

**APPOINTMENT OF WOMEN DIRECTOR: AN IDEA MORE PRACTICAL ON
PAPER**

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ABSTRACT

This article deals with disinclination of corporations with regard to appointment of women directors around the world. The article also highlights the invaluable contribution that women make to the corporation and also bring the feminist ethical value to businesses. Further, there is a discussion that why quotas are allocated for appointment of women directors and why these measures are ineffective and no significant changes are visible. The idea of 'Justice as fairness' as propounded by John Rawls is studied closely, that whether his theory can be put to use with regard to providing reservation to women directors.

Lastly, what are the measures that the bodies like the registrar of companies and other sectoral regulators can take to provide opportunities to women and treat them with fairness in the workplace.

Key words: Women Directors, Feminist ethical values, feminist jurisprudence, gender equality, diversity.

“If you want something said, ask a man; if you want something done, ask a woman”

-Margaret Thatcher

This statement was given by Margret Thatcher, the first female British Prime Minister at the National Union of Townswomen’s guild Conference on May 20, 1965¹. She was undoubtedly correct in making this statement. Women around the world have proved their competency with hard work and zeal in every sector be it business, arm force, politics research and entertainment. It was not long ago that women were not allowed to join the workforce around the globe. The job sector was male dominated and it was only during the second world war, when men were off to war in countries like UK and USA. Women had no option but to take up jobs and run the businesses that men left behind to be able to earn the daily bread. In less than a century woman has challenged all notions of patriarchy and managed to hold on to jobs, run business, explore entrepreneurship while fulfilling family responsibility and mothering children.

This was the beginning of the idea of women in boardroom. As the idea of working female force catching up to speed. It became very important to have women on board in an important position. Having female director is not only about diversity in the boardroom but they also bring a female point of view, which is crucial to many businesses. The idea of women director appeals the idea of feminism which a larger part of society has now accepted.

RECOGNIZING FEMINISM

The idea of feminism became popular post world -war. Where women had already joined the workforce and were getting education and training to pursue different careers. In the beginning, the right of women were advocated to identify the needs of the women in the workplace which were different from a man. But in the 1910s the progressives of the society formally used the term ‘Feminist’ which was the starting point of a movement. Feminism as a concept simply means ‘to identify a person who believes in the societal equality and liberation of women’.²

The radical theory of feminism advocated for understanding of law, religion and society. Which because of its inherent biasness place women in a position subordinate to men. If women wanted to be treated equally, they had to make a place in the society through law. The idea of women alongside of men did not fit into the traditional roles that the church preached. The

¹ <https://www.margaretthatcher.org/document/101374>, Margaret Thatcher Foundation, Speech to National Union of Townswomen’s Guilds Conference

² Feminist Philosophy, Stanford Encyclopaedia of Philosophy, (July 9th, 2022, 11:35 pm)
<https://plato.stanford.edu/entries/feminist-philosophy/>

practice was that a woman needs to be protected by the man in all of senses be it physically, financially and in order to set moral standards of a virtues. The advocates of feminist movement, on the other hand also demanded that women should be protected by not by men but by the principles of legal justice. At this point, it became a clear that the only way for women to make a place for themselves in the institutional set up is by participating in them as an equal and not a subordinate. This in itself was a challenge as women at institutional level were seldom given the opportunity to enter the all-boys clubs. Thus, began the long history of quota allocation for women in different social set up ex: politics, job sector and business. The idea of feminism gained flesh and blood in the movement for adult suffrage. But soon after the women got the right of suffrage. The due recognition was given to male activists, agencies and scholars who advocated women's right. That is when Feminism was understood as a tool for societal revolution and it was not just exclusive to some rights but the new idea was emerging which advocates equality to women in all sections of society.

INCORPORATING THE IDEAS OF FEMINIST JURISPRUDENCE IN MODERN DAY BUSINESS STRUCTURE

Corporate governance is being looked at from different perspectives around the globe. The billion dollar financial scams happening in almost every country is not only siphoning the public money but also creating trust issues among the foreign investors.³ As a result the whole concept of Corporate governance is being revisited by scholars to address the problems at the grass root level. When closely investigated, it was pointed out that because of the business area is mostly male dominated, it is easier to slip the ideas of swindling. There is easiness among the members and stakeholders to pass the ideas of treachery as it is all done in a predictable atmosphere of camaraderie.

Placing a feminine authority in corporations, will not only mean diversity and inclusion. But it is directly proportionate to encompassing the ideas of female ethical values in the business model. Women have the intrinsic quality of relationship building and communication⁴. According to ILO, since 1991 there has been a significant rise in participation of women in managerial positions around the globe other than Middle eastern nations and northern Africa.

³ Financial frauds are sore point for foreign investors: Study, Business Line, (July 10th, 2022,11:45 pm) https://www.business-standard.com/article/current-affairs/financial-frauds-are-sore-point-for-foreign-investors-study-116072200539_1.html

⁴ The business case for change, ILO Report, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_700964.pdf

Dobson and White were among the scholars believed that the values brought by Feminine ethics in business were there of fairness and inclusion. In contrary to that of Masculine ideas of competitiveness and promotion of individualistic ideas. They went further in putting the perspective that feminine management was superior in building ethical relationships with customer and generated bonds of trust and respect.

This gives rise to the importance of feminist ethics in Business. The idea of feminist ethics emerged as a discipline to understand male privileges and the underrated valuation of a women's contribution to the society at large.⁵ As a result of the inherent bias towards women, their point of view to social setups have been long ignored depriving institution of a chance to incorporate feminine values.

Application of Rawls theory of 'Justice as fairness' in placing women in Corporations

Rawls gives a neutral view of natural justice which gives the idea that equality and fairness form the basis of justice⁶. He advocates the idea of interdependence of beings, resulting in cooperation and relationship building. In his idea of basic principle of Justice, personal self-interest is excluded. The basic principles of Justice will bring primary social goods. The primary social goods are basically opportunities to all, power and minimum wealth. Power and opportunity form the basis of a fair society and it should be accessible to all in the society, all men and women from all walks of life.

The principles of justice as explained by Rawls can be categorized separately. The first purpose of justice is basic liberty given to individuals in order to establish liberal ideas in the society.⁷ Secondly, he believed the purpose of natural law is to minimize the social and economic inequalities. This can be achieved by providing opportunity to the least advantaged of the society. Another method for inclusion suggested by Rawls is that the official positions should be open to all and fair opportunities are to be provided.

WOMEN IN BOARDROOM

⁵ Feminist Ethics, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/index.html>

⁶ Dias Jurisprudence, fifth edition, Lexis Nexis, page. 116

⁷ John Rawls, Stanford Encyclopaedia of Philosophy, <https://plato.stanford.edu/entries/rawls/>, (July 9th, 2022, 11:35 pm)

The task of ensuring diversity in the boardroom was then taken up by the policy makers. Norway was the first country to incorporate the idea of women director and directed the companies to appoint women directors. In the year 2003, It allotted quota for the appointment of women directors.⁸

The time given to the corporations to appoint women directors was only two years as a result there was a significant rise in the number of women in companies in Norway. However, there was opposition to the quota-based allotment. It was argued that compulsory appointment would lead to putting undeserving candidates into position. Which will bring down the performance of the corporations. But this was proved to be a wrong proposition as widely appointment of women had no immediate positive or negative impact on the business,⁹ But other than financial gains. Women directors did add a feminine value to the Board. After Norway similar ideas were incorporated around the globe.

STUDY OF JAPAN, IRELAND AND USA: LAWS FOR AN INCLUSIVE BOARD ROOM

Japan

For a very long time, Japanese companies have failed to diversify their Boardroom and only six percent women are appointed as directors in the Japanese listed Companies.¹⁰ Along with the issue a smaller number of women in Japanese boardrooms. There is a huge pay – gap between the male and the female employees and there is virtually no maternity benefits and women have to leave their jobs after having children because of lack of benefits in the workplace The Japanese Government envisioned that by the year 2020, the Japanese boardroom will consist of 30% women directors but in reality, the number is still stuck at 13 %.¹¹ Along with that the vision to seat women in the top corporate positions is still far from reality. In 2021, Japan revised its corporate governance code, to span gender diversity in the workplace. The code had incorporated many new age ideas like climate risk disclosure and appointment of women directors, non-Japanese directors.

⁸ <https://library.fes.de/pdf-files/id/ipa/07309.pdf>, International Policy analysis

⁹ QUOTAS TO GENDER-BALANCE THE BOARD: NORWAY'S DRASTIC ACTION WORKED, <https://www.ideasforleaders.com/ideas/quotas-to-gender-balance-the-board-norway%E2%80%99s-draastic-action-worked> , (July 9th, 2022,12:35 pm)

¹⁰ Few Women Ascend Japan's Corporate Ladder. Is Change Finally Coming?, <https://www.nytimes.com/2021/08/25/business/women-japan-companies.html> (July 9th, 10:48pm)

¹¹ Japan pushes to put more women in the boardroom, <https://asia.nikkei.com/Politics/Japan-pushes-to-put-more-women-in-the-boardroom> (July 9th, 10:40 pm)

Ireland

In 2021, Ireland passed a bill called the Irish Corporate governance (gender balance) bill, 2021. The bill aims to increase the women representation in the board by 33%. The companies have to comply with the provision. Otherwise, they will be subjected to summon by the court. Wherein, they will be required to provide a proper explanation. This law was passed following the lines of other EU nations like France and Germany.¹²

WOMEN DIRECTORS IN INDIA AND ISSUES WITH THEIR APPOINTMENT

As per section 149(1) that a certain class of companies need to appoint women directors in their board of directors. The Act requires every listed company along with public company having paid-up 100 crores, and turnover 300 crores also need to appoint a women director. India is lagging behind in the said goal of appointing women directors.¹³ Non-appointment of women director can lead to heavy penalty under section 172 under the companies Act, 2013

As this law has been mandated and is strictly monitored by SEBI. Most listed companies have appointed women directors in India. But the focus is doing the bare minimum and not equality and inclusion. It is difficult for the authorities to understand the reason as studies have shown that companies with more than one women director have outperformed and the companies with two or three women directors have lesser chances of insolvency and show consistency in growth.¹⁴

Along with the statutory compulsion and the SEBI mandate.¹⁵ The Registrar of companies are taking measures to appoint women director. The ROC passed an order dated 03rd March, 2022 stating that there is a penalty from fifty thousand rupees to three lakh rupees upon the officer who contravene the section.¹⁶

CONCLUSION

¹² Irish Corporate Governance (Gender Balance) Bill 2021, <https://www.oireachtas.ie/en/bills/bill/2021/124/>

¹³ Companies Act, 2013

¹⁴ Women on Board

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/1-745-women-on-boards.pdf

¹⁵ <https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3&smid=0>, SEBI (LODR)

¹⁶ ROC ADJUDICATION ORDER DATED 03RD MARCH 2022 FOR VIOLATION OF 2ND PROVISIO OF SECTION 149(1) OF CA 2013 (NON APPOINTMENT OF WOMEN DIRECTOR), <https://businessosimple.com/2022/03/04/roc-adjudication-order-dated-03rd-march-2022-for-violation-of-2nd-proviso-of-section-1491-of-ca-2013-non-appointment-of-women-director/>

In spite of the value addition a woman does to a corporation both in terms of finances and morality is invaluable. But still there is a lot of hesitance around the appointment. Some of the probable causes are:

- Lack of training and inadequacy of skillset for the appointment in the position of director.
- Over shadowing of talented and deserving female candidates in a male dominated workplace.
- Lack of check and balance mechanism.
- No provision for maternity benefits.
- Lack of constant monitoring by bodies like the SEBI and ROC.
- No immediate repercussion for the falling short of the said provision.

But in spite of the above-mentioned causes of the lacking approach to appointment of women directors. A number of measures can be taken to improve the statistics.

- Increasing the requirement of women director from one to two (minimum). And a compulsory appointment of independent women director.
- Training the potential candidates before their appointment.
- Stricter scrutiny by the registrar of companies should be applied. With immediate action for non-compliance.

It is important to understand the contribution of a women to business and what are the inherent skills that she can bring on the table. It is the executive that should take a lead in ensuring the presence of a women in boardrooms.