



GENDER DIVERSITY IN CORPORATE BOARDROOMS AND ITS LEGAL IMPLICATION UNDER COMPANIES ACT 2013

Sakshi singh¹, Dr. Taru Mishra²

¹ Sakshi singh Student, LLM, Amity Law School Lucknow, Lucknow India.

¹ Dr. Taru Mishra Assistant Professor, Law Department, Amity Law School Lucknow, Lucknow India.

ABSTRACT

The topic of diversity in boardrooms is one that is frequently discussed in the context of modern corporate governance. Encouraging women to take on leadership positions is essential to promoting economic progress. More gender diversity on corporate boards is strongly justified, both macroeconomically (in terms of attaining greater, sustainable rates of economic development) and micro economically (in terms of the success of organizations).³

Different nations have used different strategies to achieve the appropriate degree of diversity on corporate boards. While some countries have imposed quota systems that are required to be followed, others have chosen to take the "comply or explain" approach and establish voluntary standards that are detailed in their corporate governance laws.

Effective corporate decision-making in the rapidly evolving global economy of today greatly depends on accepting a variety of perspectives from various experiences and backgrounds. A varied board is better able to handle the obstacles of the contemporary business world and keep up with the quick speed of change. When it comes to creating successful goods and services aimed at women, female directors are particularly insightful about the wants and needs of their target audience. Beyond women's rights or numerical representation, gender diversity on boards is being pushed as a strategic imperative. The Companies Act of 2013 and SEBI's listing

¹ Sakshi singh Student, LLM, Amity Law School Lucknow, Lucknow India.

² Dr. Taru Mishra Assistant Professor, Law Department, Amity Law School Lucknow, Lucknow India.

³ Adams R. B, Ferreira D. (2009). Women in the boardroom and their impact on governance and performance. Journal of Financial Economics, 94(2), 291–309.

agreement, among other legal obligations, emphasize the need of gender diversity in corporate governance. But there is still a paucity of diversity on Indian boards; few corporations have any female representation. In Indian enterprises, the percentage of female directors was only 8.9% as of December 2014. One of the main barriers to women's advancement in Asia's business sector is the "double burden" that comes with juggling job and home obligations.

Keywords: Diversity, potential, opportunities, Societal perceptions, empower, fortune, Governance.

INTRODUCTION

The process of creating a corporate culture that reflects an organization's values, guiding principles, and management practices is known as corporate governance. Companies, governments, investors, and others around the world agree that having a diverse roster of directors on company boards is essential to successful corporate governance. In the field of corporate governance, diversity in boardrooms is a topic that is frequently explored. Proponents of better corporate governance and women's rights⁴ agree that empowering women to take on leadership roles is crucial for promoting economic growth.⁵

Businesses that successfully integrate women into their ranks are seen by a variety of stakeholders as being better positioned to take advantage of competitive opportunities in the increasingly complex global marketplace. These stakeholders include shareholders, institutional investors, and corporate governance rating agencies worldwide. As a group of institutional investors with more than US\$18 trillion in assets, the international company Governance Network (ICGN) sees gender diversity as essential to guaranteeing a range of viewpoints on company boards. The ICGN states that boards should be made up of people who have a good balance of relevant experience, expertise, and different viewpoints.

Because strategic decisions, governance, and risk management are all done in the boardroom, board diversity—defined as the representation of women on corporate boards—is essential. Consequently, it is essential that boards be composed of qualified people with a range of backgrounds, experiences, and skill sets. Recognizing and elevating the distinct abilities, assets, and potentials of men and women as equally significant is what gender diversity means. Corporate boards function best when they are composed of the most competent people with a range of experiences and viewpoints.⁶

RESEARCH OBJECTIVES

1. To evaluate the current level of gender diversity on corporate boards in India under the Companies Act 2013 and identify areas for improvement.

⁴ Bilimoria D. (2000). Building the business case for women corporate directors. In Vinnicombe S. (Ed.), *Women on corporate boards of directors: International research and practice* (pp. 25–40). Springer.

⁵ Adler R. D. (2001). Women in the executive suite correlate to high profits. *Harvard Business Review*, 79(3), 30–32.

⁶ Bokhari S. N., Hashmi K. A. (2016). A critical review on the corporate governance, board independence and gender diversity in emerging Asian countries. *Corporate governance*, 25.

2. To investigate the legal provisions and requirements regarding gender diversity on corporate boards as outlined in the Companies Act 2013 and analyze their effectiveness in promoting diversity.
3. To examine the impact of gender diversity on corporate board performance and decision-making processes, considering both qualitative and quantitative measures.
4. To assess the compliance levels of Indian companies with the gender diversity provisions of the Companies Act 2013 and analyze the factors influencing their adherence to these regulations.
5. To explore the legal implications and consequences for companies failing to meet the gender diversity requirements mandated by the Companies Act 2013, including potential penalties and regulatory actions.

ANALYSIS OF GENDER DIVERSITY ON CORPORATE BOARDS

Internationally, there has been a growing push for increased gender diversity within corporate boardrooms. This trend is also acknowledged within India's regulatory framework, particularly under the Companies Act of 2013, which mandates the appointment of at least one female director in listed companies and certain other specified classes of companies.

The global recognition of the importance of balancing gender representation on corporate boards has led to various approaches across different countries. Some nations have enacted legislation with quotas, while others have opted for alternative methods such as moral persuasion or the implementation of voluntary measures. For instance, some have amended their corporate governance codes to require companies to disclose their policies on gender diversity or set targets for board composition. The drive to include more women on boards transcends mere numerical targets or considerations of women's rights.⁷ It reflects a broader acknowledgment of the missed opportunities for companies and society as a whole when the potential of women⁸ remains untapped.⁹ Organizations striving for top-tier leadership understand that achieving the highest standards necessitates embracing a diversity of perspectives, skills, experiences, work approaches, and talent capabilities.

CHALLENGES TO GENDER DIVERSITY IN BOARDROOMS

The gender gap on corporate boards is caused by a number of variables. guys make up the majority of board members, and they frequently favor hiring people who are similar to them—that is, other guys. This feeds into a vicious cycle where women struggle to get on boards, lack board experience, and are then passed over for additional possibilities. Furthermore, the corporate culture that is prevalent in many nations does not support family policies, which causes moms to take time off from work and is therefore interpreted as unfit for executive positions. Childcare-related issues, such as fees, regulations, and schedules, make it more difficult for women to successfully manage work and family obligations, which is generally required of corporate board members.

⁷ Deloitte Global Services Limited, Women in the Boardroom: A Global Perspective, November 2011.

⁸ McKinsey & Company- Women Matter: An Asian Perspective 2012 - Harnessing female talent to raise corporate performance

⁹ Daily C. M., Certo S. T., Dalton D. R. (1999). A decade of corporate women: Some progress in the boardroom, none in the executive suite. Strategic Management Journal, 20(1), 93–100.

Fifty percent of Asian business leaders have recognized the "double burden" that women bear when juggling work and family obligations as a major obstacle. The expectation that senior managers be available at all times exacerbates this difficulty. Gender diversity in corporate settings is also impacted by other variables such as women's unwillingness to self-promote, their lesser ambition than men's, the lack of female role models, and networking challenges. About half of respondents in nations like Korea, Japan, and India blame women's voluntary employment departures on obligations to their families. Social views that still allocate males to the role of providers and women to the role of primary caregivers/homemakers are further barriers. Social views on the proper ratio of caregiver to provider are changing as more and more women are taking on provider duties as well, which presents difficulties for women trying to find a fulfilling balance. Globally, childcare is still a major problem since many women cannot pay or cannot access quality daycare, which limits their ability to participate in the workforce.

A REVIEW ON GENDER DIVERSITY IN CORPORATE BOARDROOMS IN INDIA

India has implemented a mandated strategy to encourage female representation on business boards. According to Section 149(1) of the corporations Act of 2013, a minimum of one female director must be present in certain types of corporations. These firms include all listed companies and other public corporations that fulfill certain requirements, such as having a paid-up share capital of Rs. 100 crore or more, or a turnover of Rs. 300 crore or more, as stated in Rule 3 of the **Firms (Appointment and Qualification of Directors) Rules, 2014**. Within the corporation, a woman may serve in the capacities of independent, non-executive, or executive director.

Through Clause 49 of the listing agreement, the **Securities and Exchange Board of India (SEBI)** requires that boards of directors have a suitable balance of executive and non-executive directors, with at least one woman director and at least fifty percent of the board made up of non-executive directors.¹⁰ According to SEBI's Listing Obligations and Disclosure Requirements (LODR) regulations, as of April 1, 2019, the top 500 listed entities—based on market capitalization at the end of the previous financial year—had to have at least one independent woman director. As of April 1, 2020, this requirement was expanded to the top 1000 listed entities.¹¹

Notwithstanding these regulations, there is still a dearth of female participation on many Indian boards, contributing to poor gender diversity. In Indian enterprises, the percentage of female directors was only 8.9% as of December 2014. For example, just 908 of the 10,185 directors in the roughly 1,468 Indian businesses listed on the NSE are women. There is still work to be done, but certain businesses, like Apollo Hospitals, Zomato, Cummins India, and Nestle India, have made headway in getting more women on their boards.¹² Penalties may result from breaking these rules; in the 2016 case of **Soumag Electronics Limited vs. the**

¹⁰ <https://www.icsi.edu/media/webmodules/companiesact2013/Gender%20Diversity-Latest20012015.pdf>

¹¹ <https://www.india-briefing.com/news/new-disclosure-and-compliance-obligations-for-listed-companies-in-india-28639.html/>

¹² [https://www.india-briefing.com/news/understanding-the-mandate-for-women-directors-under-indias-company-law-30226.html/#:~:text=Out%20of%204%2C783%20directors%2C%20there,\(4%20out%20of%208\).](https://www.india-briefing.com/news/understanding-the-mandate-for-women-directors-under-indias-company-law-30226.html/#:~:text=Out%20of%204%2C783%20directors%2C%20there,(4%20out%20of%208).)

Deputy Registrar of Companies,¹³ a firm was fined ₹50,000 for neglecting to nominate a woman director by the deadline.

In spite of these obstacles, corporate India is improving gender diversity. According to estimates, the proportion of women working in white-collar jobs should rise from 35% in 2022 to 38% in 2024.¹⁴ Businesses such as Titan are planning to improve their representation by raising their gender diversity ratios. Furthermore, it is anticipated that measures promoting diversity, skill development, and better working conditions would lead to a rise in the hiring of women.

According to October 2022 EY research¹⁵, gender diversity is improving. Women's presence on boards rose from 6% in 2013 to 13% in 2017 and, although at a slower rate, to 18% by 2022. The survey highlights that women occupy 21.4% of non-executive posts and 7.2% of executive positions.

GENDER DIVERSITY IN CORPORATE BOARDROOMS OVER VARIOUS JURISDICTIONS

AUSTRALIA

The "ASX Corporate Governance Principles and Recommendations," Australia's Corporate Governance Code, makes a number of suggestions regarding gender diversity. The ASX Corporate Governance Council (CGC) published the draft 5th edition of these guidelines and recommendations on February 27, 2024.¹⁶ The fifth edition has seen several notable changes, including a recognition of the importance of a company's connection with its stakeholders, an emphasis on board competences necessary for future monitoring, and a call for diversity in the workforce and on the board. In line with larger initiatives for more gender diversity on Australian boards, Proposed Recommendation 2.3 recommends that firms in the S&P/ASX 300 Index strive for a "gender balanced board" consisting of at least 40% women, 40% men, and up to 20% of any gender.

CANADA

Diversity is becoming more and more important in businesses all around the world, particularly in boardrooms and senior management. The Canada Business Corporations Act (CBCA) was amended in January 2020 with the goal of promoting board diversity at the statutory level. The modifications specifically targeted women, Indigenous people, persons with disabilities, and visible minorities. Women make up 18.0% of directors in the TSX60, according to a special report by the Canadian Board Diversity Council. This is somewhat more than the 15.6% representation of women in the FP500, which is a list of Canada's 500 largest companies.

¹³ CrI.O.P.No.12393 of 2016 and CrI.M.P.No.6391 of 2016

¹⁴ https://economictimes.indiatimes.com/jobs/hr-policies-trends/companies-are-taking-steps-to-boost-gender-diversity/articleshow/106708075.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

¹⁵ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/women-fast-forward/2022/09/ey-dei-report.pdf

¹⁶ https://australia.acclime.com/governance/?utm_campaign=Mertons%20%7C%20International%20%3E%20AUS%20Website&utm_source=google&utm_medium=cpc&utm_content=Ad%20group%201&utm_term=asx%20corporate%20governance&utm_term=asx%20corporate%20governance&utm_campaign=Mertons+%7C+International+%3E+AUS+Website&utm_source=adwords&utm_medium=ppc&hsa_acc=5113478897&hsa_cam=17886837517&hsa_grp=136418250861&hsa_ad=613462864725&hsa_src=g&hsa_tgt=kwd-336020218996&hsa_kw=asx%20corporate%20governance&hsa_mt=b&hsa_net=adwords&hsa_ver=3&gclid=EAIAIQobChMIsc6-rr5hAMV0SWDAx0srgMzEAAAYASAAEgKltvD_BwE

UNITED STATES

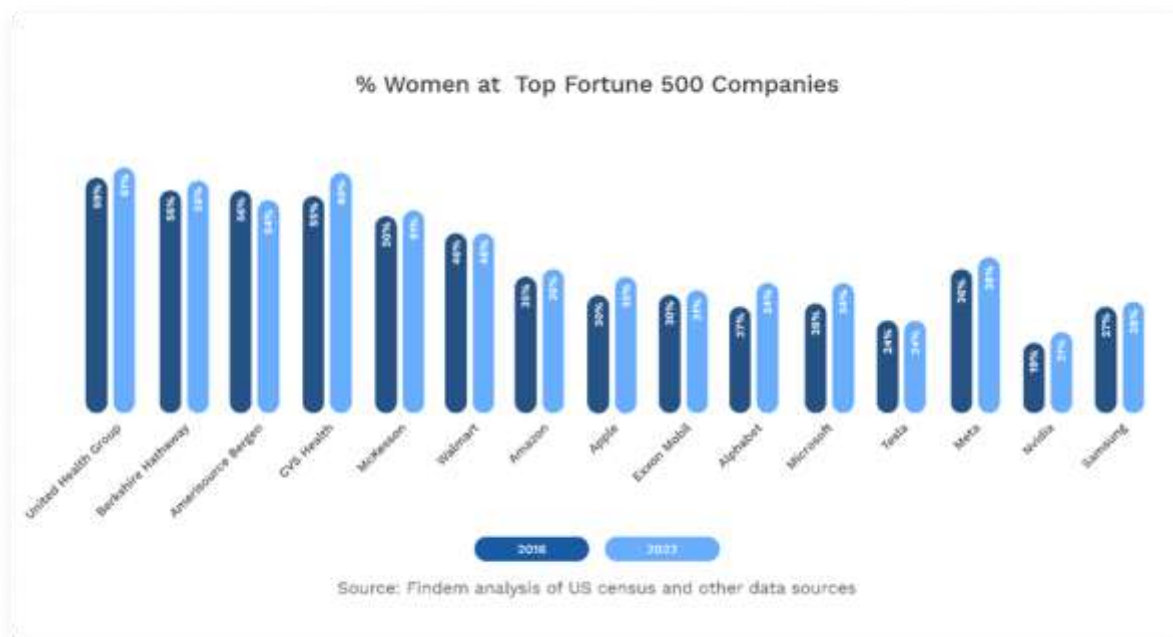
The U.S. Securities and Exchange Commission (SEC) enacted a regulation requiring disclosure in December 2009 about whether or not nominating committees take diversity into account when choosing nominees for directors. The regulation mandates that the nominating committee or board disclose the methods used to adopt and evaluate diversity initiatives. The lack of a definition for the phrase "diversity" permits businesses to use it liberally to refer to factors like gender, ethnicity, race, and education. There was no change from the previous year in the percentage of board seats held by women (16.9%) according to the 2013 Catalyst Census: Fortune 500 Women Board Directors report. In an effort to persuade U.S. corporate issuers to support women on corporate boards, the Thirty Percent Coalition launched the Champions of Change project in March 2014 with the goal of having 30% of board seats occupied by women by 2015.

GENDER DIVERSITY IN THE TOP 15 FORTUNE 500 COMPANIES

In 2022, women made up 46.3% of the American labor force. Six of the top 15 Fortune 500 firms are at or above this national average, and the other nine are below it.

When it comes to the percentage of women in their employment, Berkshire Hathaway and healthcare companies are in the lead. While CVS Health has increased by 5% during 2016, Walmart's staff makeup has remained constant at 46% women working in both years. However, attracting female personnel remains a challenge for technology businesses.

The percentage of women employed by tech businesses is still low; just one-third of the top 15 corporations' workforce is made up of women.



CONTROVERSY IN ACHIEVING GENDER DIVERSITY IN CORPORATE

1. Is India's marriage system ready to support working women, especially those in positions of leadership?

Every year, the growing economy and changing social dynamics are attracting an increasing number of Indian women to the labor. Nevertheless, a notable dropout rate among women is also a result of these same circumstances. To what extent do Indian marriages accept working women? According to Chanda Kochhar, the chief of ICICI Bank, women in their thirties frequently reach the pinnacle of their job and family duties at the same time, which causes many of them to leave the profession during this time.

2. Should businesses take further steps to keep female employees?

It is the goal of organizations to eradicate discrimination against women in the workplace. Renowned recruiter told the story of a senior manager who was hesitant to hire a young woman because he thought she would be distracted by marriage and motherhood later in life. Despite proof to the contrary, such deeply ingrained beliefs continue to exist. To assist working women, corporations might implement policies like remote work choices and flexible work schedules.

FACTORS AFFECTING POOR GENDER DIVERSITY:

- Businesses are not proactively addressing this issue, and there is a dearth of knowledge regarding the importance of gender diversity. Many businesses are still not persuaded by the advantages of gender diversity, which results in few board meetings and little corporate action.
- Certain boards can be reluctant to appoint directors who are unfamiliar with them or who have different perspectives on the roles that women should play in the home and in the workplace. This hesitation might be the result of unconscious biases, which occur when people unintentionally let their beliefs and attitudes color their decisions.
- When boards are looking for new directors, they don't always use the formal search and nomination processes. Instead, there is a strong emphasis on personal networks, which makes it difficult to find and recruit competent female candidates. According to a poll conducted among SGX-listed businesses, 42% of them employ alternative recruitment tactics, while 89% of them largely rely on personal networks.
- Certain qualities, such as previous board experience or knowledge in professions or industries that have historically been dominated by men, are frequently given priority by directors. The prospects for women to join boards are further restricted by this predilection.
- There is a restricted pool and pipeline of female applicants due to a number of circumstances. Women usually take on the majority of household obligations, which forces some of them to choose flexible work schedules or reduce their professional goals. In contrast to males, who often take a more aggressive approach, some women are reluctant to seek board seats because they are unsure of their skill sets and are reluctant to assertively promote themselves as candidates.

GENDER DIVERSITY AND CORPORATE GOVERNANCE

Effective action to improve the presence of women in positions of power is still absent, despite promises made more than 20 years ago in the United Nations Beijing Declaration and Platform for Action to remove obstacles to gender equality and the empowerment of women and LGBTQIA+ persons. The latest Global Gender Gap Report (2021)¹⁷ indicates that, at the present pace of growth, achieving gender parity will take around 135.6 years, demonstrating how slowly the gender gap is being closed. Furthermore, new challenges to creating inclusive and thriving communities and economies have been brought about by the COVID-19 epidemic and the ensuing economic crisis.

Numerous programs and solutions have been put out in an effort to address the problem of gender diversity. A few nations have passed laws demanding female quotas in boardrooms and suggested regulations requiring board composition transparency. Although stakeholders typically recognize the value of functional expertise and a range of educational backgrounds, they frequently undervalue the advantages of gender diversity. Consequently, more actions are required to advance gender equality in the workforce.

It is anticipated that achieving gender diversity on boards would have favorable externalities. Employers and investors might receive favorable signals from implementing policies that encourage gender equality, such as elevating women to top management roles and initiating campaigns to hire LGBT candidates. Such moral positions have been demonstrated to strengthen bonds with stakeholders and raise a company's worth and reputation.¹⁸ Gender diversity on the board may boost directors' independence from an agency standpoint, which would enhance the board's oversight for the benefit of shareholders. Consequently, there is a chance that this will lower agency expenses and improve business performance. Businesses that embrace gender equality policies typically see a decrease in employee turnover and a more relaxed work atmosphere, which strengthens the organization's social and human capital. These advantages do, however, come with a price.¹⁹

ANALYSIS AND CONCLUSION

Even though India has put laws in place to control diversity in boardrooms, businesses and executive members should abstain from showing partiality or prejudice. In addition to serving as legal criteria, the appointment of close female relatives to board posts serves two purposes: it allows them to function as pawns for other members. The law must be interpreted and implemented in its truest sense, which is to create precedent by

¹⁷ World Economic Forum. (2021). Global Gender Gap Report 2021. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

¹⁸ Daily, C. M., & Dalton, D. R. (2003). Women in the boardroom: a business imperative. *Journal of Business Strategy*, 24(5), 205–209. <https://doi.org/10.1108/jbs.2003.28824eaf.002>

¹⁹ Van Der Walt, N., Ingley, C., Shergill, G. S., & Townsend, A. (2006). Board configuration: are diverse boards better boards? *Corporate Governance: The International Journal of Business in Society*, 6(2), 129–147. <https://doi.org/10.1108/14720700610655141>

requiring the nomination of a minimum of one woman to the board. Businesses should value talent above gender and treat women equally based on their qualifications and abilities rather than just their gender.

The problem is that women are underrepresented on Indian boards and are frequently restricted to holding executive positions in CSR and grievance committees. According to an October 2022 EY analysis titled "Diversity in the Boardroom: Progress and the Way Forward," the NIFTY500 is showing signs of improvement. For example, the proportion of female board members increased from 13% and 12%, respectively, in 2017 to 18% and 16%²⁰, respectively, in 2020 on the Nomination and Remuneration Committee (NRC) and Audit Committee, which have historically been predominately composed of male board members. Less than 5% of women are selected to positions as chairpersons, thus there is still room for considerable progress in this area.²¹

Although requiring women to be appointed as directors on boards is a start in the right direction, India still has a long way to go before attaining gender diversity. Although gender quotas have significant drawbacks, India should first think about adopting a quota-based strategy that sets a minimum percentage of female directors on the board. Legislation establishing minimum qualifications for these appointments might guarantee the efficacy of such quotas. These quota limits may be loosened as the appointment of women to boards becomes more commonplace. Minimum qualifying standards and committee-specific quotas might also be implemented to improve women's representation on important committees.

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²⁰ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/women-fast-forward/2022/09/ey-dei-report.pdf

²¹ Chen, Jie and Leung, Woon Sau and Evans, Kevin P., *Female Board Representation, Corporate Innovation and Firm Performance* (July 18, 2018). *Journal of Empirical Finance*, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=2607295> or <http://dx.doi.org/10.2139/ssrn.2607295>

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