

Women Directors & Board Diversity: Legal Framework & Role of Company Secretary

The representation of women on Corporate Boards has become crucial for fostering diversity within the Board. The article outlines the legal framework governing Women Directors in India and emphasizes the Company Secretary's role in routinely assessing board structures, equitable recruitment practices and succession planning for women directors, thereby guaranteeing that the Board's composition adheres to legal standards.



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INTRODUCTION

In recent years, Corporate Governance has witnessed a transformative shift towards gender equality that fosters innovation, improve decision-making and contribute to long-term success. The research studies have consistently shown that diverse Boards enhance corporate performance, risk management and shareholder value. However, women are still underrepresented in corporate Boardrooms, highlighting the gap between intentions and real progress.

Historically, corporate leadership has been male dominated, with women facing systemic barriers to Board appointments. However, the landscape has been changing due to legal mandates, regulatory interventions, and increased awareness of diversity's benefits. India has made significant progress, especially after the enactment of the Companies Act, 2013, which mandated the inclusion of at least one 'Woman Director' in certain companies.

Despite improvements, women still represent a minority on corporate Boards. According to the 2022 "Board Diversity Index" by Spencer Stuart, women occupy only 18% of Board seats in India, compared to 30% in developed markets like the UK and the US. This highlights the need for continued efforts to bridge the gender gap.

LEGAL FRAMEWORK FOR WOMEN DIRECTORS IN INDIA

The representation of women in corporate leadership has become a key focus for regulators and policymakers in India. With an aim of recognizing the importance of gender diversity, the Indian legal framework mandates the inclusion of women on corporate Boards and promotes a safe and equal working environment for women in leadership roles. This

section outlines the key legal provisions ensuring women's participation in governance structures and compares India's regulatory approach with global best practices.

1. Companies Act, 2013: Mandatory Provision for Women Directors

The Companies Act, 2013 introduced a significant reform by mandating the appointment of Women Directors in certain class of companies. As per Section 149(1) of the Act, every listed company and certain classes of public companies (with paid-up capital of ₹100 crore or turnover of ₹300 crore or more) are mandatorily required to appoint at least one Woman Director on their Board. If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees. This requirement aims to enhance diversity, bring fresh perspectives into corporate decision-making, and improve governance standards.

- **Impact of the Companies Act, 2013:** Since the introduction of this provision, India has seen an increase in the number of women on Corporate Boards. According to a 2023 Deloitte study, women held 18% of Board seats in India, up from 11.2% in 2017. While this is a step forward, India still lags behind countries like France (44.7%) and the UK (40.2%), where stronger legislative measures have been implemented.

2. SEBI (LODR) Regulations, 2015: Board Diversity Requirements for Listed Companies

To further strengthen Board diversity, the Securities and Exchange Board of India (SEBI) introduced regulations under the Listing Obligations and Disclosure Requirements (LODR) Regulations, 2015. Key provisions include:

- **Mandatory Appointment of a Woman Independent Director:** SEBI requires the top 1000 listed companies (by market capitalization) to have at least one Independent Woman Director on their Board. This ensures that Women Directors play a role in objective decision-making rather than merely fulfilling a regulatory requirement.
- **Diversity Disclosures:** Listed companies must disclose their Board diversity policies, including the representation of women in leadership positions, in their annual reports.
- **ESG and Business Responsibility & Sustainability Reporting (BRSR):** SEBI's revised reporting

framework under BRSR mandates disclosures on gender diversity in corporate governance, reinforcing the link between sustainability and inclusive leadership.

- **Impact of SEBI Regulations:** SEBI's proactive approach has contributed to a gradual increase in women's representation on Boards. According to a 2023 Prime Database report, women hold around 19% of Board positions in NSE-listed companies, a substantial improvement from 6% in 2013. However, the pace of progress remains slow, indicating the need for stronger enforcement and cultural shifts in corporate leadership.

3. POSH Act, 2013: Ensuring a Safe Workplace for Women in Leadership

A critical aspect of enabling women's leadership in corporate governance is ensuring a safe and conducive work environment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) provides a legal framework for addressing workplace harassment. Key provisions include:

- **Mandatory Internal Complaints Committee (ICC):** Every organization with 10 or more employees must establish an ICC to handle complaints related to workplace harassment.
- **Employer's Duty to Prevent Harassment:** Companies must take proactive steps to create a safe and inclusive work environment, including conducting training sessions and ensuring proper grievance redressal mechanisms.
- **Protection of Women Directors and Senior Executives:** The Act applies to all employees, including Board members and senior leadership, ensuring that women directors are protected from workplace harassment and discrimination.

The results of Diverse Boards can be observed in improved decision-making, increased trust, and adherence to regulatory standards.

4. Global Best Practices

- India has made notable progress in promoting gender diversity on corporate Boards, **Stronger quotas lead to better representation:** Countries like Norway and France, which enforce strict quotas (40% Women Directors), have achieved significantly higher gender diversity.
- Voluntary vs. Mandatory approaches:** The UK has improved diversity through voluntary targets and industry-driven initiatives, demonstrating that a mix of regulations and incentives can be effective.
- Broader diversity beyond Gender:** Some jurisdictions are moving towards diversity policies beyond gender to include factors such as ethnicity, age, professional background and disability inclusion. This approach ensures a more holistic and representative leadership structure, fostering diverse perspectives in decision-making.

ROLE OF COMPANY SECRETARY IN ENSURING COMPLIANCE

Company Secretary (CS) serve as key governance professionals responsible for ensuring that businesses comply with regulatory frameworks, including those mandating gender diversity on corporate Boards. Their role extends beyond statutory compliance to fostering an inclusive corporate culture that promotes women's leadership. Below are the key ways in which CS can contribute to Board diversity and gender inclusivity:

1. Ensuring Board composition aligns with regulatory mandates:

One of the primary responsibilities of CS is to ensure that Board composition complies with legal requirements. Under Section 149(1) of the Companies Act, 2013, every listed company and certain classes of public companies are mandated to have at least one Woman Director. Additionally, the SEBI (LODR) Regulations, 2015, require the top 1000 listed companies (by market capitalization) to have at least one Independent Woman Director.

To fulfil these obligations, CS professionals should:

- regularly review Board structures to ensure compliance with diversity laws;
- advise companies on succession planning to maintain the required gender balance and
- coordinate with nomination and remuneration committees to ensure fair representation of women in leadership.

Failure to comply with these mandates can result in penalties and reputational damage, making the role of CS crucial in ensuring timely adherence to regulatory requirements, and CS is also categorised as officer in default under the Companies Act, 2013.

2. Assisting in the appointment and governance of Women Directors:

Beyond ensuring compliance, CS play an instrumental role in the appointment process of Women Directors. They facilitate transparent and merit-based selection processes that align with corporate governance best practices.

Key responsibilities include:

- To assist in the recognition and recruitment of qualified women candidates.
- To coordinate with external agencies, professional networks and leadership programs to expand the talent pool of eligible Women Directors.
- To ensure a fair and unbiased selection process by working with the nomination and remuneration committees.
- To provide governance support to newly appointed Women Directors by familiarizing them with Board protocols, corporate strategies and compliance frameworks.

By actively participating in Board appointments, CS professionals contribute to breaking gender barriers and ensuring that Women Directors are selected based on their expertise and leadership potential.

3. Drafting policies for women participation and inclusivity:

A company's commitment to gender diversity must be rooted in its policies and corporate culture. The CS play a crucial role in formulating and implementing gender diversity policies at all levels of the organization.

Some of the key policies that CS professionals can help in draft and implement include:

- **Board Diversity Policy:** Establishing guidelines for gender-balanced leadership.
- **Equal Opportunity Policy:** Ensuring non-discrimination in hiring and promotions.
- **Workplace Inclusivity Policy:** To create a safe and supportive work environment for women.
- **Parental leave and flexible work policy:** By encouraging work-life balance to retain women in leadership.

By proactively developing these policies, CS help organizations move beyond mere compliance and foster a culture that genuinely values diversity.

4. Advising on ESG related gender diversity disclosures:

With the growing emphasis on Environmental, Social, and Governance (ESG) factors, investors and regulatory bodies are increasingly evaluating companies based on their commitment to diversity and inclusion. The BRSR requires listed companies to disclose their gender diversity metrics, including the percentage of women in leadership roles.

Company Secretaries play a pivotal role in:

- Advising Boards on ESG requirements related to gender diversity.
- Ensuring accurate reporting of gender diversity data in annual reports and sustainability disclosures.
- Assisting in drafting comprehensive ESG reports that highlight the company's efforts in promoting inclusivity.
- Engaging with stakeholders, including investors and regulators, to showcase the company's commitment to diversity focusing on women.

By strengthening gender diversity disclosures, CS professionals help organizations align with global governance standards and enhance their reputation among stakeholders.

IMPACT OF DIVERSITY ON DECISION-MAKING AND COMPANY PERFORMANCE

Multiple studies have shown that gender-diverse Boards lead to better governance, enhanced performance and improved corporate reputation. Key benefits of Board diversity include:

- Better decision-making:** Diverse Boards bring different perspectives, experiences, and problem-solving

approaches, leading to more balanced and well-informed decisions. Research indicates that companies with diverse Boards are less likely to engage in unethical or risky business practices.

- Enhanced corporate reputation and stakeholder trust:** Companies that prioritize diversity and inclusivity are seen as progressive and socially responsible. This enhances their brand reputation, attracts investors, and fosters trust among employees, customers and stakeholders.
- Stronger employee engagement and retention:** Women participation at the leadership level signals a commitment to equality and fairness, which can boost employee morale, engagement and retention rates. A diverse leadership team sets a positive example encouraging talent across all levels of the organization.
- Alignment with ESG and regulatory expectations:** Investors and regulatory bodies are increasingly focusing on Environmental, Social and Governance (ESG) criteria, including Board diversity. Companies with diverse leadership teams are better placed to meet these expectations and maintain compliance with global governance standards.

CONCLUSION

While India has made notable progress in promoting gender diversity in corporate governance, to accelerate change, future reforms should focus on stricter enforcement, expanding diversity requirements, and fostering cultural shifts within organizations. By adopting a progressive and inclusive governance framework, India is paving the way for more equitable Boardrooms, ensuring that talented women leaders get the opportunities they deserve to shape the future of corporate leadership.

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