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GENDER NEUTRALITY IN BOARDROOMS OF INDIAN COMPANIES: AN ANALYSIS

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ABSTRACT

In the changing realm of corporate social responsibility, businesses are expanding their focus beyond solely pursuing profits to encompass wider societal responsibilities. The implementation of Section 149(1) of the Companies Act 2013, in conjunction with Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules 2014 (referred to as the '2014 Rules'), represents a significant step towards promoting gender inclusivity. Listed companies and other public companies that meet certain financial criteria are required by this legislation to have at least one female director on their board. At first, this resulted in female directors being nominally appointed, usually from the families of current board members, without any guarantee that they would actively participate or have competence in corporate governance. This article looks at these changes, evaluates the regulatory changes that SEBI (the Securities and Exchange Board of India) made in 2019 and 2020, and suggests actions to deal with the issues that still need to be resolved.

Keywords: *Gender-Neutrality, Companies, Regulations*

I. INTRODUCTION

"A diverse board makes smart business sense. Directors who bring divergent perspectives, experience, and knowledge are more capable of understanding an organization's stakeholders and risk profile. Diversity

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> *brings creative solutions to strategic issues and ultimately impacts profitability. Diversity equates to good corporate governance."*
>
> *-- Dr. Marie Delorme, Chief Executive Officer, The Imagination Group of Companies*

In the realm of profit earning, corruption, nepotism, and increasing white-collar crimes, there is a pressing need for stricter legislation and enhanced surveillance of the companies. It was for the same reason the concept of corporate governance was introduced. In 1984, Bob Tricker authored a book titled "Corporate Governance" in which he introduced the concept. He is generally regarded as the Father of Corporate Governance. Later, several nations incorporated this idea into their municipal laws. In 2000, India also implemented this concept in a significant action following the establishment of the first official regulatory structure for corporate governance by SEBI. This was done in response to the recommendations made by the Kumar Mangalam Birla Committee in 1999.

The term "corporate governance" describes the body of laws, regulations, and practices that are in place to ensure that organizations are operating within regulations. It involves the execution of the organization's commercial activities in alignment with the desires of its stakeholders or with the optimal interests of both the organization and its stakeholders.

Individuals or entities with personal, professional, or financial interests in the organization and who are therefore directly or indirectly associated with it are stakeholders. Stakeholders can fall into either the category of internal or external. Though directors are one of the most imperative members of a company, they are not the only ones. Many other individuals are linked to the company. They are considered key managerial personnel (KMPs) such as high-ranking executives like the CEO, MD, Company Secretary, whole-time director, and chief financial officer, as stated in the Companies Act, 2013.

The acts that mainly govern India's corporate sector are the *Companies Act of 2013, the Monopolies and Restrictive Trade Practices Act of 1969, the Competition Act of 2002, the Foreign Trade (Development & Regulation) Act of 1992, and the Foreign Exchange Management Act of 1999, The Securities and Exchange Board of India Act, 1992*, and many ensuing rules, regulations, and guidelines, also apply to listed firms.

An important part of good corporate governance is putting safeguards in place

to prevent or at least mitigate conflicts of interest between different groups of interested parties or between other individuals. A greater amount of attention has been directed toward corporate governance due to current scandals involving prominent corporations and the purported illegal actions of corporate officials. Numerous statutes and regulations covering different parts of corporate governance standards have been passed to counteract this. One law among such regulations that needs special mention is the "*second proviso of Section 149(1) of the Companies Act*" [1]i.e. appointment of a women director to the board.

In the changing realm of corporate social responsibility, businesses are expanding their focus beyond solely pursuing profits to encompass wider societal responsibilities. The implementation of *Section 149(1) of the Companies Act 2013*[2], in conjunction with *Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules 2014 (referred to as the '2014 Rules')*, represents a significant step towards promoting gender inclusivity. Listed companies and other public companies that meet certain financial criteria are required by this legislation to have at least one female director on their board. At first, this resulted in female directors being nominally appointed, usually from the families of current board members, without any guarantee that they would actively participate or have competence in corporate governance. But slowly some changes were seen.

II. Regulatory Evolution and Its Impact

The Board of Directors oversees the company's most senior executives and makes all major decisions. Directors are therefore responsible for playing a crucial part in the regulation of company management. Every Indian company must adhere to a legal requirement of maintaining a minimum number of directors. Chapter XI i.e. sections 149 to 172 deals with the provisions regarding appointing directors under the Company Act 2013 to be read along with SEBI rules and regulations as led by the Ministry of Corporate Affairs, Government of India.

As a major step towards encouraging gender diversity as well as inclusion in corporate governance, Indian legislation necessitates the presence of a women in company boardrooms. By bringing fresh ideas, opinions, and techniques, this mandate aims to boost gender diversity in the workforce and improve decision-making.

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

2 *Ibid*

2.1 Appointment

According to the *second proviso of Section 149(1)*[3] of the Act, there should be a minimum of one single female director on the board of directors for a specific category of companies that are defined in the Rules. The following types of businesses are required by *Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014* to have a female director on their board:

1. Every listed company.
2. Every other public company having:
   - *Paid-up share capital of Rs.100 crore or more, or*
   - *Turnover of Rs.300 crore or more.*

In the event that a business meets both requirements, it has to name a female director to its board of directors no later than six months after the requirement is fulfilled. The turnover or paid-up share capital will be assessed as of the most recent audited financial statements' final date.

If a woman's seat on the board happens to become vacant on an as-needed basis, the board should fill it as soon as possible, preferably at their next meeting but no later than three months after the vacancy took place. As per *the Securities and Exchange Board of India (Listing Obligation Disclosure Requirements), Regulations 2015, Regulation 17(1),* it is imperative that every listed entity's board of directors maintains a balanced composition of executive and non-executive directors, with a minimum of one female director. In addition, the ratio of non-executive directors to executive directors must be at least fifty percent of the total board of directors.

2.2 Tenure

In the event that a female director is appointed, her term of office will continue until the annual general meeting (AGM) that takes place after the date of appointment. She has the opportunity to be reappointed at the general meeting. However, under Section 152(6) of the Act, a female director's tenure may be terminated by rotation, much like that of other directors. The female director is free to quit from her role whenever she wants by formally notifying the corporation.

3 *Ibid*

2.3 Penalty for Non-Compliance

If the requirements for the appointment of a woman director are not met, the penalty provision provided for in Section 172 of the Companies Act of 2013 is applicable. According to Section 172 of the Act, a fine ranging from INR 50,000 to INR 500,000 will be imposed on the company as well as every officer who violates the law.[4]

III. The Advantages of Having Women Represented on Boards

Research has shown that companies that have boards with a balanced representation of genders tend to achieve higher financial performance.[5] This can be attributed to the enhanced corporate governance and ethical standards that result from having a diverse board. The mandate is also in line with wider societal objectives of attaining gender parity, granting women equal chances to engage in leadership positions, and thus tackling gender imbalances in the workplace.

According to a project done by the Canadian government, several advantages of having gender diversity on boards can be classified as follows:

i. Robust fiscal outcomes

Extensive research conducted at both national and international levels consistently shows that having better financial results is a direct outcome of gender diversity and boardroom balance that corporations achieve. Many experts assert that companies with a higher proportion of women directors exhibit superior performance in various domains, such as return on equity, return on sales, return on capital, share performance, and stock price growth, when compared to their competitors.

ii. Harnessing Skills

Including women in board positions significantly broadens the pool of talented candidates available to organizations. We can take the example of Prince Edward Island where women represent more than half of the population. They not only exhibit high graduation rates from post-secondary

4 Melissa Cyrill, *Understanding the Mandate to Appoint Women Directors Under Indian Company Law*, India Briefing (June 6,2024, 9.30 PM), The Mandate for Women Directors in India's Company Law (india-briefing.com)

5 Best Practices in Increasing Women's Representation, Benefits of Gender and Diversity on Boards, peiwomeningovernment.ca (June 6,2024, 9.30 PM), Benefits_EN.pdf (peiwomeningovernment.ca)

institutions but also demonstrate strong participation in the labor force. This educational and professional involvement equips them with diverse skills and perspectives essential for effective board governance.

iii. Better Decisions

Studies suggest that boards with higher levels of diversity are more efficient and creative, as members contribute diverse approaches and tactics to address problems. Attaining gender parity on a board fosters collaboration between women and men, resulting in the generation of innovative ideas, the integration of diverse viewpoints, and the creation of effective solutions to challenges. Abundant evidence demonstrates that having more diverse genders on boards helps to prevent groupthink and leads to more sophisticated decision-making by considering a broader range of possibilities.

iv. Enhancement of Board Cohesion

The board culture greatly influences the organizational decision-making and strategic direction. Boards with an equal distribution of males and females tend to experience greater involvement in strategic planning, strengthening responsibility, enhancing recruitment initiatives, delivering comprehensive training, enforcing efficient policies, and handling potential risks.

v. Portrays the Population Group

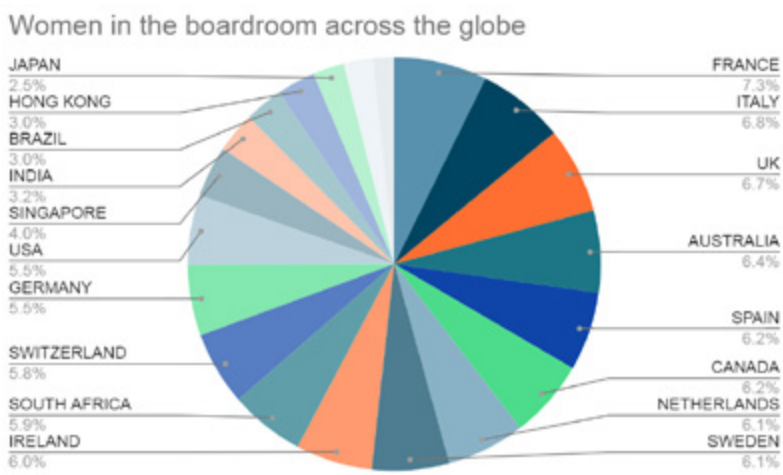
Society now has higher expectations for decision-making bodies to accurately represent the diverse demographics of the area, encompassing factors such as gender, age, region, language, race, ethnicity, sexual orientation, and ability. Boards that more precisely reflect the diverse composition of society are more in tune with the realities and requirements of people's lives. Having diversity on boards enhances project development, improves marketing effectiveness, elevates customer service, and boosts public profile.

Incorporated within the Companies Act of 2013, in conjunction with the 2014 Rules, this legal requirement emphasizes the significance of conforming to contemporary governance practices that align with international standards. Moreover, its objective is to accelerate a transformation in

culture that acknowledges and appreciates the contributions made by women in positions of leadership, while also questioning and overcoming deep-rooted stereotypes and prejudices. In essence, this initiative promotes the economic independence of women. Also, it contributes to the overall social and economic progress, resulting in a more inclusive and prosperous business environment in India.

IV. Gender Neutrality in Boardrooms: Globally

Talking about the position across the globe, Positive trends have been observed in the participation of women leaders in the company's boardroom; nonetheless, several changes have to be made in order to increase the proportion even higher. India has just 3.2% of women on boards as Directors, which places it relatively low on the global ranking. As a result, the government and businesses must collaborate to make things work out for the greater good. The greatest percentage of women in boardrooms is 7.3% in France, followed by 6.8% in Italy.



Women in Boardroom across the globe[6]

Having a "critical mass" of women in decision-making—at least 30%—is a major goal stated in the Beijing Declaration and Platform for Action to effect genuine and long-lasting change.[7] This worldwide objective can be accomplished via short-term

6 Altrata report, *Global gender diversity 2023* (June 12, 2024, 6.00 PM) https://altrata.com/reports/global-gender-diversity-2023

7 United Nations, *Beijing Declaration and Platform for Action, The Fourth World Conference on Women September 1995* (June 12, 2024, 6.00 PM) www.unwomen.org/en/ digital-library/publications/2015/01/beijing-declaration-1995

special measures, such as targets, which require businesses to reserve a specific number of seats for women until parity is attained. It is crucial to make sure that these initiatives take intersectionality into account and include women from various backgrounds, identities, and skill levels.

To prevent tokenization, quotas work best when combined with corporate cultures that respect and value women's perspectives. Quotas can end the practice of male dominance on boards and guarantee that qualified women are no longer excluded from management positions due to their gender. By enacting laws requiring disclosure rules on board diversity, critical mass tactics, and quotas for board participation, state actors can promote equitable representation on boards.

Following are some examples of different countries and the ways they deal to achieve gender neutrality in boardrooms-

i. **Australia**:

To improve the proportion of women on boards, the Australian Securities Exchange (ASX) has mandated since 2011 that all publicly traded firms adhere to an "if not, why not" paradigm, which is akin to the "comply or explain" concept.[8] Companies must disclose diversity policy details, including aims and objectives, to the public or explain if they have not done so. This is mandated by ASX. Every year, businesses are required to reveal the percentage of women working for them, including the number of women in senior executive roles and on the board. Consequently, the rate of women serving on the boards of publicly traded companies in Australia rose from 10.7% in 2010 to 22.7% in 2016.[9]

ii. **Canada**:

Equal representation of men and women is mandated under Quebec government legislation on corporate boards of Crown Corporations.[10] Shortly after the law was passed, in 2011, 22 of the Crown Corporations covered by it achieved board parity.[11] Federal legislation mandates that,

8 Catalyst, *Gender diversity on boards in Canada: recommendations for accelerating progress (Catalyst, 2019)*, (June 12, 2024, 6.00 PM) https://www.catalyst.org/wp-content/uploads/2019/01/gender_diversity_on_boards_in_canada_final_pdf_version.pdf

9 *Ibid.*

10 Library of Parliament, *Women's Representation on Corporate Boards in Canada Hill Notes* (June 15 20124,3.00PM) https://hillnotes.ca/2015/03/05/womens-representation-on-corporate-boards-in-canada/

11 *Ibid.*

as of January 1, 2020, Canadian corporations report to shareholders and Corporations Canada the minimum amount of women, Indigenous people, persons with disabilities, and members of minority groups that are on their boards.[12]

iii. European Union:

According to a 2012 proposal from the European Commission, there is a lack of representation of a certain gender among the nonexecutive directors of companies listed on stock exchanges. The proposal suggests that companies with a lower proportion of this underrepresented gender should establish clear and unbiased criteria in their selection procedures for these positions in order to address this issue.[13] The goal for listed firms in the EU to strive for at least 40% of non-executive directors of the underrepresented sex by January 2020 was endorsed by the European Parliament in 2013.[14] Stronger sanctions, such as exclusion from public bids, were among the additional steps that were suggested for firms that failed to implement transparent appointment procedures.[15]

iv. France:

In 2011, the government implemented gender quotas on corporate boards, thereby requiring corporations to have at least 40% of one gender represented on their boards.[16]

v. Germany:

After a gender quota of thirty percent for women on boards was implemented in 2016, the boards of nearly two thirds of the nation's corporations now meet this goal.[17] Even yet, the quota only applies to supervisory or

12 Government of Canada, *Diversity disclosure for boards of directors and senior management comes into force* (June 25, 2024, 5.00 PM) https://ised-isde.canada.ca/site/corporations-canada/en/business-corporations/diversity-boards-directors-and-senior-management

13 European Commission, *Directive of the European Parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures* (June 25, 2024, 6.00 PM) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52012PC0614

14 European Parliament, *Gender Balance on Boards* (June 25, 2024, 6.15 PM) https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-gender-balance-on-boards

15 *Ibid.*

16 Aviva Wittenberg-Cox, *France's Gender Balance Paradox, Forbes, 2019* (June 26 2024, 9.00 PM) https://www.forbes.com/sites/avivahwittenbergcox/2019/05/20/frances-gender-balance-paradox/

17 ILO, *The Business Case for Change* (June 26 2024, 9.30 PM) https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@

administrative boards—not executive or management boards—despite being effective in raising the number of members.[18]

vi. **Norway**:
Businesses were threatened with penalties, such as closure, if they failed to adopt a gender quota of 40% women on boards by the end of 2008.[19] Since then, Norway's percentage of women directors on corporate boards has increased significantly. In 2014, there were 35.5% of women directors at OBX index firms, up from 6.8% on boards of public limited businesses in 2002.[20]

vii. **United Kingdom**:
In addition to the "comply or explain" rules on board term limits, which explicitly addressed the independence of directors who had served longer than nine years, the United Kingdom implemented a "comply or explain" approach for gender disclosure in 2012. Consequently, from 2011 to 2015, the number of women serving on FTSE 100 boards more than doubled.[21]

viii. **United States**:
Recently, California passed legislation mandating that, by the end of 2021, publicly traded domestic firms with headquarters in California and international corporations with headquarters in California have a representative number of female board members, with a minimum of one female member by the end of 2019.[22]

To bring about change, public-private partnerships that prioritise a transformative agenda for gender equality and women's empowerment and respect boardroom diversity are essential, as is a multifaceted, multi-stakeholder strategy.

dgreports/@dcomm/@publ/documents/publication/wcms_700953.pdf

18 *Ibid.*

19 *Supra* note 8

20 *Ibid*

21 *Ibid*

22 Brooke E Condran, *New California Law Imposing Gender Diversity on Boards of Publicly Held Corporations Raises Constitutional Awareness,* Greenberg Traurig, 2018 (June 28 2024, 5.00 PM) https://www.gtlaw.com/en/insights/2018/10/new-california-law-imposing-gender-diversity-on-boards-of-publicly-held-corporations-raises

V. Overview of Women Directors in India's Leading Companies

The share of women in the boardrooms of India's top firms continues to be disproportionately low, despite progress towards gender parity. Reliance Industries and other corporations do not achieve parity and frequently comply with legal obligations instead of promoting true inclusion, according to a review of the top 10 companies based on market capitalization. This discrepancy suggests a large imbalance in corporate governance as it is not indicative of the gender distribution in the population. The same can be seen in the table below[23]-

S. No	Name of Company	Total No. of Directors	No. of Women Directors
1	Reliance Industries	14	2
2	TATA Consultancy Services (TCS)	13	2
3	HDFC Bank	12	3
4	ICICI Bank	13	2
5	Infosys	9	2
6	Bharti Airtel	10	3
7	State Bank of India	13	1
8	LIC India	15	1
9	Hindustan Unilever (HUL)	10	1
10	ITC	16	3

VI. Current Status of Women Leadership in The Nifty-500 Companies:

The current situation regarding women in NIFTY-500 company boardrooms indicates that these businesses are actively fostering a more diverse and inclusive workplace culture in addition to adhering to legal obligations.

1. 17.6% of directorship was held by women in the NIFTY-500 companies in the 2022 financial year.

2. The share of one or more women directors in the NIFTY-500 companies increased to 48.6% in 2022 as compared to 45% in 2021 and 44% in 2020

23 Dr. Honey Sharma *Gender Neutrality in Boardrooms of Indian Companies: An Analysis* (June 28 2024,6 00 PM) https://vipslawblog.wordpress.com/2024/04/01/gender-neutrality-in-boardrooms-of-indian-companies-an-analysis/

respectively.

3. 159 of the NIFTY-500 companies had more than 20% women representation in 2022 as compared to 146 and 139 companies in 2021 and 2020 respectively.

4. 22 of the NIFTY-500 companies are chaired by women, 25 women are the CEOs and 62 have executive directorships in these companies.

5. Out of 2960 committees held by these NIFTY-500 companies 442 are led by women and the rest 2518 are chaired by males.

Rise in women representation in boardrooms from 2015 – Oct, 2023

Date	Total No. of Nse Listed Companies Being Considered	Total Directorships	Total Women Directorships	Women Representation
31.03.2015	340	3208	367	11.44
31.03.2020	427	3910	636	16.27
31.03.2021	450	4026	676	16.79
31.03.2022	479	4462	780	17.48
31.03.2023	493	4660	842	18.07
26.10.2023	497	4750	870	18.31

VII. Women Leaders Across Different Sectors in India:

In the current scenario with more companies taking a step further to infuse more females in their boardrooms, the following is the sector-wise share women leaders have in the Indian economy as of 2022:

Sector-wise women leadership in Indian Economy 2022

S. No.	Sector	Percentage of Women Leadership (approx.)
1.	Education	28%
2.	Consumer and Retail	33%
3.	Healthcare and Hospitals	24%
4.	Financial Services	25%
5.	Media and Communication	18%
6.	Manufacturing	19%

VIII. CHALLENGES

The quest of gender diversity in corporate boardrooms faces several daunting hurdles, all of which add to the intricacy of the undertaking. The idea of the "glass ceiling," an imperceptible but ubiquitous system of hurdles impeding the advancement of women and minorities to higher organisational levels, is at the centre of these challenges. Demand-related obstacles also limit development. These include a general assumption among firm boards that applicants have prior board experience, and a lack of knowledge among them of the critical business rationale for gender diversity.

Concerns are raised about the independence of female directors nominated under compliance-driven programmes in the Indian environment. The stated advantages of increased gender diversity, according to critics, may be jeopardised by connections to the powerful families of promoters. The problem is exacerbated by supply-related concerns, since there is a perceived dearth of capable independent directors, particularly among women. Skilled women may choose not to serve on boards for a variety of reasons, such as concerns about how well their skill sets match board requirements and obligations to their families. Talks on gender diversity highlight how important it is to have a critical mass of female directors.

According to research, organisations that have three or more female directors often do better than those that have fewer women on board. However, the favourable effects may not last forever. The ways in which female directors see their positions and impact also provide a complex dilemma. Women directors generally worry that their voices may not have the impact they should, even when they are heard. Remarkably, female directors in executive roles—chief executive, executive chairperson, etc.—are an exception and are likely to be given more weight because of their executive authority. A comprehensive strategy that takes into account supply, demand, independence, critical mass, and directors' opinions is essential for navigating these complex difficulties. In order to create a gender-diverse corporate environment that is both inclusive and effective, it is imperative to adopt a holistic view that fully utilises the range of talent and perspectives present.

It said that, due to lower experience levels, the percentage of women in senior-level roles remained at 20% in 2023, despite these optimistic improvements. According to the LONGHOUSE research, women in mid-managerial positions who aspired to leadership positions faced a number of obstacles, which frequently led to a stalling

of their careers or their retirement from the workforce.

In India, around 80% of working women have taken professional interruptions; the main reasons given by 45% are childcare and personal homemaking responsibilities. Their problems include gaps in their resumes, outdated skills, insufficient confidence, prejudice, preconceptions, and a lack of assistance. Extended childcare leave policies, remote and flexible work environments, gender-neutral carer leaves for new parents, upskilling possibilities, and other measures were being implemented by certain organisations.

IX. Conclusion

It is vital to establish gender neutrality in boardrooms to foster inclusive and equitable corporate environments. Adopting gender neutrality fosters inclusivity and allows for a wider range of viewpoints, which enhances the quality of decision-making, promotes innovation, and ultimately boosts overall business performance. It not only promotes social justice but also aligns with current corporate governance standards and investor expectations. Boardrooms that are gender-neutral showcase a company's dedication to equity and inclusivity, which in turn promotes long-lasting progress and fosters a more vibrant and adaptable business environment.

From an Indian standpoint, the heightened representation of women in boardrooms signifies a significant accomplishment. Nevertheless, on a global scale, substantial endeavours are still necessary to attain genuine gender neutrality. The current representation of women in top executive roles at prominent companies falls significantly short of achieving gender parity, as there is an imbalanced proportion of older women occupying director positions. To rectify this inequality, it is imperative for regulatory bodies, as well as social and legal systems, to create environments that encourage and enable the involvement of women, especially younger generations, in high-ranking positions within companies. Enacting strategic changes and fostering social acceptance are crucial measures for narrowing the gender gap in Indian boardrooms, thereby establishing a fair and inclusive corporate governance environment.



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