 DOI: *http://doi.one/10.1732/IJLMH.25269*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 6

2020

Gender Diversity on Corporate Boards: A Cost-Benefit Analysis

SWARNA HARDIKAR[1] AND SHIBANA FARHEEN[2]

ABSTRACT

Over the past few years, attention has significantly shifted to the influence that gender diversity has on the efficiency of corporate governance and how it is imperative to boost productivity and social compliance, thereby increasing firm value. Despite such increase in the need of a gender diverse board, a number of Asian countries including India, fall below the average indicator for female representation on boards. The reason for such underrepresentation is manifold for India. There is an increased need to look at the social and economic factors that impact gender bias and stereotypes and hence leads to a predetermined notion of gender-based work roles.

The uprise in the number of female board members in Indian corporates was visible after the implementation of a legislation mandating a quota for such representation. But it subsequently became stagnant, making the regulatory mechanism inadequate to cater to the need of a gender diverse board. Also, compulsorily pushing companies through legislation may not have helped us reach the goal. This article analyses the important role regulators, institutional environment, companies and investors together play in diversifying the corporate boards. The article also analyses the need for a more inclusive structure, which will include social, cultural and economic factors in determining an equal representation of women on corporate boards.

I. INTRODUCTION

Gender diversity on boards is a major ethical issue for most corporations and union or federal governments across the globe.[3] Many countries seek to enforce the same through laws, other use the broader corporate governance codes to do the same. It becomes an ethical issue primarily because of the kind of culture[4] of discrimination in the social hierarchy which

[1] Author is a LL.M. Candidate (2020-21), Corporate and Financial Law and Policy at Jindal Global Law School, Sonipat, India.
[2] Author is a LL.M. Candidate (2020-21), Corporate and Financial Law and Policy at Jindal Global Law School, Sonipat, India.
[3] Amalia Carrasco et al., *Appointing Women to Boards: Is There a Cultural Bias?*, 129 JOUR. BUS. ETHICS 429 (2015).
[4] *Id*.

 [ISSN 2581-5369]

makes the governments feel obligated to take measures to promote gender diversity on corporate boards, especially within the kind of companies which largely deal with public money.

With a global movement catering towards an inclusive participation of women in public spheres and basically all walks of life, there is a heightened scrutiny on corporations and their top management, primarily the boards, and the kind of inclusivity they are portraying.[5] In such situations, the reputation of the corporation and the reputation of the country's federal government is most likely to be affected by lack of gender inclusivity on boards, which is also a reflection of the social culture.

But even after all the legislations and thoughts of gender sensitisation, the corporate world has always been traditionally dominated by men and still continues to be dominated by them.[6] As is examined and explained later in this paper, it is frightfully evident that women have clearly not gotten their due as far as their representation on corporate boards is concerned; the reasons for the same are varied and it would not be justified to blame either the corporations or the governments in silos. The intention behind mandating women representation on boards and carving out 'quotas' for them might have been that of promoting gender inclusivity and diversity in the top tier of corporate management, but that purpose has not yet been achieved, and as many would say, would not be achieved with the current framework in hand. The road that leads to complete gender inclusivity is long and arduous, and would require a complete societal overhaul, which cannot be achieved through a simple piece of legislation.

II. LEGAL FRAMEWORK ON GENDER DIVERSITY

In most countries, it falls to the central governments to enforce gender diversity on corporate boards, primarily because their reputation also gets affected if they do not take steps to promote gender inclusivity. Some countries enforce gender diversity through such hard legislations, others provide for the same through comprehensive corporate governance codes. While making women directors mandatory on corporate boards might seem extreme from one perspective, many think that this is a necessary evil to break years of tradition.[7]

---

[5] Stephen Bear et al., *The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation* 97 JOUR. BUS. ETHICS 207 (2010).

[6] Pushpa Sundar, *Czarinas or Girl Fridays? Women in the Corporate Sector* 39 IND. INT. CEN. QUART. 69 (2013).

[7] Jennifer Rankin, *EU revives plans for mandatory quotas of women on company boards*, THE GUARDIAN (March 5, 2020) https://www.theguardian.com/world/2020/mar/05/eu-revives-plans-for-mandatory-quotas-of-women-on-company-boards (last visited November 7, 2020).

In India, the gender inclusivity legislation came in the form of the Companies Act, 2013 (the "**CA 2013**"). Section 149(1) of the CA 2013[8] mandates the formation of a Board of Directors and lays down qualifications for the appointment of various directors, among which it also mandates the appointment of "*at least one-woman director*".[9] This has to be read with Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 (the "**AQD Rules**"), which lays down the classes of companies which need to appoint a woman director-

> *"(i) every listed company;*
>
> *(ii) every other public company having-*
>
> *(a) paid–up share capital of one hundred crore rupees or more; or*
>
> *(b) turnover of three hundred crore rupees or more:*
>
> *Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:*
>
> *Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later."*[10]

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the "**LODR Regulations**") also talk about gender diversity in corporate boards. Regulation 17(1)(a) of the LODR Regulations says that the Board of Directors of a listed entity must comprise of "*at least one woman director*".[11] After the 2018 amendment to the LODR Regulations, it is now mandatory for "*the Board of Directors of top 500 listed entities (with effect from April 1, 2019) and top 1000 listed entities (with effect from April 1, 2020) to have at least one independent women director*".[12]

Such legislations mandating women's participation on corporate boards are not limited to India. These can be seen across the globe, either in the form of hard or soft law. While for some countries, legislation is key to ensure gender diversity, other countries are doing very

---

[8] The Companies Act, No. 18 of 2013, § 149(1).
[9] *Id*.
[10] The Companies (Appointment and Qualifications of Directors) Rules, 2014, rule 3.
[11] The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, regulation 17(1)(a) (2015).
[12] *Id*.

well in that aspect without any mandate. One such country is Sweden, along with multiple Nordic countries, which, despite not having any hard law mandating women representation on corporate boards, have the most gender diverse boards in the world.[13]

Most of the European countries like France, Austria, Germany, Greece, Italy and others have hard laws governing gender diversity on corporate boards.[14] In France, the Law Regarding the Professional Equality Between Women and Men (2001, as of August 2013) was amended in 2017 and it mandated for 40% quota for both genders; such a law is applicable to public, private and government companies.[15] The German Parliament, in 2015, through the Law on Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector, mandated listed companies to have 30% of non-executive seats on supervisory boards to be held by women.[16]

In Greece, one-third seats on the boards of fully or partially state-owned companies are mandated to be held by women;[17] Italy has a similar law on gender representation.[18] In Spain, the Law for Gender Equality passed in 2007 called for equal representation of men and women on corporate boards.[19] Another law passed in 2014 called for both listed and unlisted companies to set minimum specific number of women on their boards.[20] The United Kingdom does not have specific quotas or a legislation for women representation on corporate boards. Instead, the UK Government set up the Davies Commission in 2011 to review women representation on boards,[21] the recommendations of which set specific targets to be achieved by 2015. Since then, women representation on UK boards has gone up considerably.[22] Russia does not have a law governing gender diversity, neither can a public discourse be seen to that effect; gender diversity on boards remains a concern in Russia.[23]

In North America, Canada has no law on gender diversity on boards.[24] The United States also does not have a law on women representation on corporate boards. However, some State

---

[13] Albertine d'Hoop-Azar et al, *Gender Parity on Boards Around the World*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (January 5, 2017) https://corpgov.law.harvard.edu/2017/01/05/gender-parity-on-boards-around-the-world/ (last visited November 7, 2020).
[14] *Women in the Boardroom: A Global Perspective*, DELOITTE GLOBAL CENTRE FOR CORPORATE GOVERNANCE 5/2017 (2017) https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf (last visited November 7, 2020).
[15] The Law Regarding the Professional Equality Between Women and Men (2001, as of August 2013) (France).
[16] Law on Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector, May 2015 (Germany).
[17] Government Gazette 196, September 2000 (Greece).
[18] Decree of Republic President 251/ 2012 (Italy).
[19] BOE, 3/2007 Law for Gender Equality, March 2007 (Spain).
[20] BOE, 31/2014 Corporate Enterprises Act (Article 540), November 2014 (Spain).
[21] *Supra* Note 12.
[22] *Id.*
[23] *Id.*
[24] *Id.*

governments like California, Massachusetts, Illinois and Pennsylvania have passed non-binding resolutions as measures to promote gender inclusivity.[25] The situation is equally bleak in Latin and South America,[26] where the countries have gender inclusivity bills stuck in their respective Parliaments or only have soft to no laws to deal with the same.

Most countries in Africa have stayed silent on the issue of women representation in corporate boards, except Kenya. The Kenyan Constitution enacted in 2010 mandates that no gender shall occupy more than two-thirds seats in Government-owned companies.[27] There is no mandate for women representation on boards in the Middle Eastern countries, with the exception of Israel, which mandates that if the corporate board is composed entirely of one gender, a non-executive director of another gender shall be appointed.[28] Neither Australia nor New Zealand have any hard laws for women representation on boards, but they are working towards a more gender inclusive corporate culture through exercises like gender sensitisation schemes.[29]

In Asia (apart from India), neither China nor Hong Kong has any law on gender inclusivity in corporate boards, and there is no discussion surrounding that issue. Most other countries like Japan, South Korea, Indonesia, Singapore, Thailand, Taiwan or Vietnam have no such laws,[30] but there is a public discussion surrounding the issue in some countries. Some are also on the path to incorporate soft laws on gender diversity into their legal structure.

III. WHY DOES GENDER DIVERSITY MATTER IN CORPORATE BOARD-COST ANALYSIS?

Social diversity is an outcome of the interrelation of multiple human attributes of distinguishing individuals and groups. In the similar manner, 'diversity' at the board level surrounds a number of human attributes, of which gender is one. Female presence on boards has been widely noted and has seen a steady growth throughout the past years. With legislations mandating quotas and such minimum representation of women in corporate boards in various countries, the increase has been decent.

There may not be a direct correlation between gender diversity and financial performance, but many studies have shown a positive outcome. Like for example, a study indicated that a proportion of women on corporate boards, especially on a Fortune 500 company, has seen

[25] *Id.*
[26] *Id.*
[27] KENYA CONST. 2010.
[28] Companies Law 5759-1999, Part VI Chapter 1 Article E(d) (Israel).
[29] *Supra* Note 12.
[30] *Id.*

 [ISSN 2581-5369]

significant return on sales and return on capital.[31] A 2% greater return on assets ("**ROA**") was evident of companies with diverse boards among the Fortune 500, when compared with boards with only males.[32] Various researchers have asserted on similar lines. They have indicated that corporates with more women in board level or leadership positions, in terms of return on equity ("**ROE**"), stock price growth and others, have outperformed in these sectors. According to the McKinsey 2015 Report on *Why Diversity Matters*, it specifically finds that gender diverse companies are 15% more likely to outperform their peers.[33] This report suggests correlation between gender diversity and financial performance.

A study from the International Monetary Fund considered over two million listed and non-listed firms across almost 34 countries in Europe.[34] Their analysis showed that having a larger number of women in directorship positions contributes to higher ROA. By replacing just one man with one woman on the board or in senior management, firms could experience an 8 to 13 basis point increase in their ROA.[35] This kind of relationship is more evident in industries that employ more women in their overall workforces; "*a firm in an industry in the top quartile for gender diversity on boards or in senior management is associated with a 20 basis points increase in ROA.*"[36]

If we look at studies available there has been consistent mention of correlation between gender diversity and performance of a company. The result of such analysis is positive. All have directed the need for a gender diverse board and how with such diversity a firm's performance as well as reputation can be affected, for the good. Even if we consider the socio-ethical and cultural bias around the women on corporate boards, there is absolutely no harm to the company in bringing such diversity.

IV. Analysis of women representation with or without compulsory legislation

Women getting involved in corporate governance is not a very farfetched or impractical idea for India, even though India's performance in this regard is quite poor compared to other big nations. The glass ceiling has not been smashed loudly enough. In order to promote gender

---

[31] Lois Joy et al., The Bottom Line: Corporate Performance and Women's Representation on Boards (Catalyst 2007).
[32] Francesca Lagerberg, Women in Business: The Value of Diversity (Grant Thorton 2015).
[33] Vivian Hunt, *Why Diversity Matters*, McKinsey (2015) https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters (last visited November 10, 2020).
[34] Lone Christiansen, Huidan Lin, Joana Pereira, Petia Topalova, and Rima Turk, *Gender Diversity in Senior Positions and Firm Performance: Evidence from Europe*, *Int. Mon. Fund* (2016).
[35] *Id.*
[36] *Id.*

diversity in India, the legislations have been imposed on corporates, with a turnover of more than 300 crore to appoint at least one women director[37]. This did start a trend in the country. According to data available on Prime Database, a data services organisation which studied the board of top 500 companies listed on the National Stock Exchange, it indicated the rise in female representation from 5% in 2012 to 13.8% in 2017.[38] However, with the implementation of legislation we could assume that in order to fulfil such legal compliance, a promoter may appoint any family member as director for the firm. The Securities and Exchange Board of India for this reason, mandated in October 2017 that every firm listed on stock markets had to have at least one female independent director.[39] Since this implementation the number of women on board have increased to 17% by Prime Database's Estimate.[40]

Boards of Indian Corporations have one woman for every six men, while such number is different on global context. Globally, one woman for about four men, is the number.[41] If we look at the data available for Indian Companies, we may find a gap when compared to other countries in spite of compulsory legislations.

Women's Global Representation on Boards, 2019						
Country	**Women Directorships, 2019 (%)**	**Women Directorships, 2016 (%)**	**With Three or More WOB, 2019 (%)**	**With 1-2 WOB, 2019 (%)**	**With Zero WOB, 2019 (%)**	**Quota and Year Introduced**
Australia	31.2	26.0	58.2	40.3	1.5	No
Canada	29.1	22.8	63.0	35.9	1.1	Pending
France	44.3	37.6	98.6	1.4	0.0	Yes, 2010
Germany	33.3	19.5	81.0	17.2	1.7	Yes, 2015
India	15.9	12.8	21.3	78.8	0.0	Yes, 2013

---

[37] *Supra* Note 7, § 149(1).
[38] NSE INFOBASE, https://www.nseinfobase.com/index.aspx?ReturnUrl=%2f (last visited November 10, 2020).
[39] The Companies (Appointment and Qualifications of Directors) Rules, 2014
[40] *Supra* Note 37.
[41] THE CS GENDER 3000 IN 2019: THE CHANGING FACE OF COMPANIES (Credit Suisse 2019), available at https://www.credit-suisse.com/about-us-news/en/articles/news-and-expertise/cs-gender-3000-report-2019-201910.html.

Women's Global Representation on Boards, 2019						
Japan	8.4	4.8	3.4	63.2	33.4	No
Netherlands	34.0	18.9	65.2	34.8	0.0	Yes, 2013
Sweden	39.6	35.6	96.6	3.4	0.0	Yes, 2016
Switzerland	24.9	17.5	48.8	51.2	0.0	Pending
United Kingdom	31.7	25.3	82.2	17.8	0.0	No
United States	26.1	20.3	56.2	42.8	1.0	CA Only, 2018

Source: Women on Boards, 2019; Progress Report.[42]

The above data captures a part of analytical representation of women on corporate boards across countries. The underrepresentation is evident for India. Even with compulsory legislation, women are not adequately represented in boards in India. Countries like United Kingdom, Australia, Canada and Switzerland have double the percentage of such representation, despite having no quota or legislation governing gender diversity.[43] From 2016 to 2019, India saw a rise from 12.8 % to 15.9% of representation of women.[44]

V. Conclusion

Different studies have suggested that representation of women on boards has a causal relationship with various factors of firm's performance. Such evidence of direct or indirect relationship between gender diversity and performance has strengthened over the years; like various indicators of firm valuation and performance, for example implementation and commitment to CSR activities and also to ethical practices. Despite various studies reflecting women's contribution to firms in various forms like increased profitability, better financial ratios as well as other indicators, the companies even today are hesitant and a perpetual gender-bias pervades all these factors. The reasons for such disparity is multi-fold, cultural and pertinent gender-bias are major contributors to such discrimination. Women who reach at board levels and higher management levels are more diversely skilled than their counterparts.

---

[42] Olga Emelianova and Christina Milhomem, Women on Boards 2019: Progress Report, (MSCI ESG Research LLC 2019).
[43] *Id.*
[44] *Id.*

Overall, the problem of gender inclusivity is very prominent. The concept of ‘quotas’ adapted by various countries has shown substantial growth, quota system has promoted and gave gender diversity a push. Across the world and in India, the policies around gender inclusivity in corporate governance has disparity in their effectiveness and that it requires more work to make sure it is properly implemented. More than the legislative implementation, the work environment of various corporates should be made gender inclusive and look after the gender-bias and make effective corporate policies. Corporate policies of individual can be made more gender neutral and promote diversification of such corporations. Organizations which restrict such promotions and blocks the environment for women representation at top levels in corporate governance, can be changed. A pathway can be created by corporates changing such norms through frameworks, with effective legislations. The quota system cannot alone fulfil the objective of gender diversity in corporate governance. Even if we look at the structure in India, the data reflects insufficiency and lacks objective to promote such gender diversity among organizations.

*****