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BOARD DIVERSITY IN INDIAN COMPANIES: SUBSTANTIVE CHANGE OR SYMBOLIC GESTURE

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ABSTRACT

Board diversity has become an important area in corporate governance due to the gradual move towards more heterogeneous and representative boards. This essay will discuss the idea of board diversity in Indian corporations with respect to aspects like gender, age, education, experience, and independence. The aim here would be to analyze how far legislative efforts under the Companies Act, 2013, and SEBI (LODR) Regulations have led to any significant changes regarding board diversity in India. It will be noted that while legislation has brought some improvement in terms of representation especially regarding the participation of women in the boards the effect appears to be largely superficial. There are other problems like tokenism, domination by promoters, and lack of functional independence which affect the extent to which diversity makes a difference. Using relevant theories, facts, and comparative data, this essay concludes that board diversity in India is in the process of evolution. Without empowerment, cultural shift, and regulatory interventions, board diversity seems unlikely to bring about real change.

INTRODUCTION

The term board diversity is used to refer to the nature of board members of an organization whose composition includes varied attributes such as gender, age, education, experience, socio-cultural origin, ethnic background, and independence. Board diversity, therefore, marks the transition from the traditional norm of a homogeneous board to a more diverse and representative one. While the concept of board diversity has historically been associated with

issues of social justice and inclusiveness, it has recently become clear that it is now an important consideration in decision-making processes.

The advantage of having a diverse board is that it allows people with different backgrounds, perspectives, and ways of thinking to come together in discussions and debates on business plans. This diversity can help challenge existing beliefs, minimize bias, and prevent groupthink, which occurs when homogeneous groups focus too much on agreement rather than analysis. The negative impact of underrepresentation and conformity is evident from the case of the Enron scandal and the Satyam scandal. In both cases, poor governance and a lack of dissent played significant roles in causing major problems within organizations.

Worldwide, a clear and quantifiable trend towards the promotion of board diversity both legally and through market pressure is evident. For instance, the European Union has adopted a proactive approach in formulating gender quota directives which mandate listed firms to ensure female representation of 40% among non-executive board members by 2026. Norway is known to be an innovator in this sphere, where mandatory gender quotas were introduced as early as 2003; the country now enjoys female board representation of about 42%. In the US, although no legal requirement exists at the federal level, state-based efforts like California's legislation enacted in 2018 that linked board composition to gender diversity and investor pressure have exerted great impact. Indeed, the pressure by institutional investors such as BlackRock, who push for increased disclosure and link board composition to their decisions, is becoming increasingly important. This phenomenon has been referred to as the "California effect."

India's policy on board diversity has mostly been characterized by the regulatory route, through which the Companies Act of 2013¹ introduced the mandatory presence of a minimum of one female director. This represented an important milestone towards

¹ Companies Act, No. 18 of 2013, § 149 (India).



institutionalizing gender diversity on boards. On the other hand, compared to those nations where quotas have been imposed or holistic diversity policies adopted, India's policy on this issue can be described as being minimalistic.

This prompts an important and complex research inquiry regarding the issue of whether the practice of diversity among boards in India has been effective in bringing about any real change or merely a form of "tick-boxing" to fulfill regulatory obligations. This implies that without empowerment, the efforts toward diversity will ultimately become nothing more than tokenism because underrepresented groups are not given any real power or influence.

In such an environment, the current study proposes to carry out a thorough study of board diversity in India. It is intended to discuss the aspects of board diversity, the current regulatory framework on board diversity and the logic behind such diversity. In addition, the current status of board diversity in India, issues of tokenism and the structural barriers in India will be analyzed along with discussing the challenges that exist for true board diversity. By taking examples from around the world and giving appropriate recommendations, the aim of this study is to conclude whether board diversity in India is real or largely cosmetic.

CONCEPT AND DIMENSIONS OF BOARD DIVERSITY

Diversity on the board of directors is inherently multi-faceted in its essence, going beyond the visible attributes of diversity to encompass aspects related to differences in thinking, experience, and ability. In terms of corporate governance, diversity should not be considered merely as a characteristic but as a holistic model that includes different viewpoints, expertise, and identities. Diversity can help improve the performance of the board in a number of ways, such as through promoting deliberate decision-making and

reducing both explicit and structural forms of bias within the boardroom.

Gender diversity emerges as the most visible form of board diversity, especially within India. The legal mandate of having at least one woman on the board, as stated in the provisions of Section 149 of the Companies Act, 2013² and the SEBI (Listing Obligations and Disclosure Requirements) Regulations³, is an indicator of legislative recognition of the long-standing gender gap in corporate governance.

Nevertheless, there still exists an inequality. The fact is that despite being about 50% of India's population, women represent just below a fifth of the board membership in public firms. As for the proportion of women, the number makes people think of the participation of women in decision-making process. According to legal issues, it should be mentioned that the mandate, though innovative, has its limits, since there is no guarantee of proportionality of women representation or involvement in making decisions. Diversity in education refers to various educational backgrounds of board members. It includes such disciplines as engineering, finance, law, management and arts. If speaking from the governance point of view, such homogeneity of education will not help a board deal with new emerging problems.

Nevertheless, the average age profile for Indian company boards is generally higher and above 60 years. Though experience is an important factor, having too many old-age directors may pose challenges in addressing new trends especially those of digitalization and shifting consumer behaviors. In terms of board governance, balance in age is vital to foster both stability and dynamism in decision-making processes. The independence diversity pertains to the nature of composition within the board between insiders/executives and independent/non-executives. As required in Section 149 of the Companies Act, 2013, the board of directors of listed companies should

² Companies Act, No. 18 of 2013, § 149 (India).

³ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 17



have at least one-third members from independent directors to ensure some level of objectivity and impartiality in decision-making. The independent directors are responsible for protecting the rights of the minority shareholders, overseeing management activities, and restraining promoter dominance on the board. Nevertheless, just because a person is classified as an independent director does not imply that his or her position can guarantee full independence. Some factors such as close relationship to promoters, board membership, and lack of dissent culture may affect his or her functions.

The critical point here is that all these aspects of diversity should not be viewed in isolation from one another but rather as interconnected and reinforcing factors. Thus, for example, gender diversity could go hand in hand with professional and educational diversity, whereas independence would play a role in determining how valuable diverse views are during board discussions. A piecemeal or compartmentalized view of diversity would likely amount to little more than lip service to the idea of diversity. From a purely legal/governance perspective, a comprehensive and integrative approach must be taken in terms of incorporating all the various aspects of diversity into the equation at the same time.

LEGAL FRAMEWORK GOVERNING BOARD DIVERSITY IN INDIA

The framework surrounding board diversity legislation in India is primarily doctrinal and compliance-based, based on statutory requirements laid down in the Companies Act, 2013, and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015⁴. As opposed to many jurisdictions worldwide, which opt for quotas or results-based policies, the Indian legislation embodies the principles of gradualism and minimalism, being concerned more with ensuring basic representation without mandating

any substantive outcomes of diversity. One of the central tenets of the Indian legal structure on this issue is provided by Section 149(1) of the Companies Act, 2013, according to which all listed companies, as well as selected public corporations that satisfy financial criteria specified in the legislation, are required to designate at least one woman as a member of the board of directors. This is a clear example of an important statutory requirement that seeks to balance out historical inequities of corporate governance. Nevertheless, the scope of this measure is limited, since it does not involve proportionate representation nor guarantees participation in corporate governance processes of these appointed women.

More broadly, however, board membership and governance are also informed by judicial decisions, despite their lack of direct consideration of diversity requirements. Thus, in the case of *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.*⁵, for example, the Supreme Court highlighted the critical role of the board of directors in corporate governance. In particular, the Supreme Court stressed that the constitution of the board and the manner in which its functions operate should be consonant with the long-term best interests of the company as well as considerations of justice and fairness. Likewise, in the decision of *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*⁶, the Supreme Court made clear that corporate decision-making cannot simply reflect the wishes of the majority of shareholders; rather, it is necessary for the protection of minority interests. Despite not mentioning diversity directly, these decisions establish the normative framework for inclusive governance through emphasis on principles of fairness and independence. However, judicial reluctance to impose personal liability on independent directors, evident in *Pooja Ravinder Devidasani v. State of Maharashtra*⁷, is a cautionary

⁴ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Reg. 34 (India)

⁵ *Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd.*, (2021) 9 S.C.C. 449 (India).

⁶ *Needle Indus. (India) Ltd. v. Needle Indus. Newey (India) Holding Ltd.*, (1981) 3 S.C.C.

⁷ *Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 S.C.C. 1 (India).



sign of the tension between accountability and encouragement of independent participation.

Alongside the statutory provisions, Section 178 of the Companies Act, 2013 requires the formation of a Nomination and Remuneration Committee (NRC), whose mandate includes the identification of suitable candidates for the board and the development of criteria concerning qualifications, independence, and other such parameters. Although the law does not directly compel diversity requirements, it establishes a mechanism to select board members through a well-defined and merit-based process. Thus, there exists the possibility of using such an arrangement for promoting diversity. However, for the effectiveness of the NRC, it is imperative that it enjoys autonomy within the organization and operates in a corporate culture conducive to its goals. The SEBI (LODR) Regulations, 2015, on the other hand, represent the more comprehensive set of regulations dealing with board composition. Regulation 17(1) stipulates the maximum limit of board membership and the mandatory percentage of non-executive directors, followed by several changes that reinforce this obligation through the stipulation of at least one independent woman director among the largest listed companies. This shows a gradual shift from gender representation to a more holistic approach to diversity and independence.

Moreover, Regulation 34 under the SEBI (LODR) Regulations mandates firms to reveal their policies on board diversity in their annual reports. These disclosure-based strategies comply with the global trend in governance, but lack standard measures and skills matrix, making them formalistic in practice. The position of independent directors, discussed in Schedule IV of the Companies Act, 2013, strengthens the need for diversity by promoting objective monitoring, protecting stakeholders' interests, and strengthening decision-making processes in the boardroom. Despite the fact that independent directors contribute with an unbiased judgment and a variety of

perspectives, issues like social ties with promoters and lack of dissent can act as obstacles in achieving diversity. Moreover, although Section 135 on Corporate Social Responsibility does not necessarily call for diversity in the board, it advocates for ethical and socially oriented decision-making practices. This above framework does provide gender prioritisation but lacks diversity immensely.

RATIONALE BEHIND PROMOTING BOARD DIVERSITY

The rationale for board diversity in corporate governance is based on theories and empirical studies, which together have ensured that board diversity is not an ancillary concern but a governance requirement. Theoretical agency theory suggests that since there is a split between ownership and management in the corporate form, there needs to be a strong system of oversight to ensure that managerial decisions align with the goals of shareholders. The presence of a board that is made up of people who have different views and are independent thinkers would improve the efficacy of this oversight process by limiting managerial entrenchment and any opportunities for mischief. On the other hand, resource dependence theory suggests that since the board is one of the primary interfaces through which firms connect with the outside world, diversity within the board will increase the availability of resources, contacts, and knowledge, thus allowing for better decision-making. The validity of these theoretical considerations is implicitly recognized in court judgments, such as in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, where the Supreme Court stressed that decisions taken in a corporate setting should be fair and balanced across all stakeholders.

The next piece of research connected to decision-making is about the performance of firms. According to the well-known McKinsey & Company report "Diversity Wins" (2020)⁸, based on the analysis of 1,000 corporations worldwide, the probability of

⁸ McKinsey & Co., *Diversity Wins: How Inclusion Matters* (2020).



achieving above-average profitability was 25% higher for those in the upper quartile in terms of gender diversity on executive committees. The Indian experience confirms this observation, showing that the firms from the Nifty 50 group having high board diversity have better returns on equity. Thus, diversity is not only an ethical norm but also a financially sound approach that increases value for shareholders. As shown in the case of Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., the rationale of the courts in emphasizing fiduciary duties and creating long-term value is consistent with the aforementioned research.

Yet another important aspect concerns the role of diversity in risk management and financial integrity. According to empirical studies like those by Adams & Ferreira (2009), the presence of women on the boards leads to better monitoring of firm performance and less earnings management. Moreover, according to surveys by international consulting companies, having a diverse board results in more stable business processes and prudent risk management. All of this corresponds to the duties set forth for board members within statutory law and judicial practice. For example, in case Pooja Ravinder Devidasani v. State of Maharashtra, it was emphasized by the Supreme Court that board members should take certain measures related to due diligence in their work.

Moreover, diversity stimulates innovation and creativity, which are indispensable components for competitive advantage in the future. As per research conducted by Boston Consulting Group⁹, firms that have diverse management teams tend to earn more income from innovation, as they incorporate multiple viewpoints and methods of problem solving. Diversity in terms of age, education, and profession creates an innovative board that can cope with changes in technology and market trends. This issue is especially relevant in terms of corporate governance, as the board needs to define the course of action for the company.

⁹ Boston Consulting Group, *How Diverse Leadership Teams Boost Innovation* (2018).

CURRENT STATUS OF BOARD DIVERSITY IN INDIA

The following are significant findings regarding diversity within company boards in India and include the following:

Impact of Regulation: Initial progress was made in the areas of gender diversity in company boardrooms due to the implementation of legislation such as the Companies Act, 2013, and subsequent SEBI regulations that mandated the presence of at least one female director. **Stagnation of Growth:** The rapid increase of the percentage of women on corporate boards since the initial introduction of the above-mentioned legislation has plateaued around 18% (Deloitte, 2023)¹⁰. Specific industries continue to lag demonstrating boardroom gender diversity at levels similar to those demonstrated in other industries.

Under-Representation of Women in Executive Leadership: Women are primarily occupying non-executive boardroom roles (as of the date 21.4% of women in corporate boards) and only 7.2% of the executive roles are currently occupied by women.

Sector-Based Disparity: Certain industries are leading the way with respect to the demonstration of gender diversity on their corporate boards, including banking and financial services (BFSI), information technology (IT), and pharmaceuticals, while other industries lag herein.

Positive Impact of Female CEO's: Companies whose boards of directors are led by female CEOs demonstrate a higher level of gender diversity on their boards than companies whose boards of directors are led by male CEOs; 31% women's representation on the boards of BSE 200 companies led by women, compared to 17.7% women's representation on the boards of BSE 200 companies led by men. **Emergence of Diversity Beyond Gender:** There is currently an awareness and early movement to add diversity to

¹⁰ Deloitte, *Women in the Boardroom: A Global Perspective* (2023).



corporate boards akin to that found with respect to gender diversity, such as diversity concerning age, international experience, as well as, diversity of professional backgrounds/experiences.

CONCLUSION

The issue of board diversity in India can be understood as one where there has been some progress made but not an entire change. Even though initiatives such as the need for a woman director on a board have helped in diversifying boards, most of this diversity still appears to be merely cosmetic in nature since women's representation in leadership positions continues to be poor, the independent directors do not carry much weight, and the promoter driven model persists.

Even if the idea of diversity is being recognized more, it must be remembered that there is no actual empowerment being given. This implies that board diversity in India remains stuck somewhere between being only symbolic and actually becoming substantive.

