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Mandatory Women Directors Under Section 149 Of The Companies Act, 2013: Impact And Effectiveness

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Abstract

Section 149(1) of the Companies Act, 2013¹, read with the Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014², mandates certain classes of the companies to appoint at least one women director on their boards. This paper critically examines this mandate's legal framework, rationale, practical shortcomings, and comparative effectiveness. While female board representative has rises from approximately 5% in 20213 to 16.8% by 2024, qualitative gains remain limited by pervasive tokenism, promoter-family appointments, and C-suite stagnation. A comparison with Norway's 40% quota³, the UK's comply-or-expalin model⁴, and the USA's market-driven approach reveals India's mandate as quantitatively successful but structurally shallow. Case studies of Infosys, TCS, and Reliance Industries illuminate the spectrum between genuine compliance and symbolic conformity. The paper concludes with targeted recommendations to move beyond a minimum numerical threshold toward substantive gender equality in corporate leadership.

Keywords: *Section 149(1), Companies Act 2013, Companies (Appointment and Qualification of Directors) Rules 2014, women director mandate, corporate governance, gender diversity,*

¹ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), 149(1).

² Companies (Appointment and Qualification of Directors) Rules, 2014, Rule 3 (India).

³ Lov Nordvik & Ingrid Almklov, Allmennaksjeloven [Public Limited Companies Act] (Nor. 2003) (requiring 40% gender representation on corporate boards of public limited companies).

⁴ Financial Conduct Authority, Diversity and Inclusion on Company Boards and Executive Management, Policy Statement PS22/3, at 4-6 (Apr. 2022) (U.K.).

I. INTRODUCTION

Until 2013, fewer than 5% of director positions in India were held by women. The Companies Act 2013 sought to address this structural exclusion by mandating, under Section 149(1), the appointment of at least one woman director on the boards of certain companies. SEBI subsequently reinforced this mandate through the LODR Regulations, 2015⁵, and the Kotak Committee's 2017 recommendations⁶ progressively required the top 1000 listed companies to appoint independent women directors. Over a decade on, the critical question is whether this intervention has produced substantive gender integration or merely formal compliance. This paper examines the law's design, in its practical operation, its comparative standing, and what reforms are necessary to realise its objectives.

II. LEGISLATIVE FRAMEWORK

2.1 Section 149(1) and the Prescribed Classes

Section 149(1) of the Companies Act 2013 provides the structural framework for board composition. Its second proviso, read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, mandates the appointment of at least one woman director by (i) every listed company, and (ii) every unlisted public company with a paid-up share capital of Rs. 100 crore or more or a turnover of Rs. 300 crore or more. Vacancies in the office of a woman director must be filled within three months or at the next Board meeting, whichever is earlier⁷. Non-compliance attracts fines of up to Rs. 5,00,000 under Section 172⁸.

2.2 SEBI (LODR) Regulations and the Kotak Committee

Regulation 17(1)(a) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 independently mandates that every listed entity's board include at least one woman director. The Uday Kotak Committee on Corporate Governance (2017) critically recommended that mere presence of a promoter-affiliated woman was insufficient. SEBI accepted this in a phased manner, requiring the top 500 listed entities to appoint at least one independent woman director by 1 April 2019, and extending this to the top 1,000 by 1 April 2020. This amendment recognised that the independence of the woman director, not merely her presence, was essential to the provision's objectives.

⁵ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 17(1)(a) (India).

⁶ Uday Kotak Committee on Corporate Governance, Report of the Committee Constituted by SEBI (Oct. 2017) (India).

⁷ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), 149(1), proviso 2 (prescribing tenure and vacancy-filling requirements).

⁸ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), 172.

2.3 Disqualifications and Enforcement

A woman director is subject to disqualification under Section 164⁹ and may be appointed, resigned, or removed under the general provisions of the Act. Enforcement has progressively strengthened: the NCLAT, in *Subramanian Krishnan v. Registrar of Companies*¹⁰, affirmed penalty powers for non-appointment, and the Registrar of Companies, Maharashtra similarly penalised a defaulting company in the matter of *JM Financial Properties and Holdings Ltd*¹¹. The NCLT, in *Shanta Raj Subba v. Deputy Registrar of Companies*¹², held that vacancy-filling timelines under Section 149(1) are mandatory. The Companies (Amendment) Act, 2020¹³ further decriminalised non-appointment, converting it from a criminal offence to an adjudicable civil default, thereby streamlining enforcement.

III. RATIONALE BEHIND THE PROVISION

The mandate rests on three mutually reinforcing foundation. First, a constitutional and rights-based justification: Article 14¹⁴ guarantees equality before the law, and Article 15(3)¹⁵ permits affirmative measures for women. The systematic exclusion of women from corporate leadership is itself a form of a structural inequality that the State is constitutionally empowered to correct. India's obligations under CEDAW¹⁶ and the SDGs further reinforce this duty.

Second, a business case: Adams and Ferreira (2009)¹⁷ established that women directors demonstrate better board attendance, stronger oversight, and reduced financial misreporting. Gender-diverse boards counteract group-think and are increasingly rewarded by instructional investors and proxy advisors. Third, an alignment rationale: India's provision, the first of its kind in a major emerging economy, reflected a global consensus, already expressed in Norway's 2003 quota and European regulatory frameworks, that voluntary diversity measures

⁹ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), 164.

¹⁰ *Subramanian Krishnan v. Registrar of Companies*, Company Appeal (AT) No. 246 of 2019 (Nat'l Co. Law App. Trib. 2019) (affirming penalty for non-appointment of woman director under § 149(1)).

¹¹ *JM Financial Properties and Holdings Ltd.*, In the matter of, Adjudication Order No. ROC-MH/ADJ-2021/6234 (Registrar of Companies, Maharashtra 2021) (imposing penalty for non-appointment of woman director).

¹² *Shanta Raj Subba v. Deputy Registrar of Companies*, [2017] 140 CLA 108 (Nat'l Co. Law Trib., Kolkata Bench) (holding that intermittent vacancy in the office of woman director must be filled within the prescribed period under § 149(1)).

¹³ Companies (Amendment) Act, 2020, No. 29, Acts of Parliament, 2020 (India).

¹⁴ INDIA CONST. art. 14.

¹⁵ INDIA CONST. art. 15, cl. 3.

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁷ Renee B. Adams & Daniel Ferreira, *Women in the Boardroom and Their Impact on Governance and Performance*, 94 J. FIN. ECON. 291, 293-95 (2009).

produce insufficient results and that statutory intervention is necessary.

IV. PRACTICAL ISSUES AND SHORTCOMINGS

4.1 Tokenism

The most significant practical failure of Section 149(1) is tokenism: the appointment of women directors solely to satisfy the letter of the law, without genuine integration into board governance. A 2023 study found that approximately 45% of Nifty-500 companies had exactly one woman director, the legal minimum, reflecting a compliance-first mentality rather than any commitment to diversity¹⁸. India's present average of 16.8% female board representation, with only 4% of companies having three or more women directors, falls far short of the scholarly 'critical mass' threshold of 30%¹⁹. When women are the sole female voice in the boardroom, they frequently marginalised from informal decision-making networks and excluded from key committees.

4.2 Promoter-Family Appointments and Structural Gaps

A particularly acute manifestation of tokenism in India's family-dominated corporate landscape is the appointment of female relatives of promoters. A 2021 report found that 69% of female executive directors were promoter-affiliated, with only 31% being independent professionals. Reliance Industries Limited, India's largest company by market capitalisation, appointed the wife of its Chairman and Managing Director as a Non-Executive Director²⁰, exemplifying the practice of satisfying formal compliance without introducing independent oversight. The SEBI requirement for independent women directors was precisely aimed at this problem, but concerns persist about whether technical 'independence' under Section 149(6)²¹ and Regulation 16(1)(b) of the LODR²² guarantees genuine independence when the appointee remains socially proximate to the promoter group.

Beyond tokenism, the provision suffers from drafting weaknesses: it specifies no minimum qualifications, imposes no committee participation requirements, and contains no mandatory disclosure mechanism to identify promoter-affiliated appointments. The talent pipeline is also

¹⁸ Lovleen Bhullar, Gender Diversity on Corporate Boards: A Study of Nifty 500 Companies, 10 INT'L J. CORP. GOVERNANCE 98, 104 (2023).

¹⁹ Kiran Nanda, Nidhi Sharma & M.M. Beg, Assessing the Drafting Efficacy of Section 149(1) of the Companies Act, 2013, 3 SOC. SCI. REV. 1, 8-10 (2025).

²⁰ Reliance Industries Ltd., Annual Report 2023-24, at 156 (2024) (disclosing non-executive directorial appointments affiliated with the promoter group).

²¹ Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), § 149(6) (defining 'independent director' and criteria for independence).

²² SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 16(1)(b) (India) (defining 'independent director' for listed entities).

structurally constrained; post-mandate data showed women directors holding disproportionately more board positions than men, indicating that companies recycled a limited pool rather than broadening their search.

4.3 C-Suite Stagnation

The mandate’s most revealing limitation is its failure to affect executive leadership. Despite measurable board-level gains, the share of women in C-suite positions remained stagnant at 15-18% in the five years following the mandate, and more than half of NSE-listed firms had no women in their senior management teams. The glass ceiling operates below the boardroom, and a legislative intervention targeting directorships, without complementary policies promoting women through management pipelines, can at best produce partial results.

V. EFFECTIVENESS IN INDIA

Section 149(1) has produced significant quantitative progress, as shown in the table below:

| Indicator | Pre-Mandate (2013) | Post-Mandate (2023-24) |
|--|--------------------|--|
| Women on boards of listed firms | ~5% | ~16.8% |
| Listed firms without any woman director | 53% | Under 10% |
| NIFTY 500 firms with at least 1 woman director | ~47% | ~95% |
| Women as executive directors | Very rare | ~31% professional; 69% promoter-affiliated |

Within a single year of the Act's implementation, the proportion of non-compliant listed companies dropped from 53% to under 10%. However, these numbers mask a qualitative failure: the share of women in C-suite roles has not improved commensurably, pay gaps persist at approximately Rs. 1.2 crore among Nifty 100 companies, and the research consensus is that appointing only one woman director generates no statistically significant

improvement in firm performance.²³ Meaningful performance gains require a critical mass of at least three women directors or 30% board representation, a threshold India's current framework makes no effort to approach.

VI. COMPARATIVE ANALYSIS

India's approach occupies a minimal position in the global regulatory spectrum:

| Country | Approach | Quota / Target | Type | Representation |
|---------|-------------------|------------------------------------|------------------|----------------|
| Norway | Mandatory quota | 40% (both genders) | Hard law | ~40%+ |
| France | Mandatory quota | 40% | Hard law | ~45% |
| UK | Comply-or-explain | 40% target (FTSE 350) | Soft law | ~40% |
| USA | Market-driven | Disclosure/reporting | Voluntary | ~20-25% |
| India | Mandatory minimum | 1 woman; independence for top 1000 | Hard law (floor) | ~16.8% |

Norway, which enacted its mandatory 40% gender quota for public limited company boards in 2003, propelled female board representation from 9% to 40% within five years through a combination of legislative mandate and the credible threat of company dissolution for non-compliance.²⁴ However, Bertrand et al. (2019) found that quota-driven board gains did not automatically translate into higher earnings for women or greater C-suite access, with only 4% of CEOs and 8% of board chairs being women, an observation equally pertinent to India.

The United Kingdom, operating through its Corporate Governance Code's comply-or-explain mechanism and the FCA's 2022 diversity disclosure requirements, achieved approximately

²³ Vishal K. Gupta et al., The Role of Gender in Setting Business Agendas: Evidence from Private Firms, 36 STRATEGIC MGMT. J. 1578, 1582 (2015).

²⁴ Marianne Bertrand et al., Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway, 86 REV. ECON. STUD. 191, 194 (2019).

40% female board representation in FTSE 350 companies by 2023, comparable to Norway's quota-driven outcome, demonstrating that transparency and accountability frameworks can produce results as effectively as hard quotas. In the United States, both Nasdaq's board²⁵ diversity rule and California's mandatory quota were judicially struck down²⁶, leaving market pressure from institutional investors as the primary driver. Women hold approximately 20-25% of S&P 500 board seats, reflecting steady but slower progress in the absence of legal compulsion.

India's 16.8% compares poorly against all three jurisdiction. The EU's Women on Boards Directive (2022)²⁷ targets 40% non-executive representation by June 2026, and France has already achieved 45% through mandatory quotas. India's framework, lacking both Norway's ambition and the UK's transparency architecture, achieves minimal compliance without substantive transformation.

VII. CASE STUDIES

7.1 Infosys: Merit-Based Compliance

Infosys Limited, a dual-listed technology company founded outside the family-promoter model, has consistently appointed Independent Women Directors with substantive professional credentials.²⁸ As of 31 March 2024, a women constituted 39.3% of its 3,17,240-strong workforce, suggesting board diversity is integrated into a broader organisational commitment to inclusion rather than isolated compliance. Infosys demonstrates that the mandate can be fulfilled through genuine meritocratic appointment, but even here, a single woman director does not reach the critical mass threshold.

7.2 TCS: Conglomerate Constraints

Tata Consultancy Services (TCS) has maintained compliance by appointing professionally qualified Independent Women Directors with backgrounds in law, business, and public policy²⁹. The company has articulated explicit gender diversity targets at the senior level. However, TCS's position within the Tata Group's conglomerate structure, with its

²⁵ *In re Nasdaq Stock Market LLC*, No. 21-60626 (5th Cir. 2024) (striking down Nasdaq's board diversity listing requirements).

²⁶ Cal. Corp. Code § 301.3 (West 2018), invalidated by *Crest v. Padilla*, No. 20STCV37513 (Cal. Super. Ct. May 13, 2022).

²⁷ EU Directive 2022/2381 of the European Parliament and of the Council of 23 November 2022 on Improving the Gender Balance Among Directors of Listed Companies, 2022 O.J. (L 315) 44.

²⁸ Infosys Ltd., Annual Report 2023-24, at 89 (2024) (disclosing board composition and gender diversity metrics).

²⁹ Tata Consultancy Services Ltd., Annual Report 2023-24, at 72 (2024) (reporting board composition and diversity initiatives).

interlocking directorships and parent-entity influence over board appointments, raises persistent questions about whether any director, including women directors, can exercise fully independent judgement within the group's ecosystem.

7.3 Reliance Industries: Tokenism at Scale

RIL, India's largest company by market capitalisation, appointed the wife of its Chairman and Managing Director as a Non- Executive Director, the paradigmatic example of the family-appointment pattern. While individual assessments of any director's participation must be evidence-based and cautious, the systemic concern is clear: in promoter-controlled firms, the structural incentives strongly favour family appointments that satisfy the legal minimum without altering boardroom power dynamics. The law provides no mechanism to distinguish such appointments from genuinely independent ones in its reporting or enforcement framework.

7.4 Synthesis

The three cases map cleanly onto a spectrum determined primarily by ownership structure. Dispersed-ownership, professional-foundation companies (Infosys) are structurally positioned to make merit-based appointments. Conglomerate-structure companies (TCS) face inherent independence constraints. Promoter-controlled family businesses (RIL) face the weakest structural incentives for genuine compliance. The key policy implication is that mandatory disclosure of promoter affiliation and stronger independence criteria are necessary to differentiate across this spectrum.

VIII. SUGGESTIONS AND CONCLUSION

Recommendations

First, the statutory minimum should be raised progressively, targeting two women directors for large listed companies in the near term and 30% board representation over five years, reflecting the academic consensus on critical mass.³⁰ Second, SEBI should mandate disclosure of any familial or network relationship between a woman director and the promoter group, analogous to existing related-party transaction disclosures, enabling shareholders and proxy advisors to identify and penalise tokenistic appointments. Third, the independent woman director requirement under the LODR³¹ should be extended to all listed entities, not merely the top 1,000. Fourth, the government and industry bodies should invest in director development programmes and mentorship pipelines targeting women candidates, expanding

the MCA's Independent Director database. Fifth, India should adopt a UK-style comply-or-explain framework³² for board diversity targets beyond the legal minimum, institutionalising transparency and aspirational accountability.

Conclusion

Section 149(1) of the Companies Act, 2013³³ has achieved its quantitative objective: near-universal nominal compliance and a tripling of women's board representation within a decade. These are genuine, hard-won gains that should not be minimised. However, the provision has succeeded only in opening the boardroom door numerically, not in reordering the power structures within. Pervasive tokenism, promoter-family appointments, a stagnant C-suite, and a minimum threshold well below the critical mass required for transformative governance outcomes collectively reveal a framework that has reached the limits of what a simple numerical floor can accomplish.

India's performance of 16.8% female board representation, over a decade after the mandate, compares unfavorably with Norway, France, and the UK, each of which has achieved results approaching 40% through more ambitious and institutionally supported frameworks. The path forward requires not abandoning the mandate but structurally reinforcing it: raising the minimum, mandating transparency, investing in talent and aligning India's corporate governance architecture with the global standard it sought to join when Section 149(1) was enacted in 2013. True gender equality in corporate India will be realised not when one woman sits in the boardroom, but when the norms, networks, and power of that room are genuinely shared.

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