <https://hbr.org/2015/02/women-directors-change-how-boards-work>.

<sup>16</sup> DHIR, *supra* note 11.

<sup>17</sup> Lauren Rivera & Ann Shepherd & Gené Teare, *Gender Diversity on Start-Up Boards Is Worse Than You Think*, HARVARD BUSINESS REVIEW, (11<sup>th</sup> Dec, 2019), <https://hbr.org/2019/12/research-gender-diversity-on-start-up-boards-is-worse-than-you-think>.

<sup>18</sup> DHIR, *supra* note 11.

<sup>19</sup> Richard Milne, *Enlightened Norway's gender paradox at the top of business*, THE FINANCIAL TIMES, Sept. 20, 2018.

Moreover, studies have concluded that companies in Egypt with female board members had a 2% higher growth in return on equity, a 4% higher growth in return on assets and a 5% higher growth in return of sales.<sup>20</sup> In other countries such as Jordan and Lebanon, gender-diverse boards doubled the return on equity as compared to homogenous boards.<sup>21</sup>

## **(B) Disadvantages**

### **1. Resistance from male counterparts**

More often than not, women are endowed with a plethora of societal expectations from a very early age. Even pop culture reinforces the idea of women being homemakers and men being the one in the position of leadership. Such biases against women leaders play an important role in work culture. Female board members enjoy less authority and decision-making power in a company.<sup>22</sup> This results in low level of confidence and more importantly, women face resistance from their male employees due to the same. Men are often seen to question the abilities of a woman in the position of a leader and this can result in various issues.

### **2. Less initial bonding**

The forced addition of women to senior positions in a company disturbs the previously accepted traditional corporate governance methods.<sup>23</sup> Hence, as has been explained above, this can cause severe resistance from the men working in a company. This further results in little to no initial bonding between the said female director and her colleagues. Bonding becomes important for a company to work in a better fashion due to the added element of trust between the colleagues, absence of which can cause severe damage to a company's operations.

### **3. Prolonged decision-making and increase in conflicts**

The benefit of enhanced dialogue and inclusion of diverse and creative ideas, as has been discussed above can also act as a drawback because it would eventually result in prolonged decision making. Difference in ideas being presented for the effective functioning of a company can provide the said company with a plethora of options, the outcome of which would be excessive time seized for even small decisions. Another major drawback is the obvious

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<sup>20</sup> International Finance Corporation, *Women on Board in Egypt*, (Sept. 2015), [https://www.ifc.org/wps/wcm/connect/1e12d22c-baa4-434f-ac53-c05c55bb675f/Women\\_on\\_Board\\_in\\_Egypt.pdf?MOD=AJPERES&CVID=mN5V4aq](https://www.ifc.org/wps/wcm/connect/1e12d22c-baa4-434f-ac53-c05c55bb675f/Women_on_Board_in_Egypt.pdf?MOD=AJPERES&CVID=mN5V4aq)

<sup>21</sup> International Finance Corporation, *Jordan Gender Report*, (Sept. 2015), [https://www.ifc.org/wps/wcm/connect/012b7b14-bdc5-4bf6-8b08-adc09c0711a4/IFC\\_Jordan\\_Gender\\_Report\\_Sep\\_2015.pdf?MOD=AJPERES&CVID=l3Y8L.A](https://www.ifc.org/wps/wcm/connect/012b7b14-bdc5-4bf6-8b08-adc09c0711a4/IFC_Jordan_Gender_Report_Sep_2015.pdf?MOD=AJPERES&CVID=l3Y8L.A).

<sup>22</sup> DHIR, *supra* note 11.

<sup>23</sup> Patrick Velte, *Do Women on board of directors have an impact on corporate governance quality and firm performance? A literature review*, INTERNATIONAL JOURNAL OF SUSTAINABLE STRATEGIC MANAGEMENT, 10.1504/IJSSM.2017.10010121.

increase in conflicts in the board caused due to difference in perceptions, opinions, ideas and experiences. Such a conflict is less likely to occur in situations where the board consists of like-minded homogenous individuals who would agree upon similar things. Gender diversity on the board prevents this and causes serious issues and conflicts in the company.

#### 4. Negative reaction from investors

Diversity initiatives are often perceived as nothing but costly experiments by the investors. Further, more often than not, investors believe that board diversity demonstrates the fact that the firm in question cares more about social goals than maximizing shareholders' value.<sup>24</sup> For instance, in 2015, Apple shareholders voted against the recruitment of more minorities in the top management of the company due to it being considered "restrictive".<sup>25</sup> Investors believe that a company's primary goal must be maximizing the shareholders' value and hence, react negatively to such diversity initiatives. It has been noted that investors tend to penalize rather than reward such initiatives.<sup>26</sup>

### III. SITUATION IN OTHER COUNTRIES

In 2003, Norway became the first country in the world to impose a gender quota on boards.<sup>27</sup> Due to the same, nearly five-hundred companies had to raise the proportion of women of their boards to 40%.<sup>28</sup> It was noted that in just a span of ten years, women representation in Norwegian company boards shot up from 7% to 41%.<sup>29</sup> This is understood to be one of the factors resulting in Norway scoring the first position the Gender Development Index. Following this lead, in 2010, France introduced a similar mandate for diversity on the board of companies.<sup>30</sup> Various other nations such as Iceland, Norway, Spain and Germany also have gender quotas.<sup>31</sup> Comparison between these western nations and India demonstrates how India lags behind in matters of gender empowerment as India only mandates a reservation of one seat for women on the board as opposed to nations like Norway which have 40% seats reserved for

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<sup>24</sup> Isabelle Solal & Kaisa Snellman, Why Investors React Negatively to Companies That Put Women on Their Boards, HARVARD BUSINESS REVIEW, (25<sup>th</sup> Nov, 2019), <https://hbr.org/2019/11/why-investors-react-negatively-to-companies-that-put-women-on-their-boards>.

<sup>25</sup> Dannie Yadron & Julia Carrie Wong, Apple shareholders reject diversity plan to recruit minorities as company leaders, THE GUARDIAN, (26<sup>th</sup> Feb, 2016).

<sup>26</sup> *Id.*

<sup>27</sup> Milne, *supra* note 19.

<sup>28</sup> *Id.*

<sup>29</sup> DELOITTE, *supra* note 4.

<sup>30</sup> Does Gender Diversity on Boards Really Boost Company Performance?, Wharton, University of Pennsylvania Business Review, (18<sup>th</sup> March, 2017), <https://knowledge.wharton.upenn.edu/article/will-gender-diversity-boards-really-boost-company-performance/>.

<sup>31</sup> Alison Smale & Claire Cain Miller, Germany Sets Gender Quota in Boardrooms, THE NEW YORK TIMES, (15<sup>th</sup> March, 2015)

women on board of directors.

However, developed Asian nations such as China and Japan only have women representation of 8.4% and 3% respectively and have no such quota requirements to bring up the ratio of women in the position of board of directors.<sup>32</sup> Hence, it can be concluded that compared to Asian nations, India is doing significantly better than others.

#### IV. CRITICAL ANALYSIS OF THE DEFICIENCIES OF THE PROVISION

Despite the noble rationale behind the addition of this provision in India, it fails to achieve the object for the same. This quota suffers with certain deficiencies which prevent it from making the change it so aims for.

Firstly, the inclusion of this proviso does not have enough safeguards to ensure that tokenism is not practiced. Statistically, India has the third highest number of publicly listed family-owned companies in the world.<sup>33</sup> Needless to say, the absence of qualifications required for a woman director results in families appointing women from their own household. Such appointments are only done for the sake of compliance with the law. Hence, the actual participation of women in top level management remains low. Further, such women, due to the lack of educational qualifications and formal knowledge of the working of a company act as liabilities instead of assets of the said company. Hence, the object and purpose behind this provision is defeated.

Secondly, where countries such as Norway and Germany have reserved 40% of seats on a board for women in order to diversify high level management in a company, India, as has been mentioned above, has reserved only one seat for the same. Thus, this quota makes little to no difference as women on the board fail to meet the required “critical mass”.<sup>34</sup> They remain to be mere “tokens” to display diversity on board but in reality, are unable to make any significant contributions to the working of a company.<sup>35</sup> Further, absence of extra measures to retain these women in the said positions ultimately defeats the purpose of diversifying top-level managements.

Lastly, India lacks safeguards for the implementation of this provision. Even after this mandate being passed, statistics provide that 21% of companies have not yet appointed female directors as per the requirement.<sup>36</sup> Moreover, companies have already come up with loopholes in this

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<sup>32</sup> DHIR, *supra* note 11.

<sup>33</sup> AGARWAL, *supra* note 3.

<sup>34</sup> Joecks, Jasmin and Pull, Kerstin and Vetter, Karin, *Gender Diversity in the Boardroom and Firm Performance: What Exactly Constitutes a Critical Mass in Boardroom Operations?* (February 22, 2012), <https://ssrn.com/abstract=2009234> or <http://dx.doi.org/10.2139/ssrn.2009234>.

<sup>35</sup> AGARWAL, *supra* note 3.

<sup>36</sup> DELOITTE, *supra* note 3.

mandate due to lack of safeguards provided. For instance, no provision of Companies Act, 2013 provides with qualifications or disqualifications of the appointment of an alternate director in a company. Thus, a company can easily appoint a woman as an alternate director to a male director or conversely, a male as an alternate director to a female director. Similar practice was followed by BASF India to dodge the compliance of this provision. They appointed Andrea Frenzel as the woman director on their board, and on the same day appointed N.J. Baliga as an alternate director in her place.<sup>37</sup> Actions like this defeat the purpose of the provision and serve no good.

Therefore, it can be concluded that this proviso has not been able to achieve the goal which it had aspired for due to the lack of safeguards provided for the same.

## V. SUGGESTIONS

In order for Section 149(1) to serve its purpose and help in the diversification of board of directors of a company, the deficiencies discussed above must be ratified on an urgent basis.

First and foremost, the quota for the number of women on a board must be increased from one seat to a minimum of 40%. This would ensure the diversity so required to bring women at par with men in the top-level management of a company. Further, there must be qualifications provided for women to assume the position of a director under this quota mandate. These qualifications need not be educational in nature, rather, they should be related to experience in corporate sector. This would ensure that the woeful practice of tokenism is curbed and qualified women replace puppets so appointed due to family connections on the board.

Secondly, this mandate should not be limited to certain categories of companies. Rather, it should be implemented in cases of all companies. This would be more helpful in achieving the object behind the proviso as has been discussed.

Lastly, a stricter mechanism shall be placed to ensure the implementation of this mandate. Safeguards should be ensured and all loopholes should be removed to guarantee diversification of boards and upliftment of women in the corporate sector.

## VI. CONCLUSION

Gender disparity in the corporate sector is becoming one of the most highlighted issues in the present era. Even though the rationale behind the quota mandate introduced by the Companies'

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<sup>37</sup> N Sundaresha Subramanian, *At BASF, a woman alternative turns heads, raises eyebrows*, THE BUSINESS STANDARD, (18<sup>th</sup> August, 2015), [https://www.business-standard.com/article/companies/at-basf-a-woman-alternative-turns-heads-raises-eyebrows-115081801319\\_1.html](https://www.business-standard.com/article/companies/at-basf-a-woman-alternative-turns-heads-raises-eyebrows-115081801319_1.html).

Act, 2013 is rather thoughtful, due to the various deficiencies in the provision, it is impossible to achieve the goal of equality between the two genders in a corporate setting. This specially holds true for upper level management positions for which, more of than not, only men are considered. India needs to follow the examples of countries like Norway for the better implementation of this mandate and curb the issue of gender disparity by bringing women at par with their male counterparts in professional sectors.

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