



WOMEN ON BOARD- A WELCOME PROVISION UNDER INDIAN COMPANIES ACT 2013

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Abstract: *Constitution of India gives men and women equal rights, every person being treated on the same level with equal opportunities for each. Yet in India, women have always taken a back seat when it comes to profession. Although employment opportunities are many, they cannot be said to be at par with a woman's caliber. The Companies Act 2013 has made a provision of appointing women director on the Board of certain class of companies. This is a welcome move for the women as well as for the corporate world. This article focuses on the various aspects and effects of having women directors on board.*

Keywords: *expected role of women directors, independent women director, provisions of Companies Act 2013.*

Introduction:

The Companies Act 1956 is the earliest Act dealing in detail about several aspects of a company. Growth of economy at a constant pace, increasing presence of multinational companies, adoption of global standards of business by India Inc., and presence of Indian companies on foreign exchanges- these are the defining characteristics of the corporate sector and are also the primary factors that have necessitated amendments and additions to the Act of 1956. Major amendments were made in the years 1977, 2000 and 2009.

The world is shrinking in terms of trade and business. This has increased opportunities in business and employment, consequently leading to a spurt in number of companies, specially start-up ventures. On the flip side, corporate malpractices have increased. In a global scenario, where only the fittest can survive, ethics have taken a back seat and public companies have everything but the interest of general public on mind. The corporate regulatory regime had to be revamped to accommodate rules of ethics, governance, justice and equal opportunities to all in a healthy business environment.

Accordingly, in year 2013 a new bill on company law was passed which later became the Companies Act 2013. Several amendments and new concepts have been introduced in the Act of 2013, in

tandem with "changes in the national and international economic environment and expansion and growth of the economy of our country". Interestingly the 'watch dog' SEBI is now on- a link, an authority and an integral part of the regulatory system.

Objectives:

The objectives of this study are:

1. To understand the legislative intent behind Sec 149, that mandates the inclusion of woman in Board of Directors (B.O.D) of certain specified companies.
2. To understand the impact of women as decision makers on Board.
3. To throw light on the role of women in corporate sector.

Significant New Concepts:

Several new concepts have been introduced in the new Act with a view to strengthen corporate governance, simplify trading and protect and promote public interest. Composition of the Board is one aspect where additions and amendments have been introduced on a regular basis. Global exposure and increasing use of technology has made Indians a conscious population who seek accountability. Hence people who are responsible for running the business/ company i.e. Board of directors, are often under the scanner. To increase the efficiency of the

BOD, and bring transparency in their work, concepts such as 'resident directors', 'independent directors' and 'women director' in the board have been recently introduced by the Act of 2013.

Women Director:

As per the Act of 2013 every company is required to have a board consisting of minimum 3 directors in case of public company, 2 directors in case of a private company and one for an OPC (One Person Company), the maximum number of directors being 15. Further, companies are permitted to constitute a board consisting of more than 15 directors provided a special resolution is passed for the same.

Under provisions relating to *composition of the board and appointment of directors* (sec 149) inter alia, the Act has mandated:

- (a) Appointment of atleast one woman director within one year from the commencement of the 2nd proviso to Sec149 (1)*, for every listed company. (By 1 Oct 2014, SEBI has made it mandatory for all listed companies to have a woman director on their board)
- (b) Every other public company (unlisted public company)-
 - i) having a paid up share capital of 100 crores or more and/or
 - ii) revenues of 300 crores or more; (as on the last date of latest audited financial statements) must appoint a woman director within 3 years from the commencement of 2nd proviso* to Sec 149 (1) of the Act.

Proviso added to the rule provides that a company which has been incorporated under the Act and is covered under provisions of second proviso to sub-sec (1) of sec 149 shall comply with such provisions within a period of six months from the date of its incorporation.

***Second Proviso to Section 149(1) runs as:**

"Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director."

In accordance with the Directors Appointment Rules, one of the criteria for appointment of woman director in non listed public companies is that the company has paid up share capital of Rs.100 crores or more.

From Sec2 (64) and Sec 2 (84) of 2013 Act we can deduce that for the appointment of woman director, paid up share capital includes paid up equity share capital and paid up preference share capital whether convertible or not. It also appears that paid up share capital includes only amount received towards face value of shares. Amount received towards securities premium is not included in the paid up share capital.

Compliance Norm:

- 1) Companies which are incorporated under the current Act must appoint a woman director within a period of six months of incorporation.
- 2) Companies which are incorporated under the previous company laws must appoint atleast one woman director within a period of one year beginning from 1st April 2014 and ending on 31st March 2015.

Why Focus On Women Director?

In India, before the Act of 2013, women held only about 7% of the Board seats in listed companies, which was a dismal percentage. Indian society has always been male inclined with daughters being groomed to be good homemakers. In yesteryears, when women were not even allowed to take decisions about their own lives, allowing them to express their views and take business decisions was unthinkable. But in the last two decades there has been a complete paradigm shift in the way we look at Indian woman. Good education, liberal upbringing, nuclear families with double income and increasing exposure to the ways of the western world has brought women to the forefront. The government chipped in with special tax exemption and law schemes designed specially for the betterment, protection and empowerment of the women. The Companies Act 2013, by 2nd proviso to Sec 149 (1) which calls for appointment of women director is a due recognition of a woman's ability to

nurture and add value to anything, an ability that comes naturally to every woman.

What Do The Numbers Reveal?

SEBI had made it mandatory for all listed companies to have atleast one woman director by 1st October 2014. According to an analysis done by Indianboards.com, of the total 1608 listed companies

on NSE, 54 i.e. 3.36% are yet to appoint a woman director. This is a remarkable gain considering the fact that in year 2014, 904 companies out of 1,462 NSE listed companies i.e. 62% were without a woman director.

Data statistics obtained from Indian Boards provide the following numbers:

Women Directors (In NSE- Listed Companies only)

No. of women individuals	1,470	No. of women independent individuals	786
No. of directorship positions held	1,990	No. independent directorship positions held	1,205

Source: <http://indianboards.com/pages/index.aspx>, updated on 23 Feb 2017

On an overall basis there are a total of 10,138 persons occupying a total of 14,110 directorships in 1608 companies listed at NSE and 1225 companies listed on BSE.

(Source: NSE INFOBASE, updated till 3rd March 2017)

Of these, 1,468 women directors hold 1,991 positions i.e. about 14.48% of all the directorship positions. There is atleast one woman on board of 1553 NSE listed companies. Of these very few companies have a woman as a chairperson, while less than 5% of women on board are independent.

Among the women directors, Ms. Renu Sud Karnad has a presence in 9 companies, the highest number of directorships. Sector wise, at 17.5%, telecommunication Services has the highest number of female board members, followed by 11.6% in Information Technology and 9.6% in Financials.

The Companies Act 2013 has 470 sections. 283 sections and 22 set of rules corresponding to such sections have so far been brought into force. This means that around 40% of the Act is yet to be enforced. How soon the provisions relating to women director are fully adopted remains to be seen.

Global Overview:



Source: Times of India/ 9/3/2017

In an effort to push companies to have more women on their boards, a Wall Street firm on 7th March 2017, put up a statue of a girl in front of lower Manhattan’s well known bronze charging bull. The diminutive girl seems to be staring at the bull. A spokeswoman for State Street Global Advisors said this is an effort to draw attention to the glaring gender diversity that exists on corporate boards.

Although boardroom diversity is increasing, women remain largely underrepresented.

Looking at more than 3,000 global companies, *Credit Suisse** found that women held 14.7% of board seats in 2015. In Deloitte's analysis of nearly 6,000 companies in 49 countries, women held 12% of board seats.

If we look at the Indian scenario from the global perspective, India is far better placed than USA, as India has more women CEO's than the USA.

A survey based prediction by times.com says that although the glass ceiling still exists on an executive level, it is likely to change as the Indian mindset changes from the 'know -all efficient male bosses' to 'women are great leaders'.

Legislative Aspect:

Is the provision of appointment of women on board merely a social measure? Do we really need a law to help the educated, independent, emancipated Indian woman of 21st century break through the glass ceiling?

Yes it's true that in India most working women have struggled to break the glass ceiling. While gender bias has held back some, others have held themselves back due to responsibilities of maintaining home and family. However, introduction of women in board should not be considered as a social matter of being fair to the fair sex. Going by the popular notion of men are from Mars and women are from Venus, we, accept the fact that women think differently. There have been several research reports which indicate that women think differently than men, and bring more empathy and intuition to leadership. They bring a diversity of perspective in the boardroom, thus leading to good and dynamic governance.

With concept of corporate governance gaining ground, Board of Directors are constantly being scrutinized by the stake holders, media and the general public. Thus every decision that the board takes should be well thought of. Multiple views on the possible outcome of any decision, coming from

demographically diverse directors would certainly help in good decision making.

Ultimately, man or woman, it is the effectiveness of a person as a board member and the contribution they make to the betterment of the company, is what matters to the several stakeholders of the company.

Impact of Women Director:

Will the women director make an impact? This is a question that only time can answer. There are several influencing factors involved. Will the companies take 2nd proviso to Sec 149 (1), seriously and select through fair and proper procedure a deserving woman candidate or will the promoter group simply select a family member or someone from its own close circle to fill the post? The provision is not clear about the independence of the women director. So until no such provisions are made it is quite likely that the promoter group would prefer a woman from the family who would not influence the board decisions or express a discerning view.

According to a study conducted by Prime Database, nearly 1/4th directorship positions have been filled by appointing women belonging to the promoter group. These women are not expected to sing a different tune, thus defeating the very purpose of genuine (independent) gender diversity.

Of the 74 women appointed to the 80 directorship positions, in the last six months, 19 are from the promoter group. There are 59 women director who are first time appointees, of which 15 are from the promoter group and 18 are non independent, leaving only 26 women directors who are 'apparently' independent.

Apart from Renu Karnad, Ireena Gopal Vittal is another independent director who holds position on 6 company boards, all independent. Ramni Nirula also has 6 positions on a board of which 4 are independent. Aarthi Subramanian on board of TCS is the latest addition to list of independent women director. Some of the prominent names who have joined their promoter

groups are Nita Ambani- Reliance Industries, Zahabia Khorakiwala- Wockhardt Hospitals; Deepshikha Khaitaan- Cera sanityware; Sarla Devi Birla- Century Textiles & Industries; Nawaz Gautam Singhania- Raymond; Saroj Bhartia- Jindall Drilling & Industries; Amrita Vakil- Asian Paints; Avni Kishor Biyani- Future Group; Gauri Kirloskar- Kirloskar Oil Engineers.

Catalyst, a USA based non profit organisation, undertook a survey on women directors in Fortune 500 companies. The survey revealed that companies with highest representation of women board directors attained significantly higher financial performance, on average, than those with the lowest representation of women board directors.

Conclusion:

India is a great country overflowing with talent. To have our place under the sun in the global

arena, we need to provide equal opportunity to every individual irrespective of caste, creed, culture and gender. God gave women the privilege of giving birth, nurturing the offspring and carrying the world forward. Then why question the ability of a woman to give birth to an organisation, nurture it and make it a success story?

“In terms of responsibilities, in terms of postings and promotions, it happens often that there is a gap between our perception of what we deserve and the reality of what we get. It helps to deserve before we desire”. *Pranav Haldea, managing director, PRIME Database*

Appointing woman on top corporate positions should thus be based on merit of the woman as an individual, and not a mere formality for adhering to the law.

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