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RESEARCH ARTICLE

WOMAN DIRECTORS ON THE BOARD OF INDIAN COMPANIES: A MYTH OR REALITY

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Abstract

Recently, the companies, JM Financial Properties and Holdings, Shankar Packagings, Krishna Solvechem, a wholly-owned subsidiary of the Maharashtra State Road Development Corporation were fined for not appointing woman director on their boards. The appointment of a woman director on board was introduced in India in 2013 by enacting the legislation, of the Companies Act, 2013. And, the Listing regulations also made it mandatory for listed companies to have one woman director and the rule was to be complied by April 2015. But, from the incident of imposition of the fine, it can be inferred that there is no complete compliance yet even after 8 years. Therefore, an attempt is made to find out how far the rules relating to women directors have been complied within India.

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Introduction:-

The four Companies were penalized for their failure to adhere to the prescribed rules for appointing women directors by the Ministry of Corporate Affairs.[1] The reason for the inclusion of women on the Board of Directors of the company is to encourage women's Participation in the decision-making process. There was only 6% women representation on Boards in India.[2] Moreover, organizations with women at all levels of organizations are expected to have higher average returns.[3] Diversity is also considered as one of the prerequisites for the survival and performance of companies.

The companies with the greatest gender diversity have generated 34% of the revenues from innovative products and others with the least gender diversity generated 25% of the revenue.[5] In another study, it was found that companies having above-average diversity produce 45% of total revenue from innovation, and companies with below-average diversity produce 26%.[6]

It is also found that a large share of Women on Board may positively affect firm performance and enhance productivity, creativity, and innovation.[7] Another study reveals that equal participation of men and women on Corporate Board is essential for Corporate Governance.[8] Thus, woman on board is an asset for companies.

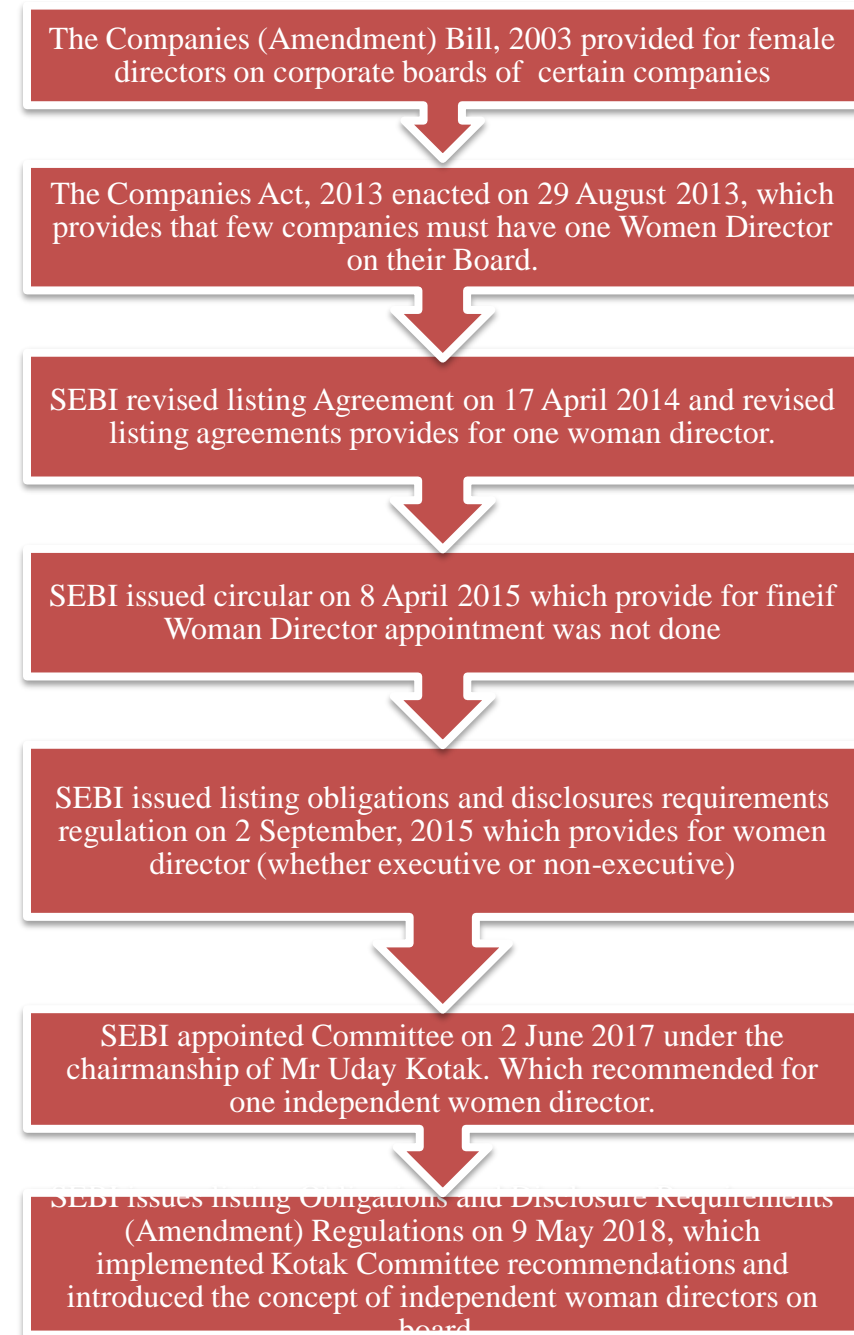
Evolution of Concept of Woman Directors in India

Several countries have mandated minimum representation of women directors on the Board. India has become the first developing country to mandate at least one woman director on the board of listed companies.[9] The Companies (Amendment) Bill, of 2003, which was meant to introduce changes in the Companies Act, 1956, was the first attempt in India to introduce the concept of women directors. It provided that public companies with paid-up capital and free reserves of not less than five crore rupees or a turnover of fifty crore rupees must have a prescribed number of women directors.[10]

Then, the Companies Act, 2013 made it mandatory for certain classes of companies to appoint at least one woman director on its Board. SEBI also revised the listing Agreement to include that the Board of Directors must have at least one woman director in 2014.[11] In 2015, SEBI introduced listing regulation to streamline the provisions of existing Agreements for different Segments of the Capital Market, which replaced the listing agreement. The regulations has provided for the appointment of one- woman director on the Board of listed companies.[12]

In June 2017, the SEBI constituted the Committee on Corporate Governance under the chairmanship of Mr. Uday Kotak. This committee recommended the appointment of one independent woman director on the Board of Directors.[13] Consequently, the Listing Amendment Regulation was introduced, which provided for independent woman directors in certain companies.[14]

Table 1:-Evolution of Concept of Woman Director.



Woman Directors :LegislationsIn India

There are two enactments which deal with woman directors in India. These are the Companies Act, 2013 and Listing Regulations, 2015. The rules for the appointment of woman director are given in section 149(1) of the Companies Act, and regulation 17(1)(a) of Listing Regulations. [Table II]. The amendment in listing regulations provides that top 1000 listed companies must have one independent woman director in the company. And, one study also shows that independent female directors make a significant positive contribution to their firms' financial performance. [15] The Companies Act as well as listing regulations deal with independent director under section 149(6) and regulation 16(1)(b) respectively. [Table III] Section 172 of the Companies Act provides that a penalty of fifty thousand rupees to three lakh rupees for a company and one lakh rupees for guilty officer would be imposed for not appointing woman Director. Similarly, other countries have provisions relating to woman Director on board. [Table IV]

Table II:- Provisions relating to Women Directors in India.

The Companies Act, 2013, S.149(1) with Rule 3 Companies (Appointment and Qualification of Directors) Rules, 2014.

- Every listed company or every other public company which either have paid-up share capital equal to or more than one hundred crore rupees or turnover equal to or more than three hundred crore rupees must appoint one woman director.
- Deadline : company has to appoint woman director within a period of six months from the date of its incorporation.

Securities and Exchange Board of India (Listing Obligation Disclosure Requirements), Regulations 2015, Regulation 17(1)(a)

- Board of directors of the listed entity must have an optimum combination of one woman director whether executive or non-executive director
- Deadline : Board of directors of the top 500 listed entities must have one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities must have one independent woman director by April 1, 2020

Table III:- Independent Director Companies Act 2013 and Listing Regulations 2015.

S No.	The Companies Act 2013 S.149 (6)	Listing Regulations 2015 Regulation 16 (1) (b)
The following persons can be appointed as Independent Directors in a company or listed entity:		
1.	Person of integrity with relevant expertise and experience.	No Change
2.	A person not being a promoter of the company or its related companies.	The person must not be a member of the promoter group of the listed company.
3.	The person must not be related to promoters of	No change.

	Directors of the company.	
4.	The person must not have financial relations with the company or its promoters or Director's exception: <ul style="list-style-type: none"> • Remuneration • Involved in transactions less than 10% of his total income 	There is one change that the value of the transaction is not given.
5.	The person's relative must not <ul style="list-style-type: none"> • Hold any security. • or be indebted to the company. • or given any security. • or has any financial relation of value not less than 2% of gross turnover or total income. 	There is one addition i.e. value of a financial transaction equal to or more than ₹50 lakhs.
6.	He or his relative must not be: <ul style="list-style-type: none"> • Key managerial person or employee of the company. • Employee or Partner of Auditor firm or company secretaries or cost auditor of the company or any legal firm transaction with the company for value not less than 10%. • Holding together not less than 2% of total voting power. • Chief Executive or Director of any Non-Profit organization receiving not less than 25% from the company or any director etc. holding not less than 2% of total voting power. 	There are two additions: <ul style="list-style-type: none"> • The restriction of holding key Managerial personnel is also applicable to any company belonging to the group of listed companies. • They must not be a material supplier, service provider or customer, lessor, or lessee.
7.	-	The person must be 21 years of age
8.	-	He must not be a person who is not an Independent Director of another company in which a non-independent Director of a listed company is an independent Director

Table IV:-Rules in Other Countries.

S No.	Country	Rule	Punishment	Additional Information
1.	Belgium	33% woman on Board of listed countries.	Board would be deprived of benefits accruing to their position.	-
2.	France	40% on Board of listed and non-listed with revenue of more than 500 millionseuro or employing more than 500 person for 3 consecutive years.	New Appointment Void.	30% for women in Senior Executive in companies having more than 1000 employees
3.	Germany	30% woman on Supervisory Board.	Appointment Void.	One woman on Management
4.	Netherland	33.3% of woman on Board of listed countries.	Appointment Void.	-
5.	Norway	40% of woman on Board of listed countries.	Delisting	-
6.	Portugal	33.3% of woman on Board of	Fine	-

		listed countries.		
7.	Finland	-	-	One woman on Management Board

Compiled by author from sources: Marie-Estelle Rey[16] and S. Lakshmi Naaraayanan and Kasper Meisner Nielsen[17]

Woman Directors in India

There are very few studies in this area.[18] One such study is done by Lakshmi and Kasper. The study is related to Gender quotas on boards. The data collected in the study is used to analyse the compliance of the Woman Director Rule in India. The data was collected for the period 2010-2020 of 1000 top firms. But, the data from 2013-2014 to 2019-2020 is analysed in this paper.

Table V:- Companies and Woman Director.

Financial Year	% of Companies with Woman Director
2013-2014	41.13%
2014-2015	93%
2015-2016	98.25%
2016-2017	98.47%
2017-2018	98.80%
2018-2019	98.80%
2019-2020	98.65%

Source: Study by S. Lakshmi Naaraayanan and Kasper Meisner Nielsen

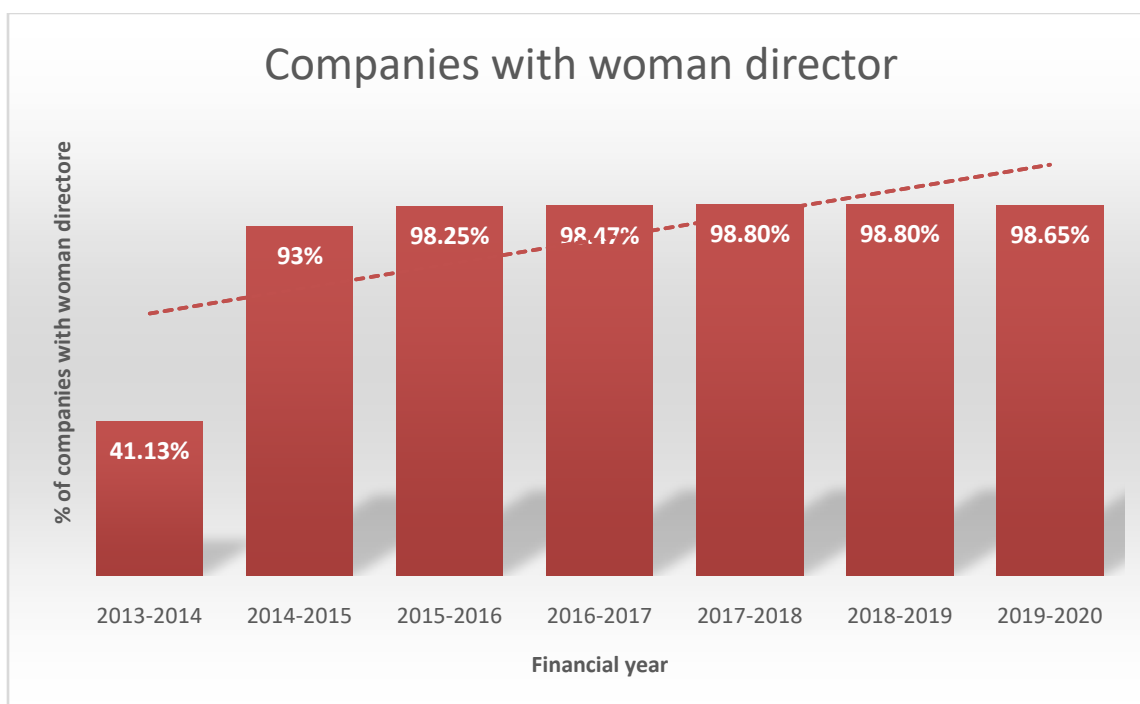


Table V provides for the companies, which have appointed Woman Directors. In the financial year 2013-2014, only 41.13% of companies have a Woman Director on board. It increased to 93% in the financial year 2014-2015 and to 98.25% in the financial year 2015-2016. This shows that compliance is made by almost all top listed companies.

Table VI:- Woman Directors and Independent Woman Directors.

Financial year	No of woman director	No of Independent woman director	% of Independent woman director
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2013-2014	495	210	42.42%
2014-2015	1019	561	55.05%
2015-2016	1117	640	57.29%
2016-2017	1172	673	57.42%
2017-2018	1227	732	59.65%
2018-2019	1324	816	61.63%
2019-2020	1392	924	66.37%

Source: Study by S. Lakshmi Naaraayanan and Kasper Meisner Nielsen

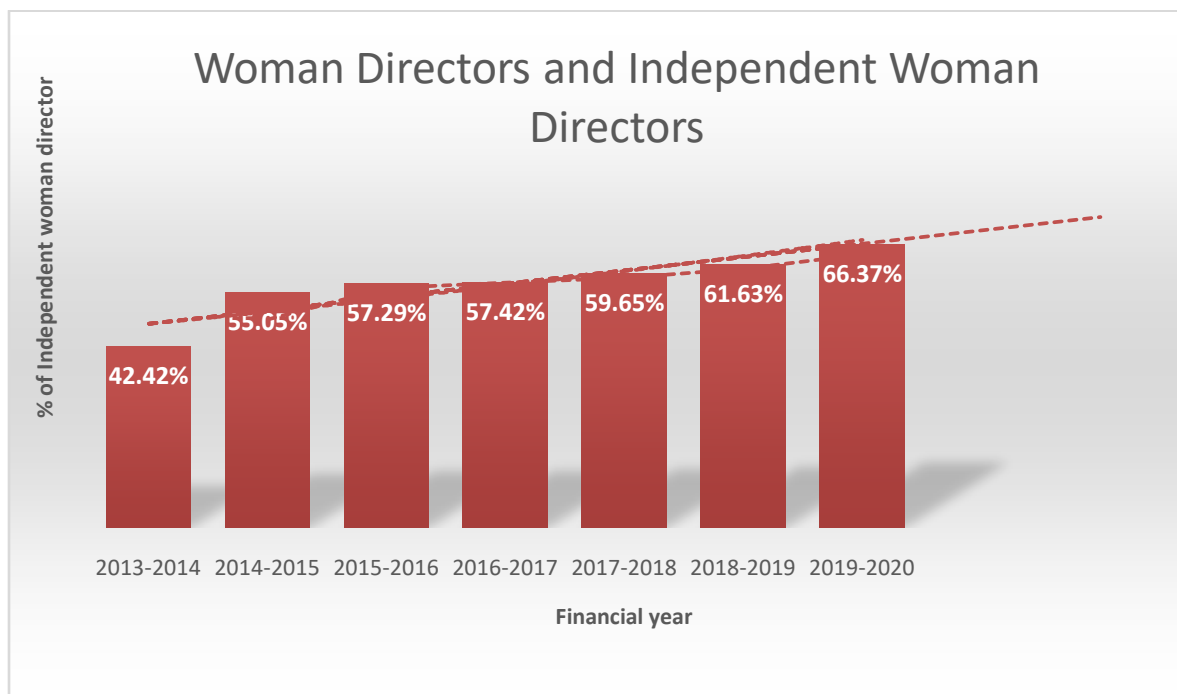


Table VI provides the total number of woman directors & independent directors from the financial year 2014-2015 to 2019-2020. It can be interpreted as:

1. There were 1019 women directors on board in the financial year 2014-2015. It implies that few companies have more than one woman director on the board. And, the count of women directors was 1392 in the financial year 2019-2020. This further substantiates that few companies are appointing more than one woman director on board.
2. The number of independent woman directors was 561 in the financial year 2014-2015 as compared to 210 in the financial year 2013-2014. The change seems big, but the independent woman directors are constituting only 55.05% of women directors on board. And, in the financial year 2019-2020, independent woman directors are constituting 66.37% of women directors on the board. It has two implications:
 - i. The number of women directors is increasing, but the increase in the number of independent women directors is only 66% of women directors.
 - ii. There are 924 independent women directors on board in the financial year 2019-2020. It means that the companies are complying with the Listing Regulation. But unlike, women directors on board, there is the almost negligible voluntary appointment of independent woman directors on board.

Conclusion:-

The inference that can be drawn from the available data is that companies are complying with the requirement of one woman director on board as well as one independent woman director on board, but companies are appointing more woman directors on board voluntarily. But this trend is missing in the case of independent woman directors. India is at 15th position with 18.9% share of woman directors according to Global gender diversity 2023. The woman director share was 10% in 2014. Thus, there is an increase of 8.9% from 2014 to 2023 indicating a positive sign for gender diversity on board in India. [19]

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