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Position of Women Directors under Indian Company Law

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ABSTRACT

The present paper is an analytical commentary on the position of women directors under the Company Law. It discusses the dilemma that women have faced for eons, and its connection to gender diversity and inclusivity issues. It further delves into Section 149(1) of the Companies Act, 2013 understanding the legislative intent behind the mandate of inclusion for women directors. Here, the paper takes a statistical approach, comparing data from prior to the enactment of the section and post, and goes on to highlight the underlying issues in the data. The shortcomings of the lacunae are discussed along with the current position and problems of both women directors and the companies. The paper concludes by suggesting utilitarian solutions.

Keywords: Women directors, Companies, Board of Directors, Gender Diversity, Gender Inclusivity, Compliance, Glass Ceiling

I. INTRODUCTION

The origins of the dynamics of women in the boardroom and the subsequent woes are a tale as old as time itself. The abysmal fate that befell Eve seems to have followed all of womankind, shadowing them century after century, from the confines of the kitchen to the glass doors of boardrooms.² It can be comfortably asserted that the inequality that has perpetrated the top brass of most corporations stems from the lack of women in positions of power and leadership.³ However, with the modernisation of society and the progression of time, the status of women has seen significant upliftment, be it in education, mentoring or professional arenas.⁴ Although change has come in leaps and bounds, it is not nearly enough to claim that equality has been achieved.⁵ The global corporate sectors have seen a significant impetus in terms of either mandating or encouraging reservations for women for the positions of directors on boards of

¹ Author is a student at Symbiosis Law School, Pune, India.

² H.L. KAILA, WOMEN, WORK AND FAMILY (2005).

³ Singh V *et al.*, *Women In Formal Corporate Networks: An Organizational Citizenship Perspective*, WOMEN IN MANAGEMENT REVIEW, 458–82 (2006).

⁴ Patel & Patel, *Agenda of Women Empowerment At the Boards- Amendment to Companies Act*, INTERNATIONAL JOURNAL OF INNOVATIONS IN ENGINEERING AND MANAGEMENT (2013).

⁵ Meyerson, D. & Fletcher, J. K., *A Modest Manifesto For Shattering The Glass Ceiling*, HARVARD BUSINESS REVIEW, 126– 236 (2000).

companies in an attempt to bridge over the prevalent gender gap.⁶ Several countries saw such reservations implemented, such as Norway, Italy, Israel, and Austria- to name a few.

With the new Companies Act, 2013 setting into place, India also faced a similar situation, with Section 149(1) of the Companies Act read alongside with Clause 49 (II) (a) (1) of the SEBI listing agreement and Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 mandating that every listed corporation with either: (i) a paid-up share capital of Rs. 100 crore; or (ii) a company with a turnover of Rs. 300 crore or more, shall appoint at least one woman director.

The present paper aims to explore and analyse how effective these measure have truly been in terms of achieving their target goal, whilst thoroughly analysing and keeping in mind the legislative intent behind the relevant provisions in the statute.

II. SECTION 149(1) OF THE COMPANIES ACT, 2013

Unlike its predecessor, the Companies Act, 2013 mandated the inclusion of at least one woman director on the Board of Directors for a certain category of companies, predominantly, large publicly listed ones. As enumerated above, it was Section 149(1) that brought about the wave of gender inclusion in Indian company law and corporate sectors along with the rules issued by SEBI. The second proviso to Section 149(1) stated that every listed company shall appoint at least one woman director within one year from its commencement. Also, every publicly listed company having paid up share capital of Rs.100 crores or more, or turnover of Rs.300 crore or more as on the last date of latest audited financial statements must also do the same. A time period of 6 months was given to the existing companies to comply with the newly announced requirements and new companies incorporated post the announcement also had 6 months from date of incorporation to comply with the requirements. Furthermore, in case of any intermittent vacancy of a woman director, the board of directors shall file and note the same within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later. However, it is notable that there exists no harsh penalty for non-compliance with Section 149(1). Non-compliance with Clause 49 of the Listing Agreement however attracts suspension or delisting of the securities of the company.

(A) Impact of the provision: a statistical viewpoint

The legislative intent behind the provision was a progressive and positive one, and was therefore at the time welcomed warmly on paper. The immediate impact was significant,

⁶ Sandeep Gopalan & Katherine Watson, *An Agency Theoretical Approach to Corporate Board Diversity*, 52 SAN DIEGO L. REV. 1, 23-48 (2015).

increasing the number of women directors majorly, however it failed to bring about meaning change in the position of women directors on the Boards of these companies.⁷ The results displayed the triumph of quantity over quality, which in turn did very little to further the agenda behind the original legislative intent of the provision.⁸ A brief comparison of the numbers and statistical data from before the enactment of the section and after its implementation shall allow us to understand the matter further:

1. Prior to Section 149(1)

A study conducted by McKinsey & Co on representation of women in Boardrooms of corporations ranked India in the bottom two position.⁹ Another survey concluded that only 0.0517% of the board members were women out of the 1500 companies analysed and only 1% of the CEOs in Indian companies were women.¹⁰ The dismal representation of women in corporate boardrooms gave the impetus to the legislating authorities to enact Section 149(1) of the Companies Act, 2013.

2. Post the enactment of Section 149(1)

As of 1st April, 2015, the NSE released data regarding the position of women in 1451 listed companies. Only 147, i.e., 10.1% of the companies mentioned in the data did not report any women on their board of directors. The total percentage of women directors had shot up to 12.3%, where 80.2% companies reported one woman director, 8.1% reported two women directors and 1.6% reported three or more women directors on their board.¹¹

Regarding the BSE, a 2014 census revealed that women accounted for 9.5% of total board seats in 200 BSE listed companies.¹²

3. Issues Hidden In the Data

While the numbers display a significant progress and a direction in the right step, it is vital that we take note of the fact that although hundreds of companies complied with the new regulations and appointed women directors to their boards, approximately 278 of them did so promptly in March 2014 itself, perhaps indicating that there had been no shift in mentality or any such

⁷ P. Sikard, J. Dhama & G.S. Batra, *Gender Diversity on Corporate Boards: A Case of India*, INTERNATIONAL JOURNAL OF MANAGEMENT, 292, 293 (2013).

⁸ Dr. Agrawal, A *Study On Appointment Of Woman Directors By Companies In Mumbai*, INTERNATIONAL JOURNAL OF ETHICS IN ENGINEERING AND MANAGEMENT, 1-4 (2015).

⁹ McKinsey & Company, *Women Matter 2012 - Gender Diversity in Top Management: Moving Corporate Culture, Moving Boundaries* (2012).

¹⁰ Ambreen Wani, *Breaking Through The Glass Ceiling*, INTERNATIONAL MONTHLY REFEREED JOURNAL OF RESEARCH IN MANAGEMENT AND TECHNOLOGY 79-88 (2013).

¹¹ NSE Quarterly Briefing, *Gender Diversity on Boards*, July (2015).

¹² Elita Sequeria, *Tanmatra: Developing The Leadership Potential Of Women In India*, CATALYST (2015).

progressive shift of mindset but rather just mere compliance with rules in order to avoid penalties.¹³ More than half of these appointments included non-independent directorships and around 80 of them appointed women that were a part of the promotor group family.¹⁴ Several companies found respite in the excuse that they were not able to sign on suitable women with the required experience and educational qualifications.¹⁵

III. BEYOND THE GAZETTE: CURRENT POSITION OF WOMEN DIRECTORS

A glance at the above data and the issues highlighted the rain exposes the serious lacunae found in the current legislation. The legislative intent behind the provision was to empower and include women in the modern boardroom. Instead, the provision has bought about inclusion for the sake of mere inclusion. Women directors are not being groomed or educated to take the helm at their roles but instead this provision is being manipulated to ensure that power remains within promoter group families or only puppet directors are appointed.¹⁶ While the provision may mandate the inclusion of women directors, it nowhere mentions that they must be independent directors. Therefore, while the base number of women in the boardroom might have increased significantly, the number of true active directors certainly hasn't.

The position of women directors in our corporate sector remains as precarious and fragile as ever – the regulations might be helping them secure a seat, but they are a far way off from earning the seat and rightfully yielding the power that comes with it. Often, the companies have only one woman on the board for the sake of compliance with the regulations, but being the only woman on the board can itself be jilting, and female directors often find their voice to be isolated and muffled due to their gender and the path they took to reach the boardroom.¹⁷ Women are often chosen on their ability to nod when required and seamlessly integrate within the already established structure and hierarchy of the Board.¹⁸ By establishing that the women directors have gained their seats merely due to a quota, we not only diminish their credibility, ethical standards and reliability but also shunt their growth. Putting under qualified women in positions of power for the mere sake of ticking a checkbox will damage her changes of growth and excellence and severely damage the company as well.

¹³ *Supra* 11.

¹⁴ Sulphey M M & Shaha Faisal, *The Position of Gender Diversity in Indian Corporate Boards*, INTERNATIONAL JOURNAL OF ECONOMIC RESEARCH, 195- 200 (2017).

¹⁵ *Supra* 8.

¹⁶ Tadwalkar, V & Vedula Lahari, S, *Representation of Women on the Board of Directors under the Companies Act, 2013*, CHRIST UNIVERSITY LAW JOURNAL, 33–47 (2015).

¹⁷ Afra Afsharipour, *The One Woman Director Mandate: History and Trajectory*, OXFORD UNIVERSITY PRESS, 1-14 (2015).

¹⁸ Hillman *et al.*, *Organizational Predictors Of Women On Corporate Boards*, ACADEMY OF MANAGEMENT JOURNAL, 941–52 (2007).

It is not only the women that must adapt to the shortcomings of their current position, but the onus also falls upon the corporations that must appoint them. Till date, it is often a task to find a woman with the required experience, educational qualifications and mastery required to take the helm of a director's role. The women that have all desired qualities are oft highly established individuals already – and most are still in training and undergoing mentorship to be able to handle the responsibilities of this role. Admittedly, it is a shabby excuse but it is also the grim truth of the current situation. However, keeping in check with our society's progress, this excuse will become redundant in little to no time.

IV. SUGGESTIONS

Based on the research conducted and the analysis enumerated upon above, the following suggestions can be made to improve the current position of women directors:

- Mandate independent women directors under Section 149(1) of the Companies Act, 2013;
- Establish stricter penalties for non-compliance under the Companies Act, 2013;
- Establish voluntary diversity policy formulation for all registered companies, make them disclose their outcomes yearly;
- Establish mentoring and training programmes for women prior to their appointment as directors so as to enhance their confidence and skills;
- Increase the minimum number of women directors required under Section 149(1) of the Companies Act, 2013.

V. CONCLUSION

In conclusion, leaps and bounds have been made in order to improve the status and position of women in the modern boardroom, but the glass ceiling is far from shattered. The changes made so far might look significant on paper, but have proven to be quantitative rather than qualitative. The must continue to prioritise the original intent behind the legislations, i.e., gender inclusivity and diversity. Our law is on the right trajectory, we must keep fueling it's fire.

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