

## Quota for women directors: A step towards gender diversity on board

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### ABSTRACT

Equal rights and opportunities for every citizen are enshrined in the Constitution of India, when the constitution talks about equality and prohibition of discrimination on basis of sex, it implies that equal rights and opportunities are available to all the citizens, without any discrimination. For long it has been of misfortune of women in India, that they were not entitled to equal opportunity of education, employment or even equal remuneration for same work. We have come a long way from evils like sati, parda-pratha and still we have a long way to go before a sense of true equality can be established.

The lack of equal opportunities is clearly visible as women are underrepresented in corporate field, as well as on the board of directors in corporate boards, the resulting lack of gender diversity is however now on its way to be fixed as the legislature have now made it mandatory upon all listed companies to appoint at least one women director on their board by Companies Act 2013, this provision was however not well appreciated by all because it was believed that this will lead to phenomenon of trophy directors in which women directors will be appointed just for the purpose of complying with the obligation set by legislature. Due to the fact that women are since long assigned with traditional role in society it is necessary to now provide a extra push and effort to make them capable of acquiring power positions and to improve gender diversity not only on the Board of Director but in other fields as well. A well and proper application of the mandate will result in positive gender diversity, appreciation and acceptance of different point of views which will result in better functioning of corporate boards.

### 1. Objects

The object of this study is to understand the reason behind under-representation of women on Corporate boards, how a mandatory quota fixing liability over corporate houses is going to improve gender diversity on board. To analyze the requisites behind fixing quota for appointment of at least one women director, and to study the role of Constitution of India regarding abolishing inequality on basis of gender and protection of rights of women. To determine the effect of United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW) on Indian legal system and its effort to increase role of women in power positions.

### 2. Introduction

Women in India are since a long time assigned a more traditional role in society, due to cultural bias, complex cultural and social factors there is a drastic gap between corporate success of men and women. Even though with passing of time and changes in society, women have found success in all fields of work but still there is a considerable gap between men and women when it comes to top management levels.

Corporate women empowerment does not mean mere employment of women, but providing equal opportunities of employment to women as are available to men, and decreasing the persistent gender gap. Indian Legislature have now taken the leading role in assuring that equal employment opportunities are provided to both men and women, and improving gender diversity in power positions.

### 3. Constitutional Provisions on gender equality

The Constitution Of India conveys a strong mandate for equality and rights for it's citizens irrespective of gender, Fundamental Rights and Duties as well as the preamble of the Constitution provides specific provisions for affirmative actions assuring gender equality. Even though Constitution makes an effort in putting both men and women equal, the later have found much difficulty in getting equal employment opportunities as compared to their male counterparts. Women in India have always been in a more reserved place in society, which made it extremely difficult for them to get same employment opportunities or equal remuneration as their male counterparts.

The Constitution provides a number of Articles that puts women at par with men socially, politically and economically, some of the articles enshrined in the constitution for safeguarding women's rights are -

- Article 14 - ensures right to equality irrespective of gender;
- Article 15(1) - prohibits discrimination on basis of sex;
- Article 15(3) - empowers the state to take affirmative action by making laws or policies in favor of women;
- Article 16 - ensures equal opportunities are provided to all citizens relating to employment and appointment to any office.

Along with Fundamental Rights Directive Principles of state policy also contains some of the important provisions regarding Empowerment of women some of concerned articles are -

- State to direct its policy towards securing for men and women equally the right to adequate means of livelihood.<sup>1</sup>

1 Constitution of India, Article 39(a)

- Equal pay for equal work.<sup>2</sup>
- State to make provisions for securing just and humane conditions of work and for maternity relief.<sup>3</sup>

#### 4. Efforts of Legislature to promote Gender Diversity

The Constitutional provisions led to various endorsements in Indian legal system towards decreasing the gender inequality and gender bias in Corporate field, among others. Women empowerment does not only mean a position where a woman plays a simple role, but providing equal opportunity to be part of the higher level of decision making process. Such an endeavor is made to promote gender equality in Corporate bodies by ensuring gender diversity on the board of directors of a company, this gender diversity is ensured by incorporating quota for Women director in a company, 'there shall be at least one women director'<sup>4</sup>.

The Companies Bill whilst recommending the incorporation of quota for women director made following remark "This likely to be in line with the policy of the Government for encouraging more and more women participation in the decision making at various levels"<sup>5</sup>. This remark not only shows the will of legislature to bring women at par with men but also shows the need of special measures that are necessary for uplifting the position of women in society.

As per The companies (Appointment and Qualification of Directors), Rule 2014,

The following class of Companies shall appoint at least one women director -

1. every listed company
2. every other public company having -
  - (a) paid-up capital of one hundred crore rupees or more;
 or
  - (b) turnover of three hundred crore rupees or more.<sup>6</sup>

#### 5. International Conventions effecting Women empowerment in India

There are various international conventions as well as Human rights Instruments aiming towards securing equal rights for Women like, 'Convention on the Political Rights of Women(1954)' with a purpose to codify basic international standard for women's political rights, 'Declaration of the Elimination of violence against Women(1993)'; This convention recognized the right of women to live a life without violence.

India has ratified with many International Conventions promoting gender equality, the key international convention for preservation of rights of women is The 'Convention on Elimination of all forms of Discrimination Against Women (CEDAW) (1979), often described as 'international bill of rights for women', it consists a Preamble and 30 Articles, which

defines what constitutes discrimination against women and sets up agenda for member states to end such discrimination.

CEDAW<sup>7</sup> states that 'men and women have the same rights to opportunity as to employment, promotion, training, equal remuneration, social security and safe working conditions<sup>8</sup> and defines discrimination against women as 'any distinction, exclusion or restriction made on the basis of sex which has effect or purpose of impairing or nullifying women's enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'<sup>9</sup>

Member states including India, agrees to take appropriate step, including statutory amendments and temporary special measures -

- To incorporate principles of gender equality in legal system
- To abolish all discriminatory laws and adopting appropriate policies prohibiting discrimination against women.
- To ensure elimination of all acts of discrimination against women by person, enterprise or organization.

India being a member state of CEDAW and in effort to uplifting the position of women in society in all fields of life made a number of amendments in present statutes and also made laws according to the changes in society and with need of time, some of them are-

1. The sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013
2. Equal Remuneration Act, 1976
3. National Commission for Women Act, 1990

These acts among many others, showcases the will of legislature to put women at par with men by providing equal opportunities and protection of their rights because there not only a need to dispel stereotypes but also to change the traditional role allocation.

A similar effort made by legislation is by amending the Companies Act 2011 and adding the provision that make it mandatory for each company to have at-least one women director, this amendment is to ensure that women gets equal opportunity as men to be a part of high level of decision making process and be self dependent both economically and socially.

#### 6. Effect of Introducing quotas for women directors.

India is one of the first developing country to have enforced a quota ensuring at least one women director on board, this mandatory obligation put upon the Companies have resulted positively for the time being in improving position of women directors, according to a Study conducted jointly by Institutional Investor Advisory Services (IIAS), Women on Corporate Boards Mentor ship Program (WCB) and Prime Database Group, on the board composition of the NIFTY 500

2 *Id*, Article 39(d)

3 *Id*, Article 42

4 Companies Act 2013, Section 149

5 The Parliamentary Committee Report on the Companies Bill, 2011, available at

<http://www.scribd.com/doc/99565110/Parliamentary-Committee-Report-Lok-Sabha-on-Companies-Bill-2011>.

6 Companies Act, 2013, Section 149(1) read with Rule 3, The companies (Appointment and Qualification of Directors), Rule 2014

7 Convention on Elimination of all forms of Discrimination Against Women (1979)

8 *Id*, Article 11

9 *Id*, Article 1

companies<sup>10</sup>. The study covers 4,690 directors. The effect of Mandatory regulation clearly shows steady increment in appointment of women directors- from 5% female representation in 2012 to 13% that is 622 of total 4690 directors as on 31 March 2017.<sup>11</sup>

Yearly reports show a slow but steady growth in gender diversity on boards -

source- Iias Research, Prime Database Group

#### Yearly trend on Gender Diversity on Board

The above mentioned chart implies that introduction of quota for appointing at least one women director caused a steady growth in the number of females in board of directors, which showcases the fact that there is no shortage of women with appropriate qualification, but a shortage in the intention to provide such a position to female gender. Although initially a sizable portion of new women directors appointed belonged to the promoter family and were appointed just to comply with the norms, but with continuous growth in number of women director where some companies are appointing more than one women director it is clear that there is a positive change in the corporate field as to appointment of a women for power position.

### 7. Recent Developments regarding Women Directors

The Securities and Exchange Board of India (SEBI) by notification on May 10, 2018 declared that there should be at least one women independent director in all listed companies. Independent Directors are non-executive directors of a company to improve corporate credibility and enhance the governance standards, non-executive meaning without a relationship with a company which might influence the independence of his/her judgment.

Such mandate is made upon the recommendation of The Kotak Committee on Corporate Governance, constituted on June 2, 2017, under chairmanship of Uday Kotak, the objective behind constituting this committee was to improve standards concerning corporate governance of listed companies in India, among other recommendations of the committee it was recommended and accepted with modification that there must be 'at least one women independent director in the top 500 listed entities by market capitalization by April, 1, 2019 and in the top 1000 listed entities by April 1, 2020'.<sup>12</sup>

Such recommendation was made and accepted because in recent trends regarding women directors it was clearly visible that a large number of Women were appointed by a number of different companies and were holding multiple directorships, or belonged to the family of promoter and while the corporate houses were abiding to the obligation of having at least one one women director but no actual opportunity is made for other qualified women who could be appointed instead. The Regulation of having one independent women

director will ensure that the companies are not merely fulfilling the obligation but are providing proper opportunity to increase gender diversity on board.

### 8. Conclusion

Our Constitution enshrines the basic rules and principles of equality, ideally it should be applicable in all paths of life not only social, political but also economical as well, by maintaining equality in employment opportunities, but seeing as India has always been a male dominated country, potential of a women does not get easily recognized and is not easily accepted that a women can also work as diligently and can bring about same results as their male counterparts.

Therefore The legislature of India has taken it upon itself to ensure that women are provided with equal opportunities of employment, and along with protecting of their rights, one such bold step made by legislature is by making it mandatory that each company is to have a women Director on Board, furthermore it has now been mandated that there shall be at least one independent Women Director on Board ensuring maximum opportunity for women in corporate field.

India is not the first country to take the quota base approach, in 2003 Norway mandated that at least 40% of all board seats should be occupied by women, followed by France with target of 40% and many others, however India is the only developing country to have taken such bold step.

Making it mandatory to appoint a women director may not be well appreciated by all, but it is a necessary step to overcome cultural barriers that women face. Although, ultimately it is upon corporate houses to proactively take it upon themselves to increase gender diversity on board and and provide equal employment opportunity.

### 9. Suggestions

Quota for appointment of at least one women director in all listed companies is legislated for achieving a simple goal of increasing women representation on the Board of Directors of Corporate houses.

It is suggested that this legislation should not be taken as a burden but as an opportunity to play part in increasing gender diversity on Board, and instead of just appointing trophy directors to comply with companies act, provide equal opportunity irrespective of gender and appoint without gender bias.

To study the continuous effect of quota on corporate houses and amend it with time.

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[https://www.nseindia.com/products/content/equities/indices/nifty\\_500.htm](https://www.nseindia.com/products/content/equities/indices/nifty_500.htm)

11 Iias Research, Prime Database Group

12 [https://www.sebi.gov.in/media/press-releases/mar-2018/sebi-board-meeting\\_38473.html](https://www.sebi.gov.in/media/press-releases/mar-2018/sebi-board-meeting_38473.html)