POSITION OF WOMEN DIRECTORS IN INDIA: MIRAGE OF GENDER EQUALITY AT CORPORATE GOVERNANCE

By Abhishek Priyadarshi
From Symbiosis Law school

Abstract

“This world is unthinkable without a lady, who is the inceptor of this universe, still we are discouraging her spirit to become independent, to follow footprint with male members of the society”

In this twentieth century still, the women are not given equal representation in the corporate governance and if by matter of chance given then not those top positions, which actually creates a vacuum of absence of gender diversity at workplace. Through this research paper I will try to bring out the laws that India has implemented along with its Legislative Intention, its loopholes which is causing the unequal distribution of opportunity to a particular gender along with reasons why we need women on board, how are they contributing along with the death ends they are facing and lastly with comparative analysis of various nations to analyse the worldwide stand on appointment of women directors on Board Of Director. To understand the Indian Perspective towards the Women director views of people are also analysed.

KEY WORDS:

Women Director, Gender Bias, Gender Diversity, Companies Act, 2013

1. Introduction

In a country like India, we have always attributed women as “Queen”, “Goddess”, “powerful”. But however, it is evident that India is a Patriarchal society where men’s are treated as supreme leaders and women’s are just given fake titles to meet the level of hyperarchy to show the world that we respect gender diversity, although still we don’t. At present, 49% of the population in Asia is women of which 36% comprises of GDP but the hypocritic part is that only 12% of the board comprises of women’s in them. As in particularly in India, out of NSE-Listed companies 3.69% comprises of women CEO’s or MD’s, surprisingly this ratio is stagnant from year 2014.2 Despite government being so optimistic in bringing the parity of gender bias in India and mandating the min cap of at least one women director, still the situation seems the same.

2. Indian Provisions Relating To Women Directors

Section 149(1)


According to the second provision of section 149 of the Companies (Appointment and Qualification of directors) Rules, 2014 (Chapter 11), following list of companies are required to appoint at least one women director in their Board of Director;

(i) All Listed companies
(ii) All other public companies having
   (a) paid–up share capital of 100 crore rupees or more; or
   (b) turnover of 300 crore rupees or more.3

Further it highlights the following related provisions related to Appointment of Women Directors;

1) Time Period for Appointment: This act prescribes a time limit of 6 months from the date of its incorporation for all the companies registered under Companies Act, 1956 or are covered under section149(1) of this act. Further, they are required to appoint Women Directors within period of 1 year from the date of its incorporation(section149(2)).

2) Intermittent Vacancy: Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes that on the vacancy of any Women director an appointment has to be made immediately or maximum before next Board Meeting or 3 month, whichever is later.

3) Qualification: The act is silent on the qualifications relating to the appointment Women Directors.

3. Research Areas
The Role of Women Directors seems to be a positive booster of the overall Corporate Governance of the company when compared worldwide. But in a country like of India where patriarchy is the rule and fake praising of women is the strategy the scenario seems different.

So, despite the positive efforts of the government to elevate the status of women in Corporate sector, by amending the Companies Act, 2013, by inserting the mandation of compulsorily one women director in board of director on fulfilling certain specification, their seems a huge gap in its implementation. Through this research paper I have taken the following areas for my area of research;

1. What was the intent of inserting the section 149(1) in Companies Act , 2013.
2. Was the compulsorily inclusion of Women Directors on the board of directors was mere a adaptation to the International norm to comply with globalization?
3. What are the results of including women directors on board verses only male directors?
4. What are the escape loopholes provided by government to please both its countrymen as well as International Conventions?
5. Comparative analysis with other nations who have practiced the gender equality at workplace concept.
6. Views of Indian employers working in the field of Corporate Governance.

3 Companies (Appointment and Qualification of directors) Rules, 2014 (Chapter 11).
3. Issues
In the light of research areas mentioned by me, I have tried to narrow down my areas of research to these 3 issues to answer them;

Issues 1
What is the National & International intention of the legislature to insert the mandatory provision of having at least one women director on the board of directors? (This will answer my research areas 1&2)

Issue 2
Whether including women in B.O.D is mere a pity on the depressed class or has some benefit to it? (This will answer my research areas question 3, 5 & 6)

Issue 3
What are the loopholes in the provision of having at least one women director on B.O.D? (This will answer my research areas question 4)

4. Critical Analysis

Issue 1:
INTERNATIONAL INTENT:
Firstly, India being fastest growing economical nation has always managed to keep pace with the globalization. In the order to maintain its global reputation, it has put all the efforts to uplift the women of the nation. As many big powers like USA, UK & CHINA have implemented the scheme of women directors on the board of directors to maintain the gender equality at work place, so India has also implemented it.

Secondly, India has constantly been practising of the upliftment of depressed class since the birth of its constitution whether be in Fundamental right or Fundamental Duties or DPSP’s. So, it been very prompt to uplift the women in all field. This intention can be seen when we have signed “MOU BETWEEN INDIA AND UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN on 19/04/2017”

For your reference the MOU is been attached as annexure 1
So, this shows the international Intent of India to implement section 149(1) of the companies act, 2013.

Legislative INTENT:
The proposed bill to insert this clause i.e. clause 149(1) by the Ministry Of Corporate Affairs before the hon’ble speaker on 26June,2012 had some commentaries to justify the intent of the legislature.

For your reference The proposed bill with ministry’s commentary has been attached herein as Annexure 2.

In the light of bill’s commentary on this section, it is crystal that the main intent was to create a gender parity and uplift the position of women in corporate governance. So the basic agenda of Indian government was to improve the status of women’s in India.

4 https://www.mea.gov.in/TreatyDetail.htm?2999
5 Bill passed by Government of India
Issue 2: Why Women’s in Board Of Directors

In the era of globalization, where women population accounts for 70% of the consumer crowd and controls sum of nearly 28 trillion dollars of annual spending. In such scenario how can we ignore this crowd. As to understand the brain and psychology of this crowd it’s prominent to include this section of society in Board of Directors. Also, the primary aim is to destroy the glass ceiling of women’s progress in the field of corporate governance and bring her to the parity with male populations.

Moreover following are the qualities of women’s over men which encourages the company to include them:

1. They Have Seen Improving The Financial Performance:
   According to the report established by Catalyst, it was found that out of 500 companies who made to the Fortune list top 500 companies list, it was found that companies with two or three women directors performed by 84% over the other companies with low women representations on return on sale.

   So keeping women on board ensures diverse perspective which on return ensure better policy making of the company hence yielding higher profit rates.

2. Women’s Are Seen Better Decision Maker: Women are despite being highly emotional by nature are being capable of taking bold and strong decision on behalf of collective progress of company.

3. Will Motivate Other Women’s To Join B.O.D: If women’s are appointed on the basis of their talent, this will boost other women’s to perform well, to reach the top management post. Since this will help them to break the both glass ceiling as well as glass walls that the male dominant industry has created over the years.

4. Improve the position of women at workplace: If more women are included at B.O.D, this will greatly boost the women safety, dignity and working condition at workplace. If this provisions is implemented in true sense then cases like Vishakha will never hamper the working conditions of women at workplace.

5. Helps To Improve The Company’s Public Image: If company includes a well balanced board of both women and men directors, it creates a parallel image in the market as well as in the minds of customer, hence increasing the sales of the company.

Result of Women on Board of DIRECTORS:

As a result of the implementation of the new scheme of companies act, 2013. In India majority of companies abiding to the

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7 Catalyst: it is an organisation at International level that support the Women Empowerment.

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Vishakha vs State of Rajasthan & ors. (1997) 6 SCC 241
compliance and have included women on board of director.
Following are the list of companies that have complied to the rule of section 149(1);

Hence the results are clear that maintain a good balance of gender mixture help to better understand market and maintain gender bias at workplace.

5. Comparative Analysis of Others nation who have opted to put Women on board of director.

On analysing the situations of other nations as compared to India, I found that certain countries like Norway & Germany has introduced the system of quotas for Women directors long back in 2010 to maintain the global gender diversity at work place. However, Countries like China, USA & India has adopted different approach not the quota approach. Since in quota approach, sometimes unqualified candidates are given posts to fill the quota, hence leading to bad ideas diversity at corporate Place.

Here is the Catalyst’s Survey List of Countries world-wide who has adopted the concept of appointing women directors at their place and their percentages over the year;

- **Major Companies on top Fortune List are doing excellent in their field.**
  Companies like Apple, which is rank 1 in the Fortune List for the year comprises of 19% of the higher post filled by women and still increasing its profit every successive year. Further Amazon has 12% of its board comprising women at high post, which is again on high profits.

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11 Yoni Blumberg, Companies with more female Executives more money—here is why, CNBC(March 2, 1.18pm,2019)https://www.cnbc.com/2018/03/02/why-companies-with-female-managers-make-more-money.html

12 Ibid 9
Is everything easy for women’s if they are given quotas or position in top management positions?

As it has been noticed worldwide, that there are hundred of factors that acts as glass ceiling and further glass walls for women’s. Whether be lack of particular expertise in particular field, or long working ours or be outcasted in male dominated corporate world. It has been significantly founds that there is a huge pay gap in the pay scale too, which acts as a glass ceiling to their progress.

According to the data collted by Prime database, its evident that in India, currently Women Directors are paid less than the Male counter parts. Here is the statistic to it;

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13 Ibid8
Loop Holes In the Provisions Related To Women Directors

Although India seems enthusiastic in implementing the provisions relating to the appointment of Women directors in B.O.D but still, there is lot of clarifications needed to make the provision more intact and specific.

Following is the List heads on which provisions relating to Women Directors are Silent;

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1.Remuneration of Women Directors</td>
<td>Silent</td>
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<tr>
<td>2.Procedure as to appointment of Women Directors</td>
<td>Silent</td>
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<tr>
<td>3.Qualifications as to appointment of Women Directors</td>
<td>Silent</td>
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<td>4.Liability of Women Directors</td>
<td>Silent</td>
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<tr>
<td>5.Manner of Selection of Women Directors</td>
<td>Silent</td>
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<tr>
<td>6. Punishment in case of Default of Women directors</td>
<td>Silent</td>
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</table>

This all heads creates a backlog of corporate scams and creates a vacuum in creation and implementation of law in India.

How it is misused
Due to lenient provisions relating to the appointment of women Directors in the B.O.D in India, the provision is often exploited by just complying for the purpose of complying, like in India usually companies appoint their wives, daughter to be a Women Director. By doing so the entire purpose of Company Law gets defeated as, family member will be prejudiced in her decision making skills and will rather act as puppet in B.O.D. Big companies like Reliance, Nyka, and others have appointed their wives as Women Directors to merely fulfil the hollow compliance of this act.

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5. Conclusion & Suggestions
At the end I would like to conclude that as per my limited research, what I found out is that the Indian Government must create more specific and transparent laws and must try to see that people are merely complying the black letter of Law but not abiding. This will not improve the situation much. However, according to responses received from questionnaire one could conclude that still majority of companies are not complying to the new rule and moreover Indian population is going through its transitional change from patriarchal society towards equal society.

My suggestions are that my data was limited to small crowd, but government must conduct it on large scale to get better laws to supper diversity in Corporate Governance. Also, Government shall come will transparent and more particular rules and regulation. Further, If women diversity can contribute to diversity in perspective of members of board then other genders like transgenders must also be considered.

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OFFICIAL GOVERNMENT SITES


BILL PASSED BY GOVERNMENT


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www.supremoamicus.org