LOCATING WOMEN IN CORPORATE GOVERNANCE LANDSCAPE

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Abstract

The research paper will provide a fusion of women into the domain of corporate governance concretized through provisions regulating the appointment of women on corporate boards across various jurisdictions. This would be accompanied by discussions regarding possible concerns and the current level of implementation of the provisions with respect to India. The author makes an attempt to sketch out a possible relationship between women directors and improved corporate governance practices & subsequent results measured not only through firm performance but also other considerations. The paper concludes that different kinds of provisions turn out to be effective in various jurisdictions without any straitjacket formula. The level of implementation in India is found to be tokenistic. A positive co relation of women directors and better corporate governance has been outlined to a certain extent. The paper ends with recommendations that deal with improved enforcement of the regulations.

Keywords: Director, Corporate Governance, regulations, performance, board

Introduction

Women Director Regulations are usually advanced on the premises of either social case which is based on equality & diversity and the business case which is rooted in economic considerations. The social case was derived from the assertion that there was a moral obligation on the corporate community to play a part in redressing the injustices from the discriminatory conduct and thereby to promote diversity. On the other hand, business case seeks to pursue diversification because diverse boards will lead to more profitable, especially in the recent times when there has been an increase in the purchasing power of women.[1]

This was a subject of debate between A.A Berle and Merrick Dodd. While the former was of the view that corporate powers were a repository of trust solely for shareholders, the latter asserted that the public opinion which is the driving force for law making indicated that business corporation ought to be seen as an economic organization with a twin purpose of profit making along with social service.[2] It is this approach which gives legitimacy to the social case

[1] Aaron A Dhir, Challenging Boardroom Homogeneity Corporate Law, Governance, and Diversity (2015)

[2] A. A. Berle, Jr., "Corporate Powers as Powers in Trust", 44 The Harvard Law Review Association 7, 1049-1074 (1931)

for women directors since the corporation being born pursuant to government sanction has to act in the interest of general welfare as an extension.[3] The way there is divergence in corporate governance models of various countries, their measures regulating women on Boards may also be colored with that.

Soft Regulations

These regulations majorly involve disclosure-based provisions implying a "comply or explain" approach.

Australia

The government issued its Corporate Governance code in 2010 comprising of recommendations for pursuing gender diversity. The public companies that were listed on the stock exchange of the company were required to embrace and publicly disclose their policy regarding gender diversity, they had to institute assessable goals for achieving the latter as well as the progress towards attaining them which had to be done in each annual report. This has to be accompanied by the disclosure over the proportion of women that were employed in the company in the roles of senior executives. The assortment of expertise and diversity which the board ought to attain has to be disclosed.[4] In 2019 it was recommended that the board of a listed firm ought to consider gender diversity as a relevant factor in the process of succession planning. It has asked for more detailed disclosures about the participation of women relative to men in senior leadership positions than the floor level provided in the recommendation.[5] In a recent report, it was found that as on February 2022, 34.5% women are occupying ASX 200 boards.[6]

United Kingdom

In UK it was the Davies Report which recommended all the chairmen in FTSE 350 companies ought to provide a percentage of women that they seek to have on boards by 2013 and 2015. It sought FTSE 100 to achieve the goal of at least 25% representation of women by 2015. The quoted companies were supposed to disclose the proportion of women present on their boards each year. Executive search firms were asked to establish a Voluntary Code of Conduct which ought to provide the best practices for search conducive to gender diversity. It also recommended training & mentoring opportunities and called for women from outside the

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[3] *Infra* note 53.

[4] Corporate Governance Principles and Recommendations Amendments 2nd Edition 2010 ASX Corporate Governance Council

[5] Corporate Governance Principles and Recommendations 4th Edition February 2019

[6] Gender Diversity Progress Report December 2021 to February 2022

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corporate background.[7] In 2018 the Corporate Code was the country was amended wherein it provided that the annual report had to present the procedure for a nomination committee along with an approach to succession planning receptive to gender diversity.[8] In 2022, Listing Rules were introduced which requires the boards to make specific declaration about meeting the diversity targets. This includes broadening the reporting standards so as to touch upon the diversity policies of key committees.[9] As per FTSE Women Leaders Review, UK ranks second in the list for representation of women in Boards with nearly 40% of positions being occupied by women.[10]

USA

Nasdaq had filed a proposal with SEC delineating rules, requiring the companies with five or fewer board members to one appoint one diverse board member or explain in case this is not complied with. New companies were given an extended timeline while companies faltering due to vacancy are to be given grace period. In accordance with this, Rule 5605(f) has been introduced which requires the listed companies to have a Board comprising of minimum 2 diverse directors which includes a self-identified woman director and other identifying as minority that has been unrepresented or belongs to LGBTQ+.[11]

California was one of the first few states which has had such regulations in place since 2018 in the form of SB 826. As per the rule, the public companies listed and headquartered in the state had to have a minimum of 2 out 5 directors as female and at least 3 if directors were more than 6. However, in a major setback to diversity advocates in May 2022, in Crest v. Padilla[12], the statute was struck down as unconstitutional as it seemed to go against the Equal Protection Clause. The Court found men and women to be similarly situated and was not convinced with the evidence of state on the strict scrutiny test. It is imperative to mention that in the days prior to the law, women holding directorship were merely 15% which had almost tripled by 2019.[13]

[7] Lord Davies of Abersoch, Women on boards February 2011
[8] The UK Corporate Governance Code July 2018
[9] Diversity and inclusion on company boards and executive management Policy Statement PS22/3 April 2022
[10] FTSE Women Leaders Review Achieving Gender Balance February 2022
[11] https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf, February 18, 2022 Last Visited 10th May 2022
[12] Crest et el vs Padilla 20 STCV 37513
[13] https://www.jdsupra.com/legalnews/california-to-appeal-decision-striking-2176953 Last Visited 10th May 2022

Quota Approach

The laws adopting quota approach embrace a more explicit form for advancing female representation on Board. These quotas may either be voluntary or compulsory, varying as per the sanctions that have been imposed in case of non-compliance.[14]

Norway

It was the first country in the world to introduce rules on gender representation in 2003, public listed companies were required to have women on at least 40% seats of the Board.[15] While this was voluntary, due to low level of compliance, in 2005 the country came up mandatory quota. It provided representation of both sexes proportionately with the number of Board Directors in general.[16] As of 2021 42.5% of boards in public companies have women are under women.[17] The success is attributed to hard sanctions according to which non-compliance can lead to forced dissolution. The Registrar has the authority to refuse to register a company which fails to meet the minimum required criteria.[18]

India

57th Report of the Standing Committee of Lok Sabha introduced an enabling provision through which it was hoped that it would let the companies become an instrument for giving salience to women in the domain of corporate governance. It was seen to be in line with the policy of the government to embolden the measures to ensure participation of women in every major decision-making level of the society. It proposed appointment of minimum one-woman director to be made compulsory for a prescribed class of companies.[19] This was given shape in Section 149(1) of the Companies Act 2013[20]. Companies (Appointment and Qualification of Directors) Rules 2014[21] appended to the provision specified the class of companies that were to follow this provision i.e. every listed and public company whose either paid up capital was up to Rs.100 crore or its turnover was about Rs.300 Crore. In addition to this in case of any

[14] Francisco Bravo-Urquiza and Nuria Reguera-Alvarado, Gender and Corporate Governance (2019)
[15] Ot.prp. No. 97 (2002-2003)
[16] Norwegian Parliament, Norwegian Public Limited Liability Companies Act
[17] Board and management in limited companieshttps://www.ssb.no/en/virksomheter-foretak-og-regnskap/eierskap-og-roller/statistikk/styre-og-leiing-i-aksjeselskap Last visited 11th May 2022
[18] Aagoth Storvik And Mari Teigen, Women on Board The Norwegian Experience, Available at https://library.fes.de/pdf-files/id/ipa/07309.pdf Last visited 11th May 2022
[19] Standing Committee On Finance (2011-2012) Fifteenth Lok Sabha Ministry of Corporate Affairs The Companies Bill, 2011 Fifty-Seventh Report
[20] The Companies Act, 2013, § 149(1) The Gazette of India
[21] Companies (Appointment and Qualification of Directors) Rules 2014 § 3

vacancy that is created, a new woman director has to be appointed either before the next board meeting of the company takes place or within a time period of 3 months.

This was further added by the Regulation 17(1) of SEBI (LODR) Regulations, 2015[22] as per which a board of director was mandated to have an adequate balance of executive director and NED, out of which minimum 1 had to be a woman.

Given the structure of ownership in Indian companies dominated by families, there was an apprehension that the above provision would be complied with for name sake by filling it with any woman from the family[23] who might not have appropriate skills, thereby making a mockery of the law.

In this background, following the recommendations of Uday Kotak Committee[24], SEBI made it compulsory for top 500 companies based on capitalization, to appoint a minimum of one woman as an Independent Director. Its ambit has now been widened by making it applicable to top 1000 companies. As on March 2019, a report found that 45 companies had defaulted on the provision of appointing women independent directors.[25] However, seen within Asia, India has fared better than its counterparts with women occupying 5% and 10% of executive and NED seats.[26]

In 2020, SEBI came out with a circular for rationalizing the fines in case of non-compliance in listing obligations and requirements related to disclosure. Non-compliance shall lead to suspension and revocation of trading for the securities that have been specified. A fine of Rs.5000 shall be levied every day of non-compliance. Subsequent to non-compliance and failure to pay the fine, the shares of the promoters shall be frozen. If such deviation goes on until two consecutive quarters, the scrip of the erring company can be relegated to Z Category which will suspend it and take away its ability of being traded intra-day.[27]

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[22] Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 § 17 No.Sebi/Lad-Nro/Gn/2015-16/013

[23] https://www.hindustantimes.com/business/all-in-the-family-in-rush-for-directors-companies-turn-to-wives-daughters/story-GOBVAKWkyG14h5BeS6L8nO.html, List Visited 11th May 2022

[24] Report of the Committee on Corporate Governance 2017

[25] WOMAN ID on the Board: Reluctant compliance by INDIA INC 2019, Available at https://www.sesgovernance.com/pdf/home-reports/1557300812_WOMAN-ID-on-the-Board_Reluctant-compliance-by-INDIA-INC.pdf, Last visited 12th May 2022

[26] The Egon Zehnder Global Diversity Report 2020

[27] Non-Compliance with certain Provision of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the SOP for suspension and revocation of trading specified securities, Circular No.: SEBI/HO/CFD/CMD/CIR/P/2020/12

Since Section 149 itself, does not provide sanctions for non-compliance of the given provisions, cases of violation under it are dealt with under Section 172 of the Act, which specifies punishment for those provisions where penalty is not provided. Under this section, a company or officer contravening a provision would be liable to pay a fine of at least Rs.50000 and in case it continues, it could go up to Rs.5 lakhs. But the cases in the recent times have shown that barring some exceptions[28], the companies are allowed to take benefit of the offence getting compounded. In In Re: Icomm Tele Ltd[29], There was a delay of more than 5 months for appointment. The company defended this by contending that they were going through a corporate debt restructuring due to financial crisis. Hence the delay was attributed to obtaining various approvals and consents from various authorities. While in Nizam Deccan Sugars Limited VS ROC the company argued that since there was a limit on the number of directors and a restriction on its composition, they could help but be delayed in making the appointment.[30]

In 2020, out of 500 NIFTY companies, women occupied merely 17% of directorships. 12 out of 13 NIFTY companies which had no woman director were PSUs.[31] As of February 2022, women occupy only 16% of NSE 200 companies as directors. Although this figure has seen a rise from 4.5% in 2016, it seems to be just for the sake of complying with statutory requirements.[32]

Data has been gathered from the Annual Reports of top 10 FMCG companies on NSE regarding appointment of women directors and their placement on committees. FMCG companies were looked at since they have traditionally been focused on targeting women as consumers.

[28] Roc vs . M/S Gehna Precious Metals Ltd. on 10 October, 2018
[29] In Re Icomm Tele Limited C.A No26/621A/HDB/2016
[30] Nizam Deccan Sugars Limited VS ROC, C.A No.25/621/HDB/2016
[31] Corporate India Women On Boards May 2020
[32] Promila Agarwal, "The Glass Ceiling: Research Report on Leadership Gender Balance in NSE 200 Companies", ESG Centre for Research and Innovation, IIM Ahmedabad

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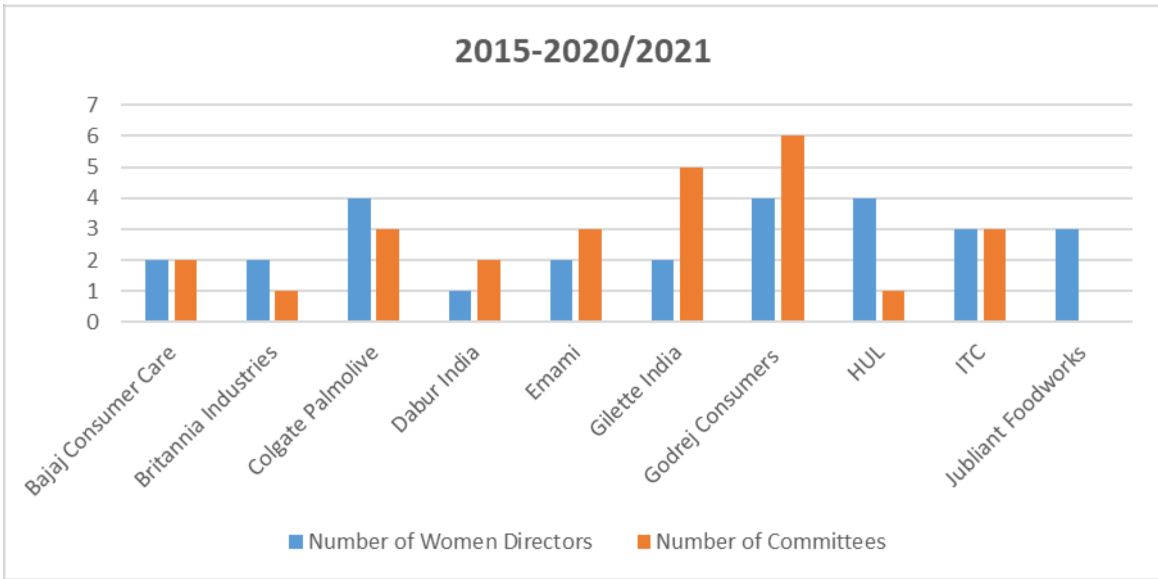
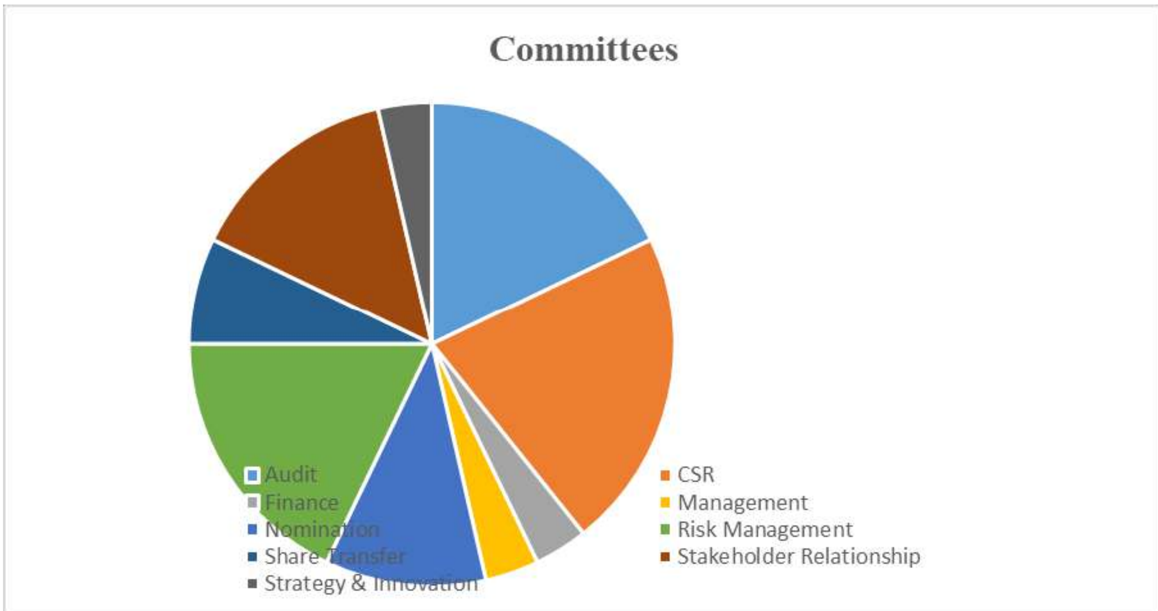


It is notable that with an exception of few, most of the companies have limited their appointments to a token amount, so as to meet the statutory compliance. The division of committees they get appointed to has been captured in the following.



Audit Committees are considered to be critical from the standpoint of responsibility especially the fiduciary duties entrusted on the board to monitor the firm's. It is refreshing to see that the capabilities of women are not being restricted to care centric domains but being extended to the field of oversight of financial management.

Evaluating the impact

While the provisions regarding women directors are in place in a number of jurisdictions, it becomes imperative to analyze the impact of the diverse boards on various aspects of corporate governance. This could help in understanding the rationale behind such regulations. Along with this, the presence of women on boards has to be seen in the context of influence if any, that they have on factors outside the sole purpose of maximizing shareholder wealth consistent with the larger goals of feminist analysis of corporate governance.

Firm performance

A study conducted on the impact of Norway's women director mandate in post-2003 years observed that it adversely affected the performance of the firms. This was consistent in accounting ratios such as ROA and Operating income divided by assets as well as factors used for measuring performance based on the market such as Tobin's Q & MTBR.[33] Taking the accounting ratios such as ROA, ROE, ROS, and GM into context, a cubic relationship has been observed between the incidence of women on boards and the firm performance. A negative relationship has been detected between a very low or huge number of women directors and the ROA whereas a positive one in the case of an intermediate number of women.[34]

Taking a sample from the Nifty 100 index from 2010 to 2018 with an exclusion of financial and public utility firms, it was observed that a higher amount of women on board in Indian firms could lead to better performance of the firm and could reduce its risk of bankruptcy. However, this was reliant on these women being independent, being part of a huge networking size, and possessing graduate degrees.[35] When the presence of females on board in India was observed in the context of ownership structure, it was detected that there was a positive influence of the former on ROA in the case of group-affiliated firms in comparison to standalone firms. It has been suggested that this can be attributed to the backup support that flows from such a group structure.[36] However, a study conducted on the financial performance of 41 firms that were listed on the Bombay Stock Exchange during the period of 2012-2016

[33] Philip Q. Yang and Jan Riepe and Katharina Moser and Kerstin Pull and Siri A. Terjesen," *Women directors, firm performance, and firm risk: A causal perspective*", 30 The Leadership Quarterly 5 (2019)
[34] Luis Rodríguez-Domínguez, Isabel-María García-Sánchez & Isabel Gallego-Álvarez, "*Explanatory factors of the relationship between gender diversity and corporate performance*", 33 Eur J Law Econ, 603–620 (2012)
[35] Rwan El-Khatib, "*Do Women Directors Improve Firm Performance and Risk in India?*", 11 The Quarterly Journal of Finance 2 (2021)
[36] Pavana Jyothi & Jayasree Mangalagiri, "*Would Firm Performance Be Better with Women Directors? Evidence from India*", 23 Vision: The Journal of Business Perspective 2 (2019)

concluded that given the insignificant number of women on board, the impact on firm performance could not be seen to be either positive or negative.[37]

Attendance behavior

This has been considered as a significant marker of governance since the directors need to attend board meetings in order to gain relevant information that can help them in fulfilling their duties. The problems related to attendance are likely to be reduced to 0.007 in case the director is a woman, thereby 30% less likely to be involved in issues of attendance than men. Apart from this, due to women's increased likelihood of attending the meetings, they have a greater chance of being given a seat at monitoring related committees.[38]

Financial misconduct

A firm with a female presence on the boards is less likely to be engaged in financial misconduct. Firms with gender-diverse boards have a 6.7% probability of indulging in such activities which is relatively lower than the 8.4% possibility of a board that isn't diverse. This suggests that a diverse board leads to better financial reporting. Restatements or Irregularity type restatements which could be related to financial manipulation were lesser in boards with a female presence.[39] It has also been observed that the presence of women directors in audit committees diminishes the possibility of getting information marred with error, non-compliance, or inadvertence.[40] In a sample consisting of 1484 companies, with 742 as a sample and another half as control firms, wherein the average percentage of women was 14%, evidence was found indicating that there was a negative correlation between women on boards and being in the fraud sample. Women tend to diminish the severity and frequency of frauds, especially in industries known to be male-dominated.[41]

[37] Amit Kumar Singh, Shubham Singhania & Varda Sardana, "*Do Women on Boards affect Firm 's Financial Performance? Evidence from Indian IPO Firms*", 13 *Australasian Accounting, Business, and Finance Journal* 2, 53-68 (2019)

[38] Rene´e B. Adams & Daniel Ferreira, "*Women in the boardroom and their impact on governance and performance*", 94 Journal of Financial Economics, 291-309 (2009)

[39] Aida Sijamic Wahid, "*The Effects and the Mechanisms of Board Gender Diversity: Evidence from Financial Manipulation Journal of Business Ethics*", 159 Journal of Business Ethics 3, 705-725 (2019)

[40] María Consuelo Pucheta Martínez, Inmaculada Bel-Oms & Gustau Olcina-Sempere, "*Corporate governance, female directors and quality of financial information*", 25 *Business Ethics: A European Review* 4, 363-385 (2016)

[41] Douglas Cumming, T. Y. Leung & Oliver Rui, "*Gender Diversity and Securities Fraud", 58 Academy of Management Journal* 5, 1572-1592 (2015)

CSR disclosures & environment

Diverse boards have a "moderating effect" on the audit committee along with its independence & CSR-related disclosures thereby enhancing transparency in such processes. Women directors tend to underline the positive correlation between financial proficiency on audit committees and CSR reporting.[42]Corporate environmental performance can be described as a firm performance that is related to its environmental responsibility.[43] A female presence on Board tends to lead to improvement in the emission reduction of the firm. A board with women directors is 9% more likely than others in diminishing its environmental emissions. What makes this finding significant is that it overcame robustness checks, thereby defeating the limitations of endogeneity, and goes on to indicate causation rather than correlation.[44] This is further reinforced by the finding that women are more amenable to environmental innovations thereby more probable in accepting emissions reduction efforts.[45] Even voluntary disclosures regarding GHG are positively associated with a gender-diverse board.[46]

Gendered Impact

In a sample of Fortune 1000 companies, it was observed that women in positions of leadership such as directors are linked to a lower level of gender segregation when it comes to non-leadership positions. This gives credence to the assertion that women on boards can act as agents of change which can be witnessed across the hierarchy of the organization. They even have the ability to nudge towards policies leading to gender equity.[47] They are also associated with organization legitimacy wherein women directors in Fortune 500 companies were found

[42] María Consuelo Pucheta-Martínez, Isabel Gallego-Álvarez, Inmaculada Bel-Oms, "*Corporate social and environmental disclosure as a sustainable development tool provided by board sub-committees: Do women directors play a relevant moderating role*?", 30 Business Strategy and the Environment, Wiley Blackwell 8, 3485-3501 (2021)

[43] Aimei Yang & Wenlin Liu, "*Corporate Environmental Responsibility and Global Online Cross-sector Alliance Network: A Cross-national Study*", 12 Environmental Communication 1, 99-114 (2018)

[44] Khine Kyaw, Sirimon Treepongkaruna & Pornsit Jiraporn, "*Board gender diversity and environmental emissions*", Business Strategy & the Environment (Forthcoming 2022)

[45] Renata Konadu, Gabriel Sam Ahinful, Danquah Boakye & Hany Elbardan, "*Board gender diversity, environmental innovation, and corporate carbon emissions*," 174 Technological Forecasting and Social Change, 12 (2021)

[46]Ishmael Tingbani, Lyton Chithambo, Venancio Tauringana & Nikolaos Papanikolaou, "*Board gender diversity, environmental committee, and greenhouse gas voluntary disclosures*", 29 Business Strategy and the Environment 6 (2020)

[47] Kevin Stainback, Sibyl Kleiner, Sheryl Skaggs, "*Women in Power: Undoing or Redoing the Gendered Organization?*", 30 Gender & Society 1, 109-135 (2016)

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to be positively linked to the number of women officers, possessing top ranking and high paying positions.[48]

Incidents of sexual harassment at a company not only lead to creation of unfavorable & toxic environment hindering the productivity of the employees ultimately leading to a diminished financial performance but it can also lead to reputational damages which can add fuel to the already lit fire. Based on firm level instances, it has been observed that presence of women directors can lead to a drop in incidences of sexual harassment. Even an addition of one female director can lead to a 20.71% drop.[49] This fits in the approach as envisaged by the stakeholder theory of corporate governance.

Anja Kirsch, has noted that 60% women who were a part of her study had taken some sort of measure associated with gender equality in both formal board procedures and informal ways. Some of them warranted that a report was presented to the board with a breakdown of gender wise data of employees and sought introduction of policies ensuring wage parity. This data was given teeth by a following them with a critical discussion in the Board. The reason for such results can be attributed to two possible explanations, the first one being social identity theory according to which there is a sense of belonging to women as a social group. While it can also be due to the their own experiences in the organizational hierarchy which prompted them to work for their counterparts working at employee positions.[50]

However, it is worth noting that when a critical mass which might be defined as 25% or more women directors is reached, it is mostly then that women directors are more likely to make a noticeable impact on various decisions.[51] The efficacy of the concept of critical mass was demonstrated when it was observed that if the size of the minority group representing women is just one or two, it is not likely to have an significant impact on the organization. When compared with boards which were all-male, the results were same in terms of firm

[48] Diana Bilimoria, "*The Relationship Between Women Corporate Directors and Women Corporate Officers*", 18 Journal of Managerial Issues 1, 47-61 (2006)

[49] Shiu-Yik Au Andréanne Tremblay Leyuan You, "*Does Board Gender Diversity Reduce Workplace Sexual Harassment?*", SSRN Electronic Journal, 2021

[50] Anja Kirsch, "*Revolution From Above? Female Directors' Equality-Related Actions in Organizations*", 61 Business & Society 3, 572–605 (2021)

[51] ? Cindy K. Harris, "*Women Directors on Public Company Boards: Does a Critical Mass Affect Leverage*?", 29 *Business and Economics Faculty Publications (2014)*

organizational innovation. However, a positive relationship was found between the latter when there were minimum three female directors.[52]

Lurking Concerns

Deriving from the discussion of critical mass, the issues such as tokenism may lead to adverse effects for women who are seen like that in the form of visibility, polarization, and assimilation. Visibility could make the appointed women directors bear the brunt of performance pressure as a result of being subject to perpetual scrutiny. Polarization refers to the cornering of women by their dominant peers in effect depriving them of access to important networks. Lastly, assimilation may lead to the woman being seen as a representative of her entire gender which could erase her identity as an individual board member.[53]

Tokenism is often attributed to the limitation of the pool problem, whereby a lack of qualified candidates throttles the board from appointing more than one woman. However, the pool problem is rooted in the usage of traditional criteria for the appointment which is often restricted to the previous experience of the board or executive level. This is exacerbated by the lack of mentoring and network opportunities similar to the ones available to men.[54]

Selection bias often pervades the experience of women appointed to the boards which is demonstrated when women are more likely to be appointed to committees or oversee domains that have traditionally been considered soft thereby keeping them out from areas such as finance which are apparently hard. The case remains the same regardless of whether women possess the same expertise or experience as their male counterparts.[55]

There is an apprehension that if women share the traditional background with their male peers, they are more likely to behave in the same way either unconsciously or in order to fit in. This will in effect negate the anticipated value creation that could have been enriched from alternative experiences or perspectives.[56]

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[52] Mariateresa Torchia Andrea Calabro` Morten Huse, "*Women Directors on Corporate Boards: From Tokenism to Critical Mass*" 102 Journal of Business Ethics 299-317 (2011)

[53] Anne Sweigart, "Women on Board for Change: The Norway Model of Boardroom Quotas as a Tool For Progress in the United States and Canada", 32 Northwestern Journal of International Law & Business 4 (2012)

[54] Debbie A. Thomas, Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors, 102 MARQ. L. REV. 539 (2018).

[55] Aaron A. Dhir, Towards a Race and Gender-Conscious Conception of the Firm: Canadian Corporate Governance, Law and Diversity, 35 QUEEN's L.J. 569 (2010)

[56] Morten Huse, Women directors and the 'black box' of board behavior in Women on Corporate Board of Directors, Susan Vinnicombe, Val Singh, Ronald J Burke, Diana Bilimore & Morten Huse (Eds.) (2008)

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Glass cliff refers to a situation whereby there is a possibility that women might be appointed to leadership positions especially when the organization is caught in a crisis situation in effect dampening their positive impact.[57] Thus, it becomes important that the performance of a woman as a director is judged by taking all surrounding circumstances into account.

It has to be noted that women that share the background of the current breed of directors are likely to be representative of similar privileged experiences. Thereby, in the presence of only such women who would be unable to produce heterogeneity which is critical for improving board oversight due to the same class and context as that of men could render the objective of such measures into nullity.[58]

Conclusion

There is no objective answer to whether soft or hard regulation works best to achieve the desired objectives. While hard quotas are criticized for going too harsh on the companies, thereby interfering with the governance structure of the company. This might lead to a culture of complying for the sake of it. Soft quotas could struggle to reach the goal due to the lack of sanctions. This is because in the absence of a state intervention, most firms are not likely to pursue expansion of diversity in their boards.

However, the results in jurisdictions of both kinds of regulations have produced mixed results. From this, it can be inferred that apart from the structure of the law which enforces a particular measure, the level of implementation and the willingness to follow the spirit of the law are of utmost importance for any such regulation to be success.

While U.S had started on a good note and California had even went on to the path of expanding the concept of diversity and moving ahead from the singular concept of women, thereby embracing the intersectionality that is the core of modern day feminism, the decision of the court in Crest v Padilla has failed to acknowledge the progress that has happened in the period for which the law was applicable.[59] It turned a blind eye over the discrimination that women generally have to face in reaching those positions without regulations in the absence of influential networks thereby blocking their access to the boardrooms.

[57] Michael Peregrine, https://www.forbes.com/sites/michaelperegrine/2021/02/28/the-glass-cliff-challenge-for-corporate-governance/?sh=66dda379240e Last Visited 10th May 2022.
[58] Supra Note 24
[59] Women Business Collaborative SPECIAL REPORT in partnership with 50/50 Women on Boards™, Women Leading Boards 2022

Coming to India, even though there has been a certain degree of progress but it can't be said that the companies are following the spirit of the law. This has to be addressed by strengthening the rigor of the current provisions and introducing newer reforms. While regulators have done their part in giving nudge to the boards into adopting woman as directors, unless institutional changes are made in the structure of functioning of the boards and in the attitudes of those who run it, a fruitful attainment of the law's objective is a far cry.

The evidence for women directors' impact on corporate governance based on firm performance is mostly inconclusive. This can be attributed to different contexts within which they were conducted, contributed to by the methodologies that may have been adopted for arriving at the results. The context is colored by the different kinds of mechanisms used to enforce the regulations, the economic status of the country, and the evolutionary maturity of the culture.

However, given the other factors pointing towards improved corporate governance and related outcomes may not be causative due to issues of endogeneity, they can be seen as co relative. Even the difference between women as mere tokens and a situation where critical mass has been reached will create difference in the results.[60]

As we attempt to infer the rationale behind women director regulations from the above studies, caution must be applied so as not to get mired in gender essentialism thereby reproducing the gender stereotypes.[61]

While the evidence does point out that appointment of women as directors may lead to the prodding of corporate governance in directions beyond the shareholder primacy model, as called for by feminist analysis, however even that is dependent on reaching a critical mass in order to be actually fruitful and noticeable. Even though the business case for appointing women on boards may not have been conclusive but diversity on boards itself is an intrinsic value. Anyway, a sole emphasis on the inclusion of women based on profitability serves to embolden the shareholder primacy deep-seated in the traditional model of governance.

Since it has been underlined that in order for women directors to be engaged in strategic decisions of the board and make a significant impact on them, reaching a critical mass is essential, it is high time that the mandate of one-woman director be increased to at least 3 women directors in order to reap the benefits of a diverse board effectively and let women

[60] Supra Note 68

[61] Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, Women on Boards Policies in the Member States and the Effects on Corporate Governance (2021)

directors work to their full potential without being shadowed by concerns of tokenism. Out of 3, at least 2 candidates ought to be in independent category in order to prevent the family firms from being rendering the provision redundant. While SEBI has made provisions ensuring the independence but those regulations are limited to only certain class of companies. The independence of directors is a critical element in corporate governance, thus this provision needs to be broadened.

Currently, Section 149(3) doesn't provide a specific penalty for non-compliance, thus reliance is placed on either Section 172 or Section 450. If the intent is to truly diversify the board it is imperative to ensure that the provision doesn't remain a paper tiger, thus the intent has to be translated into a specific penalty for non-compliance. Enforcement can't be totally dependent on a regulatory body; the parent statute should accommodate the sanctions. This can be complemented with regulations regarding making mandatory disclosure explaining delay and provision of a specific timeline within which it will be followed.

Compounding should be done sparingly and in exceptional circumstances. In order to prevent a phenomenon whereby the same group of women occupy directorships of various companies, the limits on holding directorships may be accordingly rationalized. It has been almost ten years since the provision first came in, the pool problem shouldn't be allowed to be used as a justification anymore. Further, mandatory provisions regarding the selection criteria for being appointed on various committees to be disclosed by the companies in its Corporate Governance Report may be pursued. This could ensure that women directors aren't relegated to certain kinds of committees due to some inherent bias.