

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Inclusion of Women Director in Company Board of Directors: Gain or Loss for The Company Under the New Companies Act 2013

DR. BIRANCHI NARAYAN P PANDA¹ AND DR. NARAYAN CHANDRA SARANGI²

ABSTRACT

Since its inception, Indian society has been dominated by men. Women were always thought to be inferior to men. But the time has passed. In the Indian society, various laws are enacted to provide women with security and special status. For many years, the government has also provided tax breaks to women. Some legal provisions exist solely to benefit women in society. The second proviso to section 149(1) of the Companies Act, 2013, which provides for the appointment of women directors, is an effort to empower women in India. The current paper focuses on the inclusion of women director in company board of directors, issues and challenges of female board representation and assessed whether the inclusion has profited the company or not.

Keyword: Board of Directors, Women director, Companies Act.

I. INTRODUCTION

It is the responsibility of the board of directors of any corporation to act in the best interests of the firm as a whole and to take measures to protect those interests. The shareholders of the company elect the Board of Directors, which is a significant body inside the firm that is responsible for the operation of the business and is chosen by the shareholders. The board is obligated to behave in a manner that is beneficial to the firm. It ensures that the many stakeholders in the firm have their interests protected. By making some disclosures and provisions of the Act mandatory, the Companies Act of 2013 increased the level of accountability and duty borne by directors. The nomination of women to board positions is requirements under the Companies Act of 2013, making this provision a required requirement. The legislative body has always been very particular about the qualifications and experience of a person who will be holding such a high position in a company because of the significance of the role of directors. This is because the legislative body recognises the importance of the role

¹ Author is an Assistant Professor at Xavier Law School, XIM University Bhubaneswar, India.

² Author is a Dean Academics at Xavier Law School, XIM University Bhubaneswar, India.

of directors. The Ministry of Corporate Affairs (MCA) has, on occasion, revised certain standards and qualifications in order to bring them into line with the most recent developments. One example of such a measure is the requirement that companies must now have at least one female director on their board. MCA has made this move in the hopes of achieving social security equity and bolstering the position of women in the business sector as a result of their efforts.

The preamble, basic rights, and fundamental duties outlined in the Indian Constitution all play a role in the development of the concept of social upliftment and gender equality. The ability to engage in positive discrimination is vest in the legislature and given to them by the constitution. The most fundamental rights, particularly those pertaining to the rights of woman includes article 14³, 15(1)⁴ and 15(3)⁵, 16⁶ and 23⁷. Directive principles includes article 39 (a)⁸, 39(d)⁹, 39A¹⁰, 42¹¹, 46¹² and 47¹³. There is still a male-dominated society in India despite the fact that gender equality is not explicitly provided for in the fundamental norm of the country. Nevertheless, gender inequality in the workplace is a problem not only in India but also in almost every other country in the world. In order to elevate the position of women in the workforce and provide them with equal opportunities, the appointment of a female director is now legally required in India.

II. NEED OF WOMAN DIRECTOR IN BOARD

The history of female exploitation in India is fairly clear to see when one looks at the practises that were common in the country's past, such as sati and child marriage, amongst other things. It is clear that society does not have a positive view of women, and it is unlikely that merely educating women about empowerment can result in a change in their status in society if a legally secured position is not also granted to women. Nevertheless, the contributions that women have made in a variety of fields, such as technology, science, etc., cannot be ignored. According to

³Article 14, The Constitution of India "Equality before law"

⁴Article 15(1), The Constitution of India "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them"

⁵Article 15(3), The Constitution of India "Nothing in this article shall prevent the State from making any special provision for women and children"

⁶Article 16, The Constitution of India "Equality of opportunity in matters of public employment"

⁷Article 23, The Constitution of India "Prohibition of traffic in human beings and forced labour"

⁸Article 39(a), The Constitution of India "that the citizens, men and women equally, have the right to an adequate means to livelihood;"

⁹Article 39(d), The Constitution of India "that there is equal pay for equal work for both men and women;"

¹⁰Article 39A, The Constitution of India "Equal justice and free legal aid"

¹¹Article 42, The Constitution of India "Provision for just and humane conditions of work and maternity relief"

¹²Article 46, The Constitution of India "Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections"

¹³Article 47, The Constitution of India "Duty of the State to raise the level of nutrition and the standard of living and to improve public health"

research in the field of psychology, places of business that are predominately staffed by female employees have a more upbeat and devoted atmosphere.¹⁴ Since they are responsible for managing the activities of their households in addition to performing the professional obligations for which they are hired, working women are the ideal example of how to effectively manage their time and establish priorities among their various responsibilities. Women generally have more interpersonal skills than males do, which enables them to contribute to the development of more effective strategies and, as a result, strengthens the businesses with which they are affiliated. Women are more emotionally powerful than men, and they possess the potential to handle numerous tasks at the same time. This leads to outstanding performance of the firm's business operations, which in turn helps to maintain the development and profits of the organisation. Women also have the mindset of self-branding, and they are quite picky about who they allow into their personal space. They have an innate ability to be patient and wait for the best possible outcome. They have the capacity to make sound decisions regarding both their behaviour and the relationships they maintain. When compared to men, women exude a high level of self-assurance over their actions and have the capacity to inspire and motivate their coworkers more effectively. They are better at finding solutions than man is, and they find alternatives to tough circumstances very readily. In addition, they have the ability to function when placed in stressful environments. If a woman is in a position in which she can make decisions for her organisation, she has the potential to make a substantial contribution since business is all about taking calculated risks and choosing the appropriate course of action at the appropriate moment¹⁵.

III. WOMEN DIRECTOR IN CORPORATE BOARD AS PER NEW COMPANIES ACT 2013

According to the proviso that is attached to subsection (1) of section 149 of the Companies Act of 2013, there must be at least one woman director in any company or class of companies that are considered to be prescribed. A further requirement has been laid out for already existing companies that were in operation prior to the introduction of the Companies Act 2013 in section 149 (2). This requirement states that these companies must appoint a woman director within one year of the act's commencement".

The Companies Act, when read in conjunction with Rule 3 of The Companies (Appointment and Qualification of directors) Rules, 2014 (Chapter 11), mandates that certain categories of

¹⁴Indian Legal Solution, *Role Of Women Director In Corporate Board*, ILS (Jul. 11, 2019, 1:25PM), <https://indianlegalsolution.com/role-of-women-director-in-corporate-board/>.

¹⁵Jahangir Ali Shamma & Kartik Gupta, *Role of Women Directors In A Company*, T. WOR. JOURNAL ON JUR. POL., (2017).

businesses must automatically include a female representative on their boards of directors.-

- a) A publicly traded business
- b) A publicly traded firm that has:
 - Paid-up share capital of 100 crore rupees or more
 - Turnover of 300 crore rupees or more

If there is a vacancy in the position of woman director, then it must be filled within three months of the day that the position became vacant, or within three months of the next board meeting, whichever comes later. In any case, the position must be filled no later than the next board meeting.

The preceding provision of Companies Act 2013, which was introduced with the aim of providing some guaranteed representation of woman in board to empower her in the corporate affairs, was enacted with the view to provide some guaranteed representation of woman in board.

IV. FUNCTIONS AND DUTIES OF WOMAN BOARD OF DIRECTOR

In the same way as any other director of the firm, women who hold directorships are obligated to carry out all of the responsibilities outlined in Section 166 of the Companies Act of 2013, which are as follows:

1. The responsibility to behave in accordance with the terms of the firm.
2. The responsibility to act in good faith when working to advance the goals and interests of the firm, its shareholders, and its workers.
3. The need to make autonomous decisions while also putting forth effort, being conscientious, and using proper caution¹⁶.
4. the responsibility to take steps to prevent situations in which his personal interests and those of the firm are in direct opposition to one another.
5. The director will not derive any personal benefit from the operations of the company and, in the event that they do, they will pay back to the company an amount equal to the benefit they have received.
6. Duty not to further assign her work in contravention of the rules of the company.

¹⁶Mahalakshmi.V., and Dr.P.Narayana Reddy, *Corporate Governance and Presence of Women Director on Boards*, JOURNAL OF BUSINESS AND MANAGEMENT STUDIES, 59-64(2017).

7. If the director is found to be in violation of her duties, she will be subject to a fine that cannot be lower than one lakh rupees and can go as high as five lakh rupees.

V. EFFECTS OF INDEPENDENT WOMAN DIRECTOR

SEBI has indicated that it will implement the recommendation made by the Kotak Committee to include "at least one independent woman director in each company. The Securities and Exchange Board of India" (SEBI) has issued a mandate that calls for the incorporation of an independent woman director into the boards of the top 500 publicly traded companies no later than April 1, 2019, and for the remaining 1,000 companies, no later than April 1, 2020.¹⁷ This action taken by SEBI will assist in the actual empowerment of women in the corporate sector. This is because companies will be required to search for a rank outsider woman to serve as an independent director in their company, which will, in the end, open up opportunities for women to serve in executive positions within the company. Therefore, this constructive step taken by SEBI will assist women in entering the corporate sector and establishing their careers by gaining equal access to opportunities.¹⁸

VI. ISSUES AND CHALLENGES

In India, workplace gender equality, like gender equality in any other field, has historically been an issue. Even though equality in the workplace has been acknowledged as one of the most fundamental human rights, there are still many instances in which women face discrimination because of their gender. In the case of *Vishakha v. State of Rajasthan*, the highest court in India, the Supreme Court of India, issued certain guidelines for the country.¹⁹ The Sexual Harassment of Women (Prevention, Prohibition, and Redressal) Act of 2013 was passed because of the premise on which it was established. The statute requires that a Complaint Body be established, which must be chaired by a woman who has a senior position within the organisation, and at least one-half of the members of this committee must be female. The need of at least one female director imposed by the Companies Act has contributed to the development of an antagonistic culture within the corporation.

The right to work is a fundamental human right that everyone possesses, but in most families, the right to work for a woman is determined by the men and other senior members of the family. In India, a woman who is more qualified than a man is still treated less favourably than a man

¹⁷KPMG, SEBI IMPLEMENTS KOTAK COMMITTEE RECOMMENDATIONS (2018).

¹⁸Mansi Airi Gambh, SEBI Tightens Reigns on Corporate Governance Yet, MONDAQ (Jul. 11, 2019, 1:35 PM), <http://www.mondaq.com/india/x/767948/Shareholders/SEBI+tightens+reigns+on+corporate+governance+yet+again>.

¹⁹*Vishaka and others v. State of Rajasthan and others*, [1997] S. C. 3011 (Ind.)

in family and workplace settings, despite the fact that she may have more qualifications. It is very difficult to ensure that a woman who is appointed as a director in a company is actually taking active part in the functioning and decision-making process and that she is not holding a nominal position in the company. As a result, this step appears to be illusory because it is very difficult to ensure that a woman who is appointed as a director in a company is doing so. Therefore, in a society like India, this particular step toward the empowerment of women faces a significant challenge in terms of its potential for actual implementation. There were very few women who had participated in board meetings of Indian companies, according to the records of those companies' histories. The most common reason for this is that there are not a lot of women who are qualified, have experience working in executive positions, and are capable of being appointed to positions on boards of directors. This is a significant barrier for women to break through.

However, the argument that there are no experienced and competent women working in executive positions is one that is commonly used in businesses, despite the fact that this is utterly untrue. It was stated in an article that was printed in the Economic Times that gender diversity experts believe that it is not because women are not qualified to be appointed in the board but rather because of the trend that companies prefer a woman out of another board. This was stated in reference to the fact that companies prefer a woman out of another board. They are not prepared to welcome the new women onto the board at this time. It is quite rare to find a significant firm that has added a new woman to its board of directors; rather, a woman director will only be selected if she comes from the company's family, friends, or is a well-known lady²⁰.

In a nation such as India, the statutory provision that requires the introduction of a woman as a member of the board of directors is, thus, very much needed. However, the goal of empowering women in the corporate sector appears to be extremely removed from the current state of affairs. This is because, in many businesses, a woman who is sitting or is likely to sit is none other than a family member of the maximum shareholder of the company serving as a symbolic woman director to meet the statutory requirement. In these businesses, the male is ultimately going to rule in the board meetings by imposing his decision. Since there are a total of 1,723 businesses listed on the NSE, only 1667 of those companies have really executed the legislative duty of appointing a woman director to their boards of directors. There are a total of these firms, and out of them, 425 of them have selected female directors either from within the family or from

²⁰Rica Bhattacharyya, *Many Companies Still To Induct Woman Independent Director*, ECONOMICTIMES (Jul. 11, 2019, 1:35 PM), <https://economictimes.indiatimes.com/articleshow/67733197.cms>

within the promoter group of the companies.²¹ Therefore, the objective of including a woman on the board will not result in a change in the position of women in the business world; rather, there is a pressing need to enact more favourable legislation in order to give women a greater voice in the political and economic spheres of the nation.

VII. CONCLUSION

This study has focused on the inclusion of women director in company board of directors, issues and challenges of female board representation and assessed whether the inclusion has profited the company or not. Because the function of directors in a company is so important to the overall performance of the enterprises, it is imperative that women be given the opportunity to hold these positions. This will encourage a greater number of young women to pursue careers in the business world. In addition to women holding executive and nonexecutive director positions in the company, there has also been an effort made to remove the obstacle of family pedigree that stands in the way of women achieving success through the incorporation of an independent woman director. The problems that women have had to face in the past will, to some extent, be alleviated due to the fact that companies will no longer be able to request that a woman from their family serve as an independent director. Instead, only rank outsiders who do not have any connection or interest in the "operations of the company will be able to be appointed as independent directors. This will be of further assistance in the good governance of companies because women are known to be extremely sincere toward their responsibilities. Furthermore, women will undoubtedly perform their responsibilities in the best interest of the company and will perform the whistle blowing function for which they are to be appointed in the company. Therefore, the appointment of an independent woman director in the firm is a brilliant step on the part of the SEBI, which will aid in the empowerment of women and also assist in the introduction of good governance in the companies. Nevertheless, it is not completely guaranteed that a rank outsider will be looked for appointment as an independent director. This is due to the fact that independent directors of the company are themselves recommended by the persons who are already sitting in the board or who are holding key managerial positions within the company. In light of this, the Securities and Exchange Board of India (SEBI) needs to address this disparity in appointment of intendent directors in a more effective manner in order for it to be possible for the organisation to realise its true objective behind the introduction of independent woman directors".

Not only is the appointment of women directors an urgent necessity in order to improve the

²¹Prime data group, corporate India: women on boards (2017).

image of the corporation in terms of sound governance, but they are also required in order to enhance the board's engagement in a variety of activities. The presence of a "glass ceiling" in a company's management structure, in which women are not permitted to advance to higher levels of the organisational hierarchy, may be indicated by the fact that there are no female directors serving on the board of directors. The Companies Act of 2013 made a naive attempt to increase the position of women not just on corporate boards but also in society as a whole. This was a positive step in the right direction. Despite the fact that women directors serving on boards of companies is now a voluntary decision, very few businesses have women directors who are active and engaging in their boards.

VIII. REFERENCES

Statues:

- The Companies Act, 2013.
- The Constitution of India, 1950.

Case Laws:

- *Vishaka and others v. State of Rajasthan and others*, [1997] S. C. 3011 (Ind.)

Journals:

- Jahangir Ali Shamma & Kartik Gupta, *Role of Women Directors in A Company*, T. WOR. JOU. ON JUR. POL., (2017).
- Mahalakshmi.V., and Dr.P.Narayana Reddy, *Corporate Governance and Presence of Women Director on Boards*. Journal of Business and Management, 59-64 (2017).

Reports:

- KPMG, SEBI IMPLEMENTS KOTAK COMMITTEE RECOMMENDATIONS (2018).
- PRIME DATA GROUP, CORPORATE INDIA: WOMEN ON BOARDS (2017).

Websites:

- Indian Legal Solution, *Role Of Women Director In Corporate Board*, ILS (Jul. 11, 2019, 1:25PM), <https://indianlegalsolution.com/role-of-women-director-in-corporate-board/> .
- Mansi Airi Gambh, *SEBI Tightens Reigns On Corporate Governance Yet*, MONDAQ (Jul. 11, 2019, 1:35 PM), <http://www.mondaq.com/india/x/767948/Shareholders/SEBI+tightens+reigns+on+corporate+governance+yet+again>
- Rica Bhattacharyya, *Many Companies Still To Induct Woman Independent Director*, ECONOMIC TIMES (Jul. 11, 2019, 1:35 PM), <https://www.economictimes.indiatimes.com/articleshow/67733197.cms>
