



# GENDER BENDER

Balancing diversity with qualified, independent directors is the need of the hour for emerging India

**T**he government is proposing to bend the provisions to make way for at least 1 female independent director on the board of a company.

Women may have always strived to be at the forefront and to add power to this muscle of theirs, the government is proposing a mandatory provision for companies with 5 or more independent directors to have at least 1 female independent director. This proposal which would

be part of the Companies Bill 2009, is expected to be tabled in the current session of the Parliament.

## First Move

Before gauging the success of this move, it is equally important to look around the world for similar moves. Norway set many minds aflutter when it passed a law in 2003 requiring 40% of all company board members to be women. This provision has been successfully implemented

both in public and privately held companies with a significant number of women directors being inducted.

The reservation of seats in Parliament for women faced rough times in India. Moreover 'women reservation' issues, be it in Parliament or a boardroom are always considered a disruptive provision and have to pass through the male desks for getting majority—so that has its own challenges. Thus absolute smooth flow without any objection is not



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expected. However, this seems to be a positive move towards gender equality.

After Norway it was the turn of France, Spain, and UK. However recently a government minister in UK made a statement that such a move to reserve 40% seats for women as board members would not prove to be a successful measure. Apart from that even the successive British government has voiced its apprehensions about quotas being the wrong manner to tackle the issue which needs to be combated by making appointments on meritocratic basis.

The roots of these apprehensions can be traced to the reservation policies that were faced with the challenge of being rightfully implemented. The fear expressed in UK is the outcome of a survey in which it

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was found that in Norway and Sweden, some otherwise efficient business women were spending all their time going from one corporate board room to another, with very little professional output. This happened after the women reservation law was passed and the corporates struggled to find suitable women candidates. With the passage of time and matu-

rity, the system is bound to be more efficient and a number of qualified women should be there to fulfil the demand.

### Demand and Supply

If countries like Norway and Sweden have faced a dearth of talent, will the scenario be different in India? The implementation and the qualifying criteria of selection will be important. The definition of deserving woman candidates for boardroom will be critical. Industry body Assocham, in a study titled ‘Corporate Women: Close the Gender Gap and Dream Big’ reflected that women executives would play a fundamental role in shaping market-leading institutions. However the study said that presently out of 1,112 directorships of 100 companies listed on the Bombay Stock Exchange, only 59 positions or 5.3% are held by women compared to 15% in Canada, 14.5% in the US, and 12.2% in Britain.

“There definitely is a dearth of women in leadership positions today, except for financial services. Unless we have a systemic approach to encourage women into senior positions, we have a ‘supply’ problem,” feels Aruna Jayanthi, chief executive officer, Capgemini India.

Seconding this opinion, Sujata Dev, co-chairperson (Entertainment Committee) Assocham and joint managing director, Third Generation Mobile says, “There are opportunities galore for talented women professionals. But the fear is that the law should not spawn a growing class of professional ‘board sitters’ which in Norway is coined as ‘The golden skirts’. Then the whole essence and purpose of the legislation would be lost.”



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## Success Rate

This provision may open new doors of opportunities for women professionals but its success rate is dependent on a number of factors—good professional experience, and change in the social mindset. Worldwide, women board members is about 10%. In India most of the Indian corporate boards are bastions of male members despite having equally qualified women candidates. There are only 5.3% women in corporate boardrooms which is disproportionately low. To give a fair representation, a limited few years of reservation regime may be useful. However, just being a woman should not be the criterion. There has to be pre-requisite qualifications defined. An executive director or even an independent director plays an important role in the decision making, strategy, and growth of the company. Directors are not decoration pieces hence the quality should not be compromised in the name of mere reservation. So the success would depend on the reservation quota being filled only by suitable and eligible woman candidates, or else in the long run the quality of output will suffer.

“It will depend on the timeline for the proposal to be fully implemented. If this is to be achieved in the next 1 year, it is extremely difficult but if there’s a timeline of 3-4 years then it is feasible. The other key factors to consider for success are availability of senior women who can take on these positions and also the ability of a company to make this change work and get the benefits rather than just paying lip-service for compliance purposes. The efficiency to ensure compliance of the provisions



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—Advocate Karnika Seth, attorney at law and partner, Seth Associates

also depends on the wording/text of the actual proposal and what eventually gets passed. If it is just a general guideline without any measures to monitor compliance or without a clear statement on repercussions of non-compliance, then it will not have any teeth,” feels Jayanti.

## Pros and Cons

Gender discrimination has been prevalent all across the globe and India has been no exception. Around

the world only 18.8% of national parliamentary positions are held by women and in India it’s only 10.8%. Boardroom representation also has a large gap, globally 10% and in India 5.3% are represented by women. Even in the US, roughly 15% of the board members of the Fortune 500 companies are women as reported by Nicola Clark in her recent article in the *New York Times*. When it comes to top of income scale, the salary gap between equally qualified men and women is vast. Defined reservation is a good way of bridging the gap and establishing gender equality. But the spirit should be to give the deserving women the right place in the boardroom and not deprive them due to gender bias. The fairer sex have proved their capabilities and anyway they have competed and excelled. They need no favor but the oppor-



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tunity to get what is rightfully theirs. Reservation should facilitate this spirit and implement it accordingly.

Board representations should be reflective of the talent and customer composition. Outside India there is a very strong association between high percentage of women on corporate boards and improved corporate governance. "I think it's a good proposal. I am certain that they will be excited. Every woman who is offered a senior management position will want it purely on merit and because she is truly right for the job, however there are times when a little bit of positive discrimination helps nudge the momentum in the right direction," opines Jayanti.

Currently this provision has not been expressly incorporated in the new Companies' Bill, 2009. The success of the provision will depend on the manner in which the parliament formulates this policy and mentions about the effective mechanism for its implementation. Once it gets implemented only then the plugs to certain loop holes can be found. It is not a full proof provision. The substance in the provision will evolve only in a practical environment and the government has to be open to amendments. "It is undoubtedly a good proposition and as a woman entrepreneur I whole heartedly support it. Such reservations have been adopted by progressive countries like Norway, Sweden, Spain, and Netherlands. On the other side of the spectrum we have countries like Japan and Korea that are mulling over the issue as they have negligible percentage as women in decision making chairs," feels Dev.

Rita Soni, CEO, Nasscom Foundation says, "Balancing diversity with qualified, independent directors is the need of the hour for emerging India. While legislation is a step, the future ideal is that this balance is an everyday part of responsible business practices. In a multiplicity of voices,

## At a Glance

- The government is proposing to introduce a mandate for companies with 5 or more independent directors to have at least 1 female independent director
- This proposal would be part of the Companies Bill 2009
- Success of the provision will depend on the manner in which the parliament formulates this policy
- The role and authority of the director is clearly defined and was never gender specific

leading to better ideas and better governance. Just as India thrives on her diversity, businesses too can look forward to a balanced and diverse approach particularly so as there is no dearth for inclusion. Nasscom Foundation is working with the IT-ITeS industry to shift non-strategic CSR to a core-focused responsible business. A diverse board is one step in that direction."

"I think this is a good proposal. However I feel only deserving candidates should hold this responsibility and the appointment should be merit

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based. It is going to be well accepted in women and indicate growth and a promising future. We will have to wait and see how the benefits of corporate reservation would further empower the women of India," feels Advocate Karnika Seth, attorney at law & partner, Seth Associates.

## Fears Aplenty

The role and authority of the director is clearly defined and was never gender specific. But in a bid to even the road for the fairer sex and create equal opportunities for them, the recent provision may have been formulated. The provision may, on gaining Parliament nod, open the doors of opportunity but it also brings out the fear that appointments could be made merely for the sake of appointing. This would lead to the real talent pool being ignored or even the mere appointments made lacking power to make their voice and presence felt.

"Being puppets in the hands of their male counterpart is something that exists even in the current scenario, especially in politics. So this fear to an extent is genuine. Out of the 5.3% female directors in the decision making positions, 80% are mere position holders but not decision makers. The freedom of decision making is important, mere designation in a family run business is not what the revolution is all about. Reservation has to ensure that such victimization of women in the hands of males, under the guise of a law should not happen. This provision is a bold and positive step but compliance and adaptation by the organizations in the right spirit will spell its success," feels Dev.

On a final note, the government may provide a path for the talented women but it entirely depends on the individual female director to ensure how she exercises that power to make sea of a difference.

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