



Gender parity in corporate boards in India: A constitutional legal study

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Abstract

Gender diversity has been a sensational term not just because of its Constitutional underlining but also because of its laudable goal. For instance if we talk of workplace, gender diversity and parity would indicate a bottom-line business sense for leaders of global corporations in terms of more profitability and better financial performance apart from furtherance of goals of social and gender justice as projected and targeted by the law making agencies. Government has been since the inception of Indian Constitution in 1950, trying to bring in affirmative actions at workplace in some or the other way, the aim of which might be to further the goals of the constitution as set in the form of directive principles or under the umbrella of positive discrimination theory under fundamental rights meant for setting out qualitative laws for women intending to achieve the objective set in the preamble of social economic and political justice. In this regard the most recent developments in corporate laws in India of bringing in an independent women director on corporate board to bring about equal participation in decision making can be said to be a welcoming example of insuring gender parity to some extent. Another effect of inclusion of women on board through legislative amendment can also be in positively breaking the invisible barriers to the success of a women usually termed as corporate glass ceiling, though the author doesn't deny multiple reasons for the existence of such barriers of which some might be exclusively personal and physiological where certainly the government would have less role to play apart from being social, economic or governmental which can be removed through affirmative actions to a greater extent. Here taking reference from the corporate sector if we look at affirmative action vis a vis intersectionality theory it might suggest for instance more than one independent women director of which say one might be a Dalit. The question that rises here can have two shades, first: such a move might be generally accommodating in the social fabric of India when it comes to social integration-based justice system, second: how far would the corporations accept such an approach in affirmative action and how far it would be conducive to their goals of financial performance and profit motive through gender parity at workplace. The intersectional analysis of gender while making an affirmative action policy has been often argued and supported by feminist theorists, however this has to be argued keeping in place its limitations and implications related analysis. The author through this paper would look at these issues in four parts through two lead arguments before reaching a conclusion. The first being the impact analysis of the 2013 amendment with regard to independent women director and how far it has been successful in breaking the glass ceiling. This argument shall be formed not just on an intellectual level but on actual fact findings. The second argument would be to look into the genre of corporate and business-related laws based on positive discrimination in India and analysing them keeping in matrix the intersectionality approach in providing affirmative actions.

Keywords: affirmative action, gender analysis, corporate glass ceiling, women director, company act 2013

Introduction

Working women across the world confront a variety of obstacles, including managing work and family duties, sexism in the workplace, uneven wage and dangerous work environments, and other work-related facilities, and so on. While all of these factors must be addressed, the situation must also be examined in light of the traditional roles women have played in society for millennia, as well as the patriarchal attitudes that exist in India.

For the first time, The Power of Parity^[1], a study of how gender disparity impacts India's GDP and economy, connects gender equality in the workplace with gender equality in society, stating that "the former is not conceivable without the latter." The report finds that increasing women's participation in India's labour force by ten percentage points between now and 2025, bringing 68 million more women into the labour force, 70 percent of them in just nine states would account for roughly 70% of this "best in region" potential. This will necessitate bridging the economic and social divides between men and women^[2]. The ILO's gender equality mandate is situated in the context of a number of international instruments promoting

gender equality. The UN Charter^[3] itself can be the first and foremost example. Apart from it there are numerous General Assembly resolutions, the 1995 Beijing Platform for Action and its follow-up, and the Millennium Development Goals^[4], the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)^[5], and the already adopted Sustainable Development Goals^[6] can be among the other few examples.

When we talk of gender diversity or parity at workplace, the question of corporate boards in India find an important place. The Companies Act in India has been amended formally in 2013 according to the changing and globalizing work needs and atmosphere in the world. The paper seeks to specially look into the idea of gender parity in corporate boards. The benefits of having both women and men around the table when making crucial choices that determine a business's success have been shown, and company boards today are more gender diverse than ever before. Despite significant improvement, the International Labour Organization (ILO) reports that over 50% of firms examined in 2018 had minimal female participation on their boards (less than 30%), and over 13% have all male boards^[7]. A

broad range of efforts and solutions have been offered in response to the gender diversity problem. Several nations have enacted boardroom quotas for their largest publicly traded firms, while others have established voluntary objectives to encourage an increase in the proportion of women on boards of directors ^[8]. To look into this issue broadly the author shall first look into the concept of corporate glass ceiling and then rethink the issue under the constitutional mandates of gender equality in India.

The concept of corporate glass ceiling

Despite substantial efforts to promote diversity in the workplace and legislation ensuring equal opportunity for men and women, women continue to be a minority in decision-making positions. This comment mirrors the phenomena of the glass ceiling, which is a kind of vertical discrimination against women in the workplace. Despite the fact that the glass ceiling has sparked interest in study, several writers have pointed out that theoretical models have made little effort to build a better understanding of the phenomena and its ramifications ^[9].

This can be explained with the help of the diagram of a triangle. Let us assume that at the top of the triangle in any field there would least women as compared to the base of the triangle. When we think of any profession this can be applied probably. Let us say that if we count the number of assistant professors in an university there might be many but how many universities in India has got a female vice chancellor is a big question. This illustration shows that as the power and position increases in the hierarchy at workplace the number of females decreases.

So we can say that a glass ceiling occurs when a qualified individual seeking advancement within an organization's hierarchy is halted at a lower level owing to prejudice, most commonly based on sexism or racism. Thus, the glass ceiling refers to vertical discrimination in the workplace, which is most commonly experienced by women. The multiplicity of definitions and techniques to expressing the glass ceiling adds to the difficulties of this issue. There are also no objective and immediately visible criteria that can be used to determine with confidence whether or not a corporation has a glass ceiling. Nonetheless, according to various studies, the glass ceiling is characterised as "subtle but persistent barriers/obstacles, anchored by discriminatory, conscious and unconscious behaviours, and attitudes that obstruct entry to top/senior management positions ^[10]."

Constitutional mandate on gender parity in India

Gender parity is included in the Indian Constitution's Directive Principles, Fundamental Duties, Preamble, and Fundamental Rights. The Indian Constitution not only guarantees women equal rights, but it also empowers the government to implement effective anti-inequity measures in their favour. In the framework of an equitable polity, our laws, growth strategy, plans, and initiatives have all been designed to help women in various ways. The central government has also ratified a slew of international human rights treaties and accords aimed at assuring equal protection for women. However, only a small percentage of the population is aware of these laws. It is critical for everyone, especially those who are exploited, to understand their rights and remedies in the event that they are violated ^[11]. The Constitution requires the state to provide equality

before the law and impartial enforcement of the laws throughout the country of India. The "equality before the law" method seeks out a place in all written texts that guarantees universal rights to all persons, regardless of their birth, ethnicity, gender, or race. "Equal protection of the laws" refers to the uniform application of the law to every individual in India's territory ^[12]. Apart from this there are other provisions of the constitution which seeks to provide protective discrimination to female citizens ^[13]. Article 16 ^[14] mandates equal opportunity for all in events concerned to education or allotment to any office within the State for all people. The Constitution has made it compulsory to ensure the representation of women in decision making by bringing about amendments in Articles related to administration of Panchayats ^[15]. In present India more than or equal to one-third of the maximum number of seats to be held by open voting in each Panchayat to be reserved for women (including those reserved for women from Scheduled Tribes and Scheduled Castes) and to be allocated such seats by succession to separate constituencies within a Panchayat ^[16]. This shows that the welfare state is keenly interested to ensure female participation in all kinds of decision making be it in legislature of the country or a Company.

The idea of equality has been enshrined in our constitution as a representation of the laws that have been enacted to empower everyone in modern democratic India. In a nation as varied as India, where there is a law for every wrongdoing, the Constitution serves as the binding force, enshrining principles such as social justice, equality, liberty, and brotherhood. The Indian legal system has been working on these issues and continues to uphold these guiding principles in order to advance the general public and provide equity for all.

Company Act 2013 and position of women directors

Women's empowerment does not mean that a woman may just play a supporting function in a corporation; rather, she should be involved in higher-level decision-making. According to current statistics of the OECD (Organisation for Economic Cooperation and Development) ^[17], European nations are the most likely to appoint women to company boards of directors. Norway leads the group with 45 percent, while India has only 4.7 percent ^[18]. The ratio of women directors appointed in Indian firms, on the other hand, is likely to rise. In this part of the article we'll look at the function of women directors in companies, as well as the requirements for their selection under the Companies Act of 2013.

Under the Company Act 2013 The criteria is that if a company meets any of the following conditions, it will be compulsory for the company to appoint at least one-woman director, whether it be a public corporation or a private concern ^[19].

The conditions are

1. It is a public company whose share is traded on a stock exchange.
2. Or it is a company with a paid-up capital of Rs. 100 crore or more and a turnover of Rs. 300 crore or more.

Companies formed under The Companies Act 1956, as well as those covered by Section 149 (1), were given a 6-month

time restriction to comply with such provisions from the date of their establishment. Furthermore, according to this interpretation, existing companies were compelled to add women directors within a year, as required by Section 149(2) ^[20]. In the event of an intermittent vacancy of a woman director, the Board must fill it as soon as possible, but no later than the next Board meeting or three months from the date of the vacancy, whichever comes first ^[21].

The duties of directors under the Company Act 2014 has also been modified with the needs of global corporation. They can be enlisted as follows ^[22].

1. A company's director must behave in conformity with the company's Articles of Association (AOA).
2. A corporate director must act in good faith in order to advance the business's objectives, for the profit of the firm as a whole, and in the best interests of the company's stakeholders.
3. The director must exercise independent judgement and exercise due and reasonable care, skill, and diligence in carrying out his or her obligations.
4. The director shall not be involved in any circumstance in which she may have a direct or indirect conflicting, or potentially conflicting, interest.
5. The director may not get or seek to obtain any undue benefit or advantage for herself, her family, partners, or colleagues, and if she is found guilty of obtaining any undue gain, she will be obliged to pay the company a sum equivalent to that gain.
6. The director may not assign her office, and any such assignment is null and invalid. If a corporate director violates the terms of this section, the director is subject to a punishment of not less than Rs.1,00,000/- but not more than Rs.5,00,000/-.

Women directors must perform the same duties as males. Women can serve as Nominee Directors, who are nominated by a corporate party to look after the firm's interests. Women can also hold the position of Independent Director, which is not subject to rotation.

Women directors are limited to a total of twenty directorships, with a sub-limit of 10 public businesses. Any violation of this portion would result in a punishment ranging from Rs.5000 to Rs.25000.

The Companies Act of 2013 does not stipulate any minimum credentials, qualifications or industry experience requirements for women directors of any eligible firm ^[21]. This shows that the Law seeks to involve women in decision making irrespective of the business motives or strategy of the company to involve or not involve women.

As a result, the government has now authorised women to serve on the company's board of directors. Many significant corporations applaud this step toward ending gender discrimination, with some appointing female directors as soon as the Companies Act of 2013 took effect.

Tracing the progress of women in Indian board rooms

Gender participation on Indian boards has improved and we must thank the legislative obligation for this, compared to five years ago, when women made just 13% of board members at listed businesses ^[24]. These achievements are remarkable in light of the fact that women account for just 18% of directorships on boards of publicly listed companies. According to the most recent statistics from Prime Database of the Nifty 50 index ^[25], there are 2,246 women on the

boards of directors of the 1,921 businesses listed on the National Stock Exchange. Around 60% of these women work as independent directors. However, there is a shortage of qualified and experienced female directors, as well as a reluctance among women to serve on boards. As a result, a select group of experienced female directors has emerged as the favoured option of established firms.

It is in 2022 that the India's capital market regulator SEBI ^[26] got Madhabi Puri Buch as its first woman chairperson and the benchmark Nifty50 index slated to get the first company that has more female than male directors.

After 34 years, the market regulator Sebi appointed its first female chairwoman. Ironically, the drafters of the Sebi Act of 1992 did not envision a woman as the organization's leader and referred to the post as 'chairman,' which is still used today. According to IIM-Ahmedabad professor Neharika Vohra's research on women on boards in India, female directors are eight years younger than their male counterparts and retire or leave 3.2 years sooner. They have a tenure that is 40% shorter than men's ^[27].

Preoccupation and personal reasons were cited by the survey as grounds for most women's decision to leave their directorships. They are more likely to serve as chairpersons of board committees dealing with human relations, such as grievance and CSR.

Nonetheless, a growing body of research shows that women's inclusion on boards, managerial roles, and the number of female employees has a favourable influence on stock performance and corporate indicators.

A recent analysis by Bank of America Securities ESG (environmental, social, and governance) issues in Asia Pacific, linked a higher representation of women on boards to a higher return on equity (RoE). Since 2010, firms with a higher percentage of women on their boards have had a higher RoE (13%) than those with a lower percentage (11%) on average. These firms have also continuously received higher MSCI ^[28] ESG scores, notably in terms of governance. While there was no significant increase in RoE, R&D, or cost of capital, these equities outperformed those with the fewest female board members during the ensuing one-, two-, and three-year periods.

Women as business leaders: benefits and challenges

Diversity has been proved to enhance creativity and invention, from gender diversity to culture, age, and ethnicity. Organizations across sectors, from PricewaterhouseCoopers to Disney and L'Oreal, are attempting to emphasise and profit from a diverse and inclusive work environment ^[29].

Men and women will unavoidably come from diverse backgrounds and have different perspectives on business. Challenging one another and cooperating with others who think differently can help to foster creativity and encourage unique ideas that propel businesses ahead.

While technical knowledge and competence are important for job advancement, CEOs regularly rank soft skills as the most desirable professional qualities. Although difficult to quantify, qualities like good communication, empathy, and self-awareness are highly appreciated and can have a significant impact on the bottom line. Recent study has found a link between strong character and corporate performance, with CEOs who score high on compassion and honesty seeing a 9.35 percent return on assets over the course of two years.

Women in business may find that soft skills and emotional intelligence provide a significant competitive edge. Women surpass males in 11 of 12 core emotional intelligence abilities, according to a 2016 report released by the global consulting company Hay Group. Emotional self-awareness, empathy, conflict resolution, flexibility, and teamwork were all listed as necessary abilities for effective leadership in the workplace. In fact, according to recent McKinsey study, gender-diverse organisations are 15% more likely to surpass the industry median financially ^[30].

There had always been more challenges for workplace for women than men since ages. While there are signs of a rising female workforce in many work sectors, sectors like banking, engineering, and technology are still heavily male-dominated. Women make up just 24% of the workforce in STEM (science, technology, engineering, and math) industries in the United States, and fewer than 15% in the United Kingdom. The persistent misconception that an interest in "hard science" is unfeminine may be blamed for women's underrepresentation.

While most CEOs believe that the best candidate for the position should be hired regardless of gender, anecdotes of women who have had better success with a male or gender-neutral name on their CV show that unconscious bias still remains. Women who are in or aspire to be in positions of leadership frequently believe they are scrutinised more than males. Women are taught from an early age not to be "bossy," whereas males are encouraged to be ambitious and forceful. Gender bias implies that in the workplace, the same behaviour and characteristics initiative, enthusiasm, and taking charge can be read differently in men and women ^[31].

Though women advance in having soft skills and other managerial qualities there are other deep rooted disparity at workplace which women have to overcome at every step of success. One of these can be the gender pay gaps. The gender pay gap is sometimes attributed to women's unwillingness to seek for better compensation. In a recent pay negotiating study conducted by Glassdoor ^[32], it was discovered that 68 percent of women accepted the compensation given to them, whereas almost half of the males questioned bargained before taking a position. It also indicated that when women attempted to negotiate their initial compensation, the results were often negative ^[33].

Glassdoor in its study has collected datas from the developed economies such as United States, United Kingdom, France, Germany, Australia, Canada, the Netherlands, and Singapore. The report found that even when statistical adjustments for worker and job characteristics were applied to assure an apples-to-apples comparison, males earned more than women on average in all eight nations. Despite the fact that women are still not paid equally for similar labour, progress is being made; the pay gap has shrunk since our last survey in 2016. A tighter job market, increasing female labour force participation, and increased awareness of the gender pay gap are all likely to contribute to the pay gap narrowing. However, assuming current trends continue, the adjusted gender wage gap may not be completely closed until the year 2070 ^[34].

With all the advantages of hiring women as leaders or managers of the Company being enlisted above it can also be highlighted by the author that Gender equality is becoming a matter of policy for many forward-thinking firms, whether it's committing to equal representation of

women in the boardroom or appointing diversity officers. Hiring policies that discourage and eliminate bias can help companies gain the advantages of balance and equality. Businesses prosper when diversity, inclusion, and gender equality become policy and are ingrained in company strategy, rather than political correctness or buzzwords ^[35].

To establish themselves as corporate managers and being a part of the corporate decision making process, women pursue a business degree to get the information and competence they need to stand out in a competitive employment environment. The number of women attending business school has been gradually increasing. Business school provides a wonderful platform for women to become subject-matter experts, exercise leadership skills, and earn the confidence they need to enter into the boardroom, whether it's through undergraduate education, an MBA, or a Masters degree. But even after attaining degrees, or having better managerial skills females don't find place in boards or higher managerial posts because of several other biases some being rooted in biological and natural differences between men and women like maternity issues.

Maternity issues and corporate biases

Gender disparities in the workplace are divided into two categories: those linked to motherhood and those connected to the sexes' different customs and expectations. Maternity is a biological, not a cultural, phenomenon. We can't change it, but we can significantly lessen its influence at work and, in many circumstances, erase its detrimental impact on employee growth. We can do so by addressing the second set of distinctions, namely, those between male and female socialisation. These disparities now overstate the true costs of maternity leave and can transform a little work schedule disturbance into a severe corporate problem and a career derailment for individual women.

We must address the issues that arise when female socialisation meets male corporate culture and masculine rules of career development—issues of behaviour and style, expectation, stereotypes and preconceptions, sexual tension and harassment, female mentoring, lateral mobility, relocation, compensation, and early identification of top performers if we are to overcome the cost differential between male and female employees ^[36].

Maternity is the one constant and unchanging distinction between men and women. Maternity is a process that begins with awareness of the biological clock ticking, progresses to the expectation of motherhood, encompasses pregnancy, childbirth, physical recovery, psychological adjustment, and concludes with feeding, bonding, and child raising. Of course, not all women want to be mothers, and among those who do, the process varies based on the mother's and baby's health, the parents' values, and the availability, cost, and quality of child care.

The biological fact of motherhood impacted the conventional roles of the sexes in previous generations. Women were responsible for the home-centered responsibilities of childbearing and childrearing. The labour that needed a lot of physical power was done by men. Family size shrank throughout time, the community took on more responsibility for children's care and education, packaged meals and domestic technology lowered labour load at home, and technology replaced most of the need for muscular strength at work. In today's industrialised society, childbearing is the sole role that is still distinctly gendered.

Men and women, on the other hand, are still socialised to perform their conventional roles.

The author feels that this discussion takes us back to the erroneous metaphor of the glass ceiling which connotes an unseen barrier erected by business executives to prevent women from progressing beyond middle management. A more relevant metaphor, in the author's opinion, is a geological cross-sectional figure. When potentially unproductive layers of influence on women like maternity, tradition, socialization meet managerial strata saturated by men's often unconscious prejudices, attitudes, and expectations, hurdles to women's leadership emerge. For men, such interfaces do not exist, while for women, they tend to be impenetrable^[37].

Another outcome of such biases related to women's motherhood is that every working woman is placed on a continuum ranging from complete career devotion on one extreme to a balance of profession and family on the other. What women realise is that both extremes are undesirable in the male corporate culture. Women who seek the flexibility to juggle their families and jobs aren't fully committed to the company. Women who compete and compete as strongly as males are harsh and unfeminine. Such types of observations and comments discourage women and must be condemned by the organisation

Conclusion and suggestions

The author rests these arguments on the fact that various studies have showed how important females are to an organisation both for corporate business goals, social inclusivity and economic, cultural and social development of a nation. So the sooner we dissolve these biases related to maternity make it easier for females to break corporate organisational barriers the better it shall be for world progress.

Mandating gender diversity in corporate boards in India is almost similar to legislating a class legislation on the basis of affirmative action. The Constitution not only guarantees women's equality, but also authorises the government to take affirmative discrimination measures in their favour. But we can say that this gender quotas on corporate boards have emerged as a popular tool for policymakers to promote gender equality in the workplace. Gender equality is not just a basic human right, but also a prerequisite for a society that is peaceful, affluent, and sustainable.

This step of compulsory inclusion of women in boards in India is in consonance with the global demand for women business leaders and favours the idea of gender parity enshrined in the Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles.

The author would like to conclude that this step is a laudable step for both business goals of companies and government goals of women empowerment, social inclusion and gender equality. With this step, India shall outperforms its emerging market peers in terms of gender parity in the boardroom.

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