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Gender diversity on corporate boards in India post companies Act, 2013

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Abstract

Research has proved that corporate boards perform better when they include the best people who come from a range of perspectives and backgrounds. Board appointments must always be made on merit, with the best qualified person getting the job. But, given the long record of women achieving the highest qualifications and leadership positions in many walks of life, the poor representation of women on boards, relative to their male counterparts, has raised questions about whether board recruitment is in practice based on skills, experience and performance. It is high time that corporate boards recognize that gender diversity is a business imperative and a critical element in sustaining successful enterprises. Increasing the number of women in leadership positions has to be a priority, not only because it is the right thing to do, but also because it is essential to building a high performance organization. The Companies Act, 2013 requires Corporate India's leading companies to add one woman director to the board for every listed Company and other specified class of companies. This paper examines the position and number of Women Directors in NSE-listed companies post Companies Act, 2013. It provides an insight on whether the much talked Gender Diversity has been achieved on the Indian Corporate Boards post the introduction of the New Companies Act, 2013 or not ?

Keywords: Corporate board, women directors, gender representation, India, companies Act, 2013

Introduction

Diversity on Corporate Boards

Globally, the call for more gender diversity on corporate boards has been gaining momentum. The Companies Act, 2013 in India recognizing the importance of gender diversity provides for mandatory appointment of at least one women director in the listed and other specified class of companies. The importance of improving the gender balance on corporate boards is being increasingly recognized around the world. Some countries have taken legislative action and imposed quotas, while others have used other measures like moral persuasion and introduced voluntary measures (e.g. enhanced their corporate governance codes to require companies to disclose their gender diversity policy, and/or set targets for companies). Getting women on boards is not a numbers game or about women's rights. Rather, it is about what companies, and by extension society, are losing out by not tapping on the potential of women. It is also about ensuring that decisions taken by the board reflect the realities of the society and the market, including the rising incomes, purchasing power and decision-making power of women at home and at work. Solving complex business challenges requires the widest spectrum of views, personalities, strengths and opinions in boardrooms and in senior decision making positions.

What does Gender Diversity mean?

Gender Diversity on Board refer to the presence of women on corporate board of directors. The boardroom is where strategic decisions are made, governance applied and risk overseen. It is therefore imperative that boards are made up of competent high caliber individuals who together offer a mix of skills, experiences and backgrounds. Gender Diversity means to consider and to promote different skills, different resources and potentials of women and men as equivalent. Corporate boards perform better when they include the best people who come from a range of perspectives and backgrounds.

Requirement for Gender Diversity on Boards

The desirability of having more women in the boardroom is agreed upon by both proponents of better corporate governance and champions of women's rights. Shareholders, institutional investors, as well as corporate governance rating agencies around the world believe that in an increasingly complex global marketplace, companies that effectively hire, retain and promote women are often better equipped to capitalize on competitive opportunities than those that do not. The International Corporate Governance Network (ICGN), comprising institutional investors responsible for managing more than US\$18 trillion in assets, considers gender diversity an important factor in helping to ensure a diversity of perspectives on the board. The ICGN stated that boards should have a "sufficient mix of relevant skills, competence, and diversity of perspectives".

Major institutional investors, California Public Employees' Retirement System (CalPERS) as well as Amazon, have included gender diversity as an indicator among their investment criteria. Corporate governance rating agencies such as GMI* Ratings are increasingly developing tools to measure gender diversity as a key performance indicator for corporate performance and investment recommendations. Investors around the world are urging companies to improve their board gender diversity. The board of directors' primary responsibilities includes effective governance of the company leading to its long-term success. A number of propositions exist for the business case for diversity on boards:

- Diverse boards tend to be more independent and, with fewer ties to management, can have a greater ability to monitor managers objectively.
- Diversity improves board decision making as a result of unique perspectives, increased creativity, and non-traditional innovative approaches. "More the diversity, more the creativity" even International research shows that a diverse set of perspectives is likely to result in improved board practices, stronger ability to foresee and manage risks, and better strategic decision making.
- Diversity improves information provided by the board to managers due to special skill sets, experience and complementary knowledge held by diverse directors.
- Diverse directors provide access to important constituencies and resources in the external environment.
- Board diversity sends important positive signals to the labor, product and financial markets.

Discussion of Provisions in Indian Companies Act, 2013

Section 149 (1) of Companies Act, 2013 deals with women director. It states that every company shall have board of directors who are individuals with Minimum number of three directors in case of a public company and two directors in case of a private company and one in case of One Person Company. A maximum of fifteen directors. Further it is also stated that such class or classes of companies as mentioned above shall have at least one women director.

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 deals with women director on the board. With regard to section 149, the following companies shall appoint at least one women director on the board. Firstly, for every listed company and every other public company having

- a) Paid-up share capital of one hundred crore rupees or more or,
- b) Turnover of three hundred crore rupees or more.

The paid up share capital or turnover as stated above shall be the one which is mentioned in the latest audited financial statement. Moreover any company which is incorporated under the new companies Act shall comply with the above conditions within six months from the date of incorporation. However, any company which has been incorporated under the old companies Act shall comply with such conditions within one year from the date of incorporation.

In case if there is vacancy in the post of women director, such vacancy has to be filled as early as possible and it should not be later than the next immediate board meeting or after three months from the date of the post being vacant, i.e. whichever is later.

Women on Boards Make More Return

More women on board does not only mean the mode to attract sales and production but also creates some public image. It does increase financial return as well rather than mere media attention. In terms financial returns means that the return on equity (ROE) increases. The study reveals that the board of a private sector company, run by a professional CEO with a mix of both men and women, helped ROE rise by 4.4% in 2014 over the last year. In contrast, a similar company with a men-only board saw its ROE rise by a mere 1.8% in the same period. Certain other examples would be Chanda Kochhar, who heads ICICI bank and Kiran Mazumdar Shaw, director of Biocon Limited has shown a positive difference on return on equity. All the above analysis shows that there has been an increase in women participation on the boards and also the highlight of the entire legislation is that gender diversity has been addressed through initiating a move towards women on board. Failure to address such gender diversity would lead to serious economic consequences in future. Moreover there are so many countries which leave women unrepresented. Change gets accelerated only when there is dynamism in the mind set of people. It sounds as a warm welcome by stating that "such class or classes of companies as may be prescribed, shall have at least one women director". These words mean to say no restriction being imposed in having number of women directors on the board. In a country like India where the scope for litigation is likely to be booming in the field of corporate and IP litigation where the future would rest, such legislation would bring in more clarity in specifying the rights of different genders and thereby avoiding unamicable issues. This improves corporate transparency. However certain companies such as RPG Enterprises Ltd, Essar Group, Mahindra and Mahindra Ltd are among the large conglomerates who are looking at bringing in women from government agencies, academic and research institutions, non-profit organizations, and audit firms, as most of the eligible women in the corporate world are already part of many boards. All listed companies must have at least one woman director on their board, according to new corporate governance norms finalized by capital market regulator Securities and Exchange Board of India (SEBI).

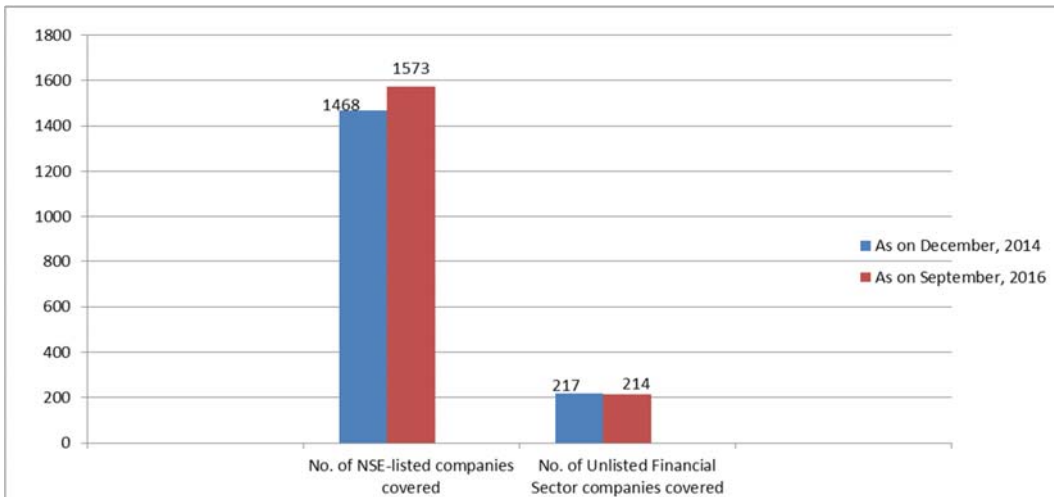
This small proportion of directors can be only on the boards of seven listed companies, which further restricts options for companies on the lookout for women directors, this is

according to SEBI’s guidelines. Henceforth, need for women director in Indian companies has become inevitable. This is a good sign for the corporate growth in the country. There are many reasons for scarcity of representation of women in senior leadership positions. Experts say that women on boards lead to more profitability and sustainability. Thus, the 2013 landmark enactment has

paved way for gender diversity and more women participation.

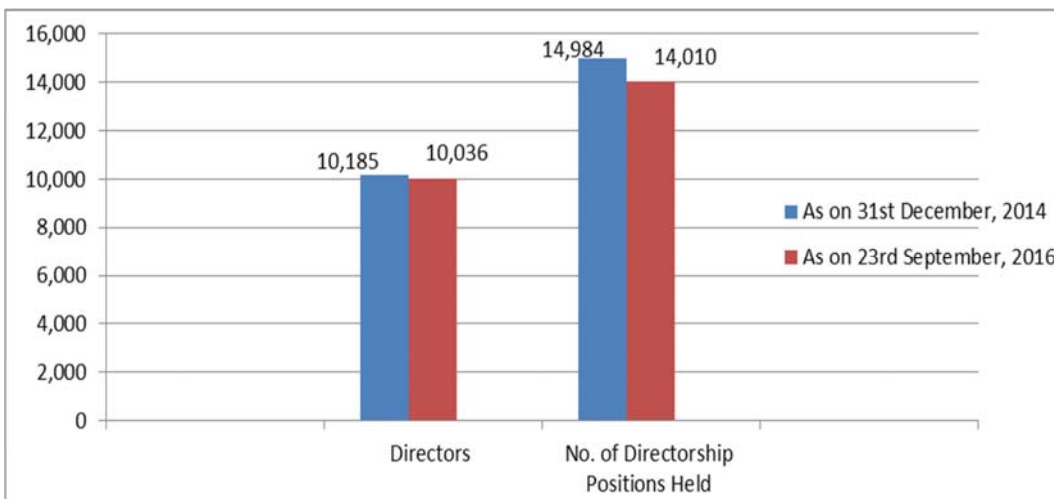
**Indian Boards Database (Developed and powered by Prime Database Group)
Number of Companies Covered**

Details	As on December, 2014	As on September, 2016
No. of NSE-listed companies covered	1468	1573
No. of Unlisted Financial Sector companies covered	217	214



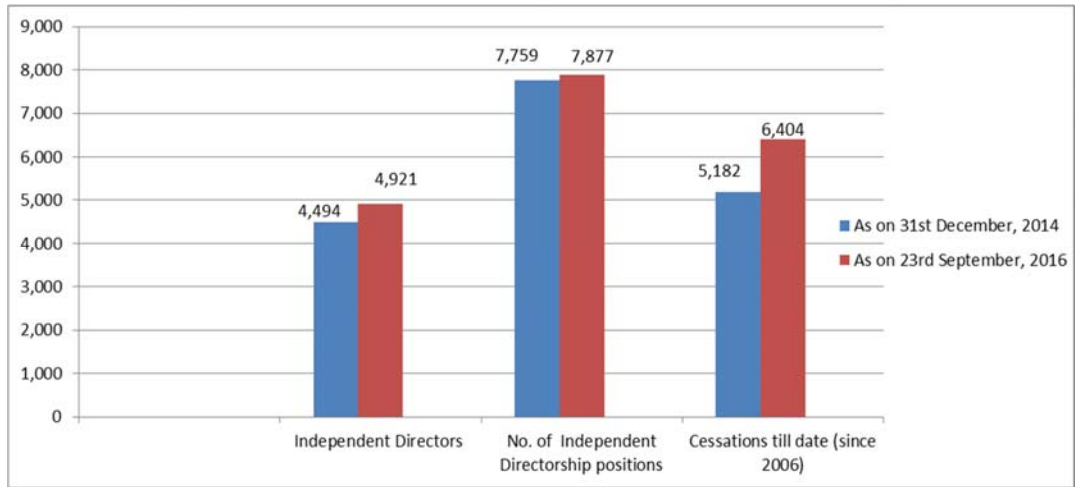
All Directors (for NSE-listed companies only)

Details	As on 31 st December, 2014	As on 23 rd September, 2016
Directors	10,185	10,036
No. of Directorship Positions Held	14,984	14,010



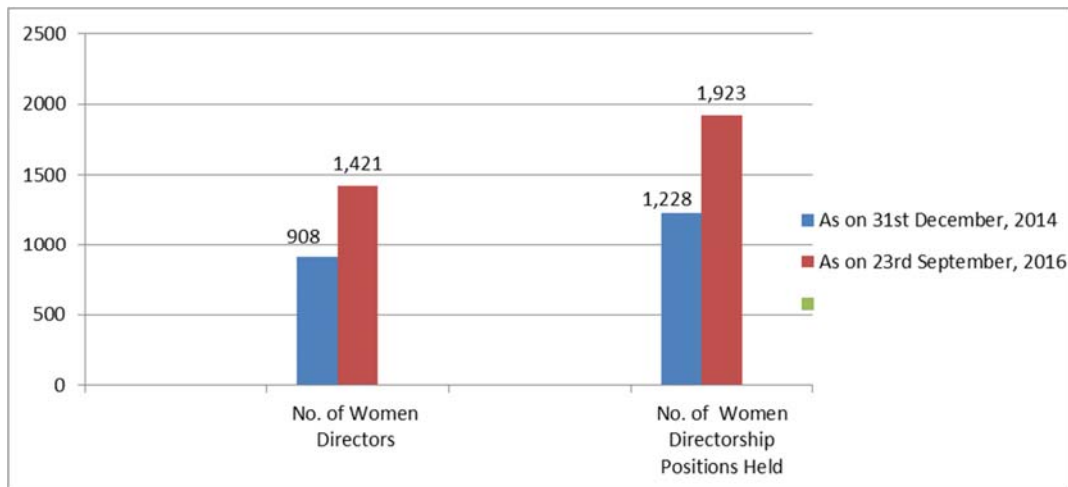
All Independent Directors (for NSE-listed companies only)

Details	As on 31 st December, 2014	As on 23 rd September, 2016
Independent Directors	4,494	4,921
No. of Independent Directorship positions	7,759	7,877
Cessations till date (since 2006)	5,182	6,404



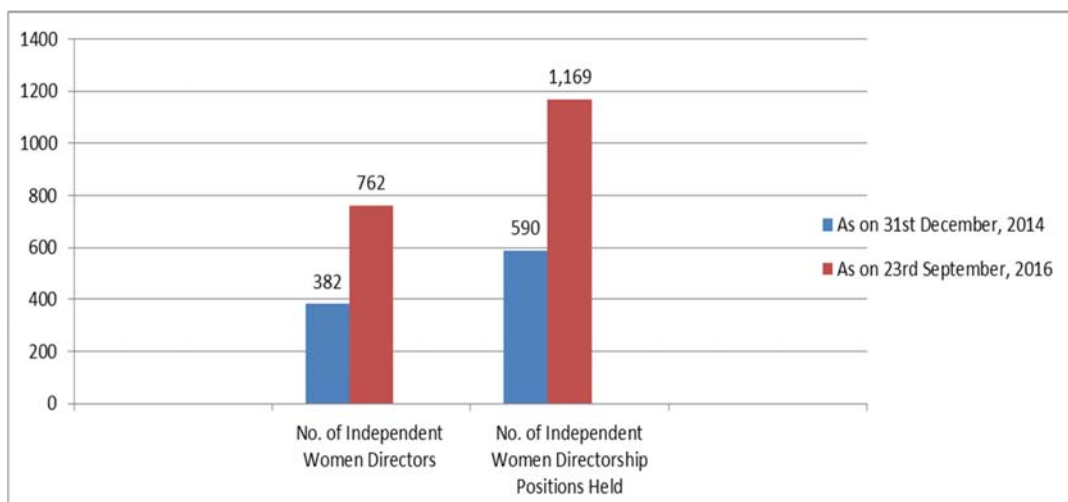
All Women Directors (for NSE-listed companies only)

	As on 31 st December, 2014	As on 23 rd September, 2016
No. of Women Directors	908	1,421
No. of Women Directorship Positions Held	1,228	1,923



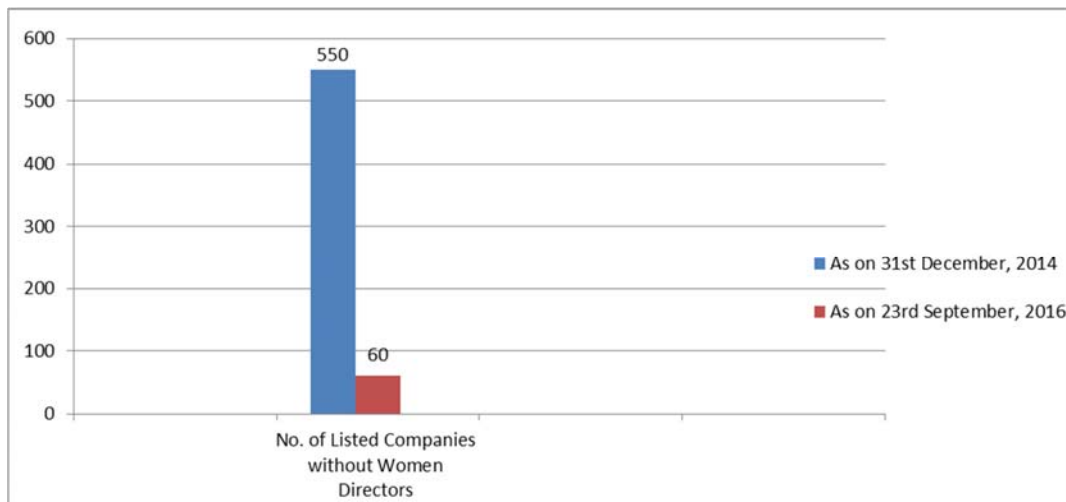
Independent Women Directors (for NSE-listed companies only)

Details	As on 31 st December, 2014	As on 23 rd September, 2016
No. of Independent Women Directors	382	762
No. of Independent Women Directorship Positions Held	590	1,169



Listed Companies without Women Directors (for NSE-listed companies only)

Details	As on 31 st December, 2014	As on 23 rd September, 2016
No. of Listed Companies without Women Directors	550	60



From the above tables and charts it can be inferred that

- 1) Diversity on Corporate boards in India was quite low previously, because many companies did not have any female directors; as of 31st December 2014, only 8.9% of directors at Indian companies were women. On 31st December, 2014, in about 1,468 NSE listed Indian companies, out of total 10,185 directors 9277 were men and a marginal number of 908 were women. The numbers of Listed Companies without Women Directors were 550.
- 2) After the introduction of New Companies Act, many companies appointed female directors; and as on 23rd September, 2016, 14.15% of directors at Indian companies are women. On 23rd September, 2016, in about 1,573 NSE listed Indian companies, out of total 10,036 directors 8,615 were men and a marginal number of 1,421 were women. The number of Listed Companies without Women Directors is 60 as on 23rd September, 2016.

Conclusion

A study entitled “Women on Boards: A Policy, Process and Implementation Roadmap” conducted by Biz Divas and Khaitan & Co. provides useful discussion, analysis as well as some empirical findings about gender diversity in Indian corporate boards as compared with developments on the global scene. (Report given in August, 2014). The report highlighted the discussions held in 8 cities by conducting ‘roundtables’.

The eight cities covered were Kolkata, Hyderabad, Chennai, Bengaluru, New Delhi, Gurgaon, Pune & Mumbai. These roundtables were attended by CEOs, CFOs, proprietors and HR heads of various organizations and the different perspectives that were received with respect to this amendment was captured in the report. As per the report, while the introduction of gender diversity in India is welcome, providing a legislative mandate is not a solution, and much lies in its actual implementation. Matters such as diversity extend beyond regulation and must percolate into the culture and DNA on the business organizations.

The Companies Act, 2013 also provides that the independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by anybody, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such director. There is a requirement of more and more professionals for serving as Independent directors on the boards of Corporate. One such database is “The Prime director’s database” which had 4494 professionals registered on the portal for selection as Independent Directors and of which only 382 (8.5%) were Women as on 31st December, 2014. As on 23rd September, 2016 a total of 17,443 professionals have been registered on the portal for selection as Independent Directors and of which only 787 (4.51%) are Women.

So the underlying fact remains that:

- 1) Gender diversity must be accepted in spirit and not just as a matter of law (that usually evolves into a mechanical “check-the-box” requirement). There is a need to guard against tokenism. It is not sufficient to merely appoint a woman director for the sake of compliance. What is required is a careful scrutiny and analysis of the strengths and contributions an individual woman director brings to the board.
- 2) Once the appropriate individual is appointed, the woman director’s contribution must be valued and duly harnessed by the company. Again, it would depend upon the board dynamics in individual companies and also the approach adopted by the chairman and the management.
- 3) A question remains whether a single woman director on a large board is likely to have any impact. Other countries (prominently Norway) have adopted the approach of requiring a larger number of women directors. This is with a view to ensure that gender diversity has the required impact on the boards. Empirical evidence discussed in the abovementioned

- report suggests a robust build-up of board diversity in Norway with nearly 40% directors comprising women.
- 4) While a growing number of companies and investors acknowledge that greater board diversity is good, opinions differ as to how best to achieve this. Some argue for quotas requiring companies to put a minimum number of women on boards. They point to the rise in female representation at board level in countries such as Norway and France, which has occurred subsequent to quotas being introduced in these countries. However, others argue that quotas undermine the principle of equality, are patronising to women and can result in situations whereby women are appointed as mere figures-heads who take on multiple boardrooms to fill quotas. Instead, they argue for a more business-led approach whereby directors are appointed on merit and business leaders take affirmative action in moving voluntarily towards a better gender diversity. At the global level, larger companies are found to have more women on their boards, probably due to their high visibility and consequently outside pressure for greater diversity.
 - 5) Progress towards higher female participation at senior levels of corporate India is likely to require more action by the government, the wider business community, and individual companies. The presence of women on boards needs to be reinforced not only for the sake of creating more equality per se, but as a way of improving the corporate governance practices. More women participation in boardrooms must not be an end in itself. Tangible benefits must be associated with such increased participation. More women should be on boards because of the evolving role of the corporate boards impelled by globalization, tackling unanticipated competition and the need to understand new and different cultures and business climates. Concerted efforts for gender diversity in boardrooms are a necessity. How can we ignore a huge talent pool and expect to succeed in our global economy? It comes down to having the best and the brightest - of both genders - guiding companies that are really in tune with what's happening in the market and the broader economy.
4. <https://www.icsi.edu/WebModules/CompaniesAct2013/Gender%20Diversity-Latest20012015.pdf>.
 5. <http://www.primedirectors.com/>.
 6. Deloitte Global Services Limited, Women in the Boardroom: A Global Perspective, 2011.
 7. Chartered Secretary, The ICSA magazine, 2012.
 8. Women on Boards: A Policy, Process and Implementation Roadmap conducted by Biz Divas and Khaitan & Co., (Report given in August). 2014.

Hence, while the requirement of one woman director can be considered to be the beginning of the progress towards gender diversity, the issue may have to be revisited over a period of time to explore if changes are required so as to provide for a greater number of women directors. Of course, in such a case the availability of the requisite number of women directors would also have to be considered.

“The situation is not going to change the next day; it is an ongoing process. Increasing the population of female professionals would help female talent to be more comfortable at work and help people to stay in their positions.”

- Misaki Jinnai, Deutsche Securities, Inc

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3. <http://indianboards.com/pages/index.aspx>.