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**PRESENCE OF WOMEN IN BOARDROOM- AN ANALYSIS WITH
REFERENCE TO THE COMPANIES ACT 2013**- Akansha¹

Abstract: Corporate Governance and gender diversity has been the most discussed topics for few decades now. This can be said to be a change in the dynamics in the business and corporate world. The Indian approach towards both the concepts has been a positive one. One of the approaches of the legislature in India which addresses both the issues positively is the inclusion of Section 149 (2) of the Companies Act, 2013 and SEBI LODR regulations. This inclusion aims for better corporate governance as well as solves the issue of the absence of women from the boardroom. This section brings an end to the boys' room approach of the boardrooms and solves the issue of gender diversity in the boardrooms. A positive impact has been noticed in the Nifty500 companies after such regulations have been brought into force. However, there are negatives to the same as well, the quota approach has not been used in the right way by a lot of businessmen and this reflects the loophole in the law framed. The law does not list down any qualifications for such mandatory inclusion which is further leading to bias appointments. This article discusses in detail the approach of the legislature and the post implementation effects of the laws framed.

Introduction

The modern world corporates has added a new word "Corporate Governance" to their organization's dictionary. In former times this word had a little to no existence in the world of corporates. The inclusion and analysis of the term helped the Corporates to better govern the

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basic matters such as shareholders rights, role of the board, monitor the corporate's performance, creation of transparency and a structural way of attaining the objectives of the corporate. Considering the Indian Scenario what attracted Indian corporates towards corporate governance was the Satyam fraud. This incident stood as an eye opener for the Corporates and the need for proper Governance for the corporates was felt. Companies Act was chosen as a path for incorporating Corporate Governance in India.

Bhabha Committee Recommendations led to the formation of the Companies Act, 1956². The 1956 Act had 25 amendments but still it failed. The act was considered to be inadequate and out of date and hence a major change was made by way of incorporating the new Act of 2013. The Bill was passed in the lower house of the Parliament on 1st of December 2012 followed by being passed in the Upper House on 8th August 2013 and then gaining the President's assent on 29th August, 2013 resulting in the formation of the Companies Act, 2013.³

The 2013 Act incorporate many major changes one of such changes was the mandate inclusion of woman directors in the boardroom. This change was made with the aim of having better governance as well as promotes gender diversity in the boardrooms. Corporate Governance is not a practice which can only be regulated by way of regulations. Focusing in the Board of Directors for corporate governance is a major change brought in by the 2013 Act. Since decision making powers rests with the Board of Directors majorly, this set of people needs to be trustworthy and looked upon to in order to safeguard shareholders interest. Therefore in this respect the Companies Act 2013⁴ also mentions under section 145 read along with the Rule No. 3 of Chapter XI of the Company Act.

Through the medium of this article I will try to analyze the presence of women in boardroom according to the new act of 2013.

Gender Diversity enshrined under the Companies Act, 2013

²Companies Act, 1956, No. 1, Acts of Parliament, 1956(India)

³Simaran Dhaner, Myriad of Reforms Engulfing M&A and other Important Provisions of Companies Act, Khurana & Khurana (April 9, 2024, 11:37 PM), <https://www.khuranaandkhurana.com/2022/10/25/myriad-of-reforms-engulfing-ma-and-other-important-provisions-of-companies-act/>

⁴Companies Act, 2013, No. 125, Acts of Parliament, 2013(India)

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Under representation of woman has been a common practice around the world and hence can be termed to be a global phenomenon. Board rooms have always been a boy's paradise. Women were kept out of the boardroom games there were several reasons given for such disproportionate ratio. The most Common reason used by the Companies for such disproportion was "board already filled with qualified candidates" such an argument is not convincing enough because most of the companies had absence of women representation. Such an excuse can be convincing for a few corporate but not all considering the standard service duration of directors and resignation of directors on a periodic basis. Keeping in mind such situations the policy makers throughout the world resorted to idea of mandating the gender quota in boardroom.

Regulations are mere words on papers it is the attitude and action which makes those letter active. Inclusion of women is not merely a gender diversity stunt but an action for better representation of all, better perspectives, insightfulness, unified management style in the executive suites. Boardroom equality finds its emergence in the year of 2003 in Norway. The policy makers in Norway announced the mandate of having at least 40% board representation in its corporate boards. Such action was then imitated by many other countries such as Spain, Finland, Iceland, France, Israel, Belgium etc. The California city in the UAS also mandated in 2018 gender representation quotas for its publicly traded Companies failure to complying with such regulations would result in heavy penalties.

Looking into the Indian Regulations:

Section 149 of the Companies Act, 2013⁵ read along with Rule No.3 of Chapter XI makes it mandatory for certain companies to have at least one woman director in its Board. The companies which need to comply such regulations are:

1. Listed Companies: All such corporations which are listed in the stock exchange are mandated to have at least one women director in its board.
2. Other Public Companies: In addition all such public companies is required to designate a female director if its satisfies the following two conditions:

⁵The Companies Act, 2013, § 149, No. 125 Acts of Parliament, 2013 (India)

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- Having paid-up share capital of a hundred Crore rupees or more
- Revenue amounting to rupees three hundred Crore or more.

Also, attention should also be drawn by the companies incorporated under the Act and covered under the second proviso of sub-section (1) of section 149⁶. Such Companies are required to comply with the requirements of section 149⁷ within 6 months from its date of incorporation.

In case there is any vacancy for the position of women director in any corporation such vacancy must be fulfilled by the board immediately. The duration fixed by the legislation is, the vacancy should either be filled at the next immediate meeting of the board or within a period of six months from beginning of the vacancy date, the later of the two.⁸

Regulation 17(1) of the Securities Exchange Board of India (Listing Obligation Disclosure Requirements), Regulations 2015, the regulation stipulates certain precondition for board composition of listed companies.

1. The gender diversity quota can be seen here as the Board of directors needs to strike an ideal balance between its executive and non-executive board members. Mandating one female director and fifty percent representation of non-executive directors in the board.
2. Certain deadlines were provided for specific group of companies such as the top 500 listed companies must have at least one female as its independent director, deadline for complying with the same was April, 2019. Another mandate was made for the board of 1000 top listed companies for having at least one independent woman director.

In order to determine the company to be top 500 or 1000 listed the market capitalization of the company's immediate preceding financial year shall be taken into consideration. Such

⁶The Companies Act, 2013, § 149 (2), No. 125, Acts of Parliament, 2013 (India)

⁷*Id.*

⁸ Independent Director's Databank, https://www.independentdirectorsdatabank.in/pdf/partners/icai/Handbook_on_Role_of_Women_Directors.pdf (last visited April 10, 2024)

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mandates were made with the intent of making an impact on the market by prioritizing the inclusion of woman director in the boardrooms.⁹

The “handbook on role of Women Directors released by the Women Members Empowerment Directorate and Corporate Laws & Governance Committee of the Indian Institute of Chartered Accountants of India (Setup by an Act of Parliament)” mentions the following:

Necessity for Women Independent Directors

1. A woman’s prudence: Positive influence of a woman’s prudence, patience, detail-oriented nature on the board. The strong communications skills held by a woman contributes towards through assessment and helps in right decision making.
2. A woman is considered to have diverse perspective which helps in evaluating social concerns with strong focus.
3. The inquisitive nature of a woman helps her to inquire which helps in assessing the risk involved in any decision and paves a platform for honest and frank exchange of dialogues.
4. A typical nature of a woman- the judgment taking it into positive notion. The judgment and analysis of a woman is results in better and careful supervision. Helping to make better CSR policies, HR policies, marketing strategies and also legal compliances.
5. Collaboration and cooperation: it is a common understanding that women are more inclusive- which means women are not self-centric, this nature of a woman stands out to be a great help for the employees, stakeholders, Environment and society at large.
6. The golden word Empowerment: every organization has a history of the boy’s paradise boardrooms. Involving a woman in a boardroom will stand as a cultural change for the entity as well as the society. She well stands as a role model for other woman stakeholders in the entity as well as for the future generations to come.¹⁰

⁹*Id.*

¹⁰Independent Director’s Databank, https://www.independentdirectorsdatabank.in/pdf/partners/ica/Handbook_on_Role_of_Women_Directors.pdf (last visited April 10, 2024)

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Post-Amendments Evolutions- Is it real?

According to stats the 2013 fiscal year ended with only 5% women representation in the boardrooms. However the implementation of the mandate quota enshrined in the newly enacted act made it a mandate for big companies to have presence of women in its boardrooms. The consequence of such a mandate was a threefold increase in the representation or presence of women in boardroom by 2014.

Data acquired from the National Stock Exchangedata base exhibited that in the year 2019 the representation of woman on the board of the Nifty-500 companies remained stuck at a low point. Only 15% of the Nifty-500 board members were women.

Observation of the data also suggests that majority of the representation of women in boardrooms can be said to be mere meeting of the obligations imposed by way of statutes. The Nifty-500 Companies till 2019 has only appointed only one women director as mandated by the provision. This shows the inbuilt patriarchy which exists in the society has not yet faded away. A lack of support, lack of proactive efforts by the entities to promote gender diversity can be witnessed.

However the above mentioned statistics represents disparity within Nifty-500 companies but let's not overlook the small advancements. Few firms have appointed women directors exceeding the statutory limits, but such representation remains skewed. Since only a few companies have exceeded the number of women directors to more than three this paints a picture that achieving gender parity in boardrooms is still a task difficult to achieve. This indicates towards the need for continued efforts to address the challenges faced by the women in boardrooms representation.

The actual scenario was witnessed in incident related to Murugappa Group. The group has been engaged in baking enterprises since the pre- World War one era in Myanmar. Headquartered in Chennai. The group is well known for its caution, collective decision making and Conservativeness. The group has a legacy of 122 years. The group had been in talks in the past for not including any woman of the family into the Company's boardroom. Such allegations

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were made by Dr.Valli Arunachalam daughter M.V Murugappa who was the head of the entity for more than two decades.

Valli Arunachalam fought for right as a woman to find herself a representation in the board of the Group. She wanted to exit the company by selling of her 8.15 stake in the company to her uncles and if her demand of selling of the shares were not agreed to then she wanted a representation in the board of the holding company Ambadi Investments Ltd (AIL). Her request was delayed and not looked into for two years. If her offer would have been accepted then she would have been the first women director from the family. However she was called out for her actions. She was addressed by using terms such as “arrogant” and “unwomanly” for asking her representation in the board. Her demands came to a freeze when the majority in the board voted against her candidature. The struggle faced by Ms. Valli stands as a strong evidence to the fact that mere implementation of legislations won't help in changing the age old conservatism and patriarchal nature of the corporate boardroom. This case clearly highlights the absence of gender diversity the boardrooms.

From the above mentioned case analysis it is clear that the women are still not given an opportunity for being included in the board.

Challenges for representation

On the face of it the Companies Act, 2013 mandates the representation of women directors for excluding gender disparity and promoting equal representation of all sexes in the boardroom. However the puzzle is not a simple one to be solved. The legislative intent behind such law was very clear; the intention was to include representation of woman in decision making and just not be a dormant part of the company. The real picture is different from the images created by the legislature in their mind and in people's mind.

Due to the statutory mandate almost every company has women representation in its boardroom. But the question which pops up is whether such representation creates any major impact in the board? What needs to be evaluated is the number of women required to make a meaningful impact on the governance of the entity. The critical mass theory has a role to play in this

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circumstance. This theory helps to examine the right number of women representation needed to create an impact. The tokenism phenomenon where a minority in underrepresented leading to biasness from the majority. The theory majorly underlines the fact that although women has representation in the board but are such representations enough to create an impact in front of the dominant majority. As the representation (token) increase it becomes easier for the particular group to reach the masses and create a critical impact. Then such impact leads to changes in the dynamics. Overall, the theory underlines the importance of paving a path beyond token representation in order to create impactful gender diversity in the boardroom.

Nepotism

Another major issued which came up with the new provision of the 2013 act was the issue of Nepotism in the boardrooms. The inclusion has just become a “tick the box” activity for the corporates. The companies have started the practice of appointing family members as women representative in boardrooms as a matter of promoting diversity. The question arises “Is this actual diversity?” the answer to the question is a big no. The representation of human capital on the board should not just be a matter of tick the box activity rather it should be seen as a way for enhancing the corporates productivity by making use of the knowledge, skills and abilities of the board member. Including family members as women representation might not help in enhancing the corporate’s productivity as the family member might lack the skills also Contravenes the essence of law. The trend of nepotism and favoritism in boardroom has been promoted by the major business tycoons of the country.

Examples: The appointment of Nita Ambani wife of Muskesh Ambani to the board as the first woman director of the Reliance group. The trend was followed by Cera Sanitary ware, Raymond, Kirloskar Oil Engines and many more.

Conclusion

Research paints a positive picture about gender diversity in the boardroom as it promotes better profits, better decisions and innovations. At the same time the quota approach of the legislature towards these issues has raised certain concerns such as the biased approach. Such acts make it

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evident that Indian has a substantial progress yet to be made concerning this issue. Therefore, the minimum quota approach seems to be the best and most effective approach considering the present scenario.



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