



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

## **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

## **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



## **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **WOMEN ON BOARD AND GENDER DIVERSITY IN INDIAN CORPORATE GOVERNANCE**

AUTHORED BY: SHUSHREE PATTANAİK (UL20BB038)

PROGRAM- BBA- LLB (8<sup>TH</sup> Semester)

SCHOOL- Xavier Law School

## **ABSTRACT**

Women on board bring a very different and fresh perspective to the company. In this 21<sup>st</sup> century, it has become important to provide all people with equal opportunities irrespective of their gender. They should be computed on the basis of their set of skills and competencies.

In this paper, I will be highlighting all the situations pertaining to women on board in India. Apart from this the paper also contains information regarding the adaption of different policies for a gender diverse society by other countries.

The figures regarding the increase or decrease of women's representation on the board will also be explained with current figures or numbers.

This paper also includes all the legal provisions having relation to the duties and requirements of female directors for a company in India. All sections of the Companies Act with relation to Women directors will be mentioned and their basic rights under the Constitutional Law will also be highlighted.

**Keywords:** Gender Diversity, Women, The Companies Act, Legal provisions, Constitutional Law

## **INTRODUCTION**

According to reports regarding the Women on Board, it has always been a challenge to overcome this problem. But with advancement in time, Women's Representation in India's Corporate world has increased in 10 years span of time. So, we can say that from being a homemaker and managing all



kinds of household work to managing companies, women have successfully set examples in all sectors of our society, may it be Falguni Nayar (CEO and Founder of Nykaa) in the field of business or may it be Kalpana Chawla in the field of space.

The Constitution of India provisions many rights for women and also empowers them. The provisions give them legal status in a society free from any kind of discrimination and provide them with freedom and equality. There are many legal statutes under the law governing the rights of women and empowering them.

The Company Act is one of the statutes which promotes Gender Diversity on Board. Under this act, it mandates all companies to appoint women directors to the company board and failure to do this can also lead towards the attracting penalties for an individual and for a company as well.

Apart from provisions of the Companies Act, basic rights of women under Constitutional Law will also be enumerated.

## **PROVISIONS IN INDIA RELATING TO COMPANIES ACT**

Companies Act 2013 provides many provisions for women on board. The rules and regulations are mandatory in nature and failure to comply with them would lead to various penalties enlisted under the act. To understand the involvement of women in the company acts first, we need to understand the basic concept of Corporate governance.

As the name suggests it is the way in which a company should be governed. It entrusts accountability, power and decision-making power to the required authorities and employees under a company. It helps in the effective and efficient running of a company. Apart from this it protects and balances out the interests of a company and its shareholders. Management, investors, customers and so on can come under the definition of shareholders. There are four important Ps under Corporate governance:<sup>1</sup>

1. Purpose: This term defines the objective and goals of a company for the long run.
2. People: We can define people as the most important Ps among the four of them. The future of

---

<sup>1</sup> I PLEADERS, <https://blog.iplers.in/all-about-women-directors-under-companies-act-2013/> [Mar.25, 2024]



the company depends on them. (Examples of people include- Stakeholders, Employees, Financiers and so on.)

3. Process- The process is basically defined as how a company functions and manages in the short or long run.
4. Performance- It is like an outcome of how the company performed within a year or from the date of its establishment. The performance decides the future of the company and it has a significant effect on our society.

So, there are two important sections under Section 2(10) and Section 2(34) which define the Board of Directors terminology, scope and composition of the Board of Directors.

#### Important case laws under the term “Directors”<sup>2</sup>

1. Directors of the company as an agent:

This case highlights the relationship between an agent and a company. A case law named “Ferguson vs Wilson” in the year 1866. This case underlines the relationship of directors with the company. It also established that the company can only work through its directors.

2. Directors of the company as trustee:

The case of Ramaswamy Iyer vs. Brahmayya and Co. in the year 1966 highlights that the directors of the company are supposed to act as trustees of the company and by default they need to fulfil all the responsibilities and duties of a trustee. This judgement was passed by the High Court of Madras.

3. Directors of the company as Organs/Limbs:

The judgement under this case was passed by the Calcutta High Court. It was the case of Gopal Khatian vs State in the year 1969. The court held that both the directors as well as the company will be liable for any decisions made for the company.

The next most important section under the Companies Act 2013 is Section 149(1). It is a mandatory clause that states the mandates that “there should be a minimum 1 women director involved in the company’s board or corporate governance”. There are certain categories of a company which mandate

---

<sup>2</sup> *Id.*

these rules for a women director. The following categories are:<sup>3</sup>

1. Every Listed company
2. Every other Public Company
3. Paid-up share capital should be approx. Rs. 1 Billion or more
4. Turnover should be Rs. 3 Billion or more

If a situation of Intermittent vacancy arises in the case of Women Directors then it should be filled by the Board of Directors of the company either immediately next board meeting or within three months of the intermittent vacancy. Whichever falls later.

There is also another Regulation which is mentioned under SEBI's (Securities Exchange Board India) rules and regulations. So, the SEBI LODR (Listed Obligation Disclosure Requirements) states that there should be at least one women director in a listed entity which maintains an optimal blend of Executive Directors and Non-Executive Directors. Apart from this the rule also includes that the top 500 listed companies should include at least one Independent Women Director. This obligatory clause was established in April in the year 2019. A new obligatory clause was released in April 2020. This new clause extended the threshold of the listed companies that went to 1000 listed companies from 500 listed companies. Top listed companies as decided based on immediate previous years market financial year's end.

There is another situation under the Companies Act in case of non-compliance under the category of women directors. The provision for penalty comes under Section 172 of the above-mentioned act. The section states that in case of non-compliance, the company and every officer of the company will be charged with a penalty which ranges within the minimum limit of INR. 50,000 and can extend a maximum of up to INR. 5,00,000.

This provision of non-compliance is also covered under an article by the Economic Times, an E-paper publication. The article stated that four companies have been penalised because they failed to hire or appoint any female directors within the recommended time period. The MCA (The Ministry of

---

<sup>3</sup> *Id.*

Corporate Affairs) imposed the above-mentioned fine.<sup>4</sup>

An amount of Rs 4,85,000 was imposed on the below-mentioned companies:<sup>5</sup>

1. JM Financial Ltd. (A Capital Market Investment Company)
2. Shankar Packaging Ltd. (A manufacturing company)
3. Krishna Solvechem Ltd. (A Chemical products company)

Apart from these companies, there was another company is the list imposed with a penalty of Rs. 1,85,000. The company was MSRDC Sea Link Ltd.<sup>6</sup>

The above information is from a recent article published in November 2023. This also mentions that in the previous year, there were dozens of such show-cause notices for violations regarding the same. Both the company and officers were penalised for the same. The company was slapped with a penalty of a maximum of INR. 3,00,000 and the officers had to pay a penalty of a maximum of up to INR. 1,00,000. The Registrar of Companies had imposed the fines since mid-October. The provisions also entitle the companies to file appeals against the order of ROC.<sup>7</sup>

Other relevant sections under this topic:

1. Section 149 (4) of The Companies Act, 2013 mandates that every listed company under the companies act should have at least one-third of independent directors among the total number of directors. Apart from this the section also states who comes under the criteria of an Independent director. A few criteria are mentioned below:
  - I. The person should not be a managing or whole-time director
  - II. The person should not be a promoter of the company.
  - III. The person or his relatives should not be gaining any monetary benefits from the company directly or indirectly.
  - IV. The person should have the required set of skills and expertise in relation to the company's business.

---

<sup>4</sup> Banikinkar Pattanayak, Four companies fined for failing to hire female directors on time, THE ECONOMIC TIMES, [Nov. 16, 2023, 1:35 pm], <https://economictimes.indiatimes.com/news/company/corporate-trends/four-companies-fined-for-failing-to-hire-female-directors/articleshow/105217415.cms>

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

2. Provided further if the company existed before the amendment under the Companies Act 2013, then one year's time was supposed to be given to the companies for appointing women directors on board and meeting the criteria provided under the act.
3. Section 165 is also important. This section provides for how much ownership of companies can an individual hold under this act. The limit for directorship is a maximum of 20 companies. Furthermore, there is also a clause under this provision which states that the maximum limit for holding directorship in public companies is up to 10 Public companies.
4. Apart from all this there are also some related provisions under the Constitutional Law. Article 14, Article 19 and Article 21 mention that women on board also have an equally significant impact when compared to when compared to men on board. These articles are also defined as "The Golden Triangle" and they highlight the Right to Dignified life and the Right to Personal Liberty.
5. There are certain duties that a women director needs to fulfil. The duties are mentioned under Section 166 of the Company Act 2013. The duties are enumerated below:<sup>8</sup>
  - a) The director is supposed to act with respect to the Articles of a company.
  - b) The directors are supposed to act in favour of the company and stakeholders and need to make decisions beneficial for the company.
  - c) The directors need to work with due diligence.
  - d) The directors should not take any undue advantage of their position in the company.
  - e) The Director is prohibited from assigning their own offices to any other person without discussion with the board.
  - f) If there is any non-compliance with the above-mentioned rules then a fine can be imposed on the directors whose minimum limit is Rs 1,00,000 and maximum limit can extend up to Rs. 5,00,000.

#### APPOINTMENT OF WOMEN DIRECTORS:<sup>9</sup>

1. Firstly, the women candidate needs to submit her consent for the same. They have to use a form named DIR-2 and if required then DIR-8 in case of disqualification.

---

<sup>8</sup> *Id.* At 1

<sup>9</sup> DEEZAN SHIRA AND ASSOCIATES, <https://www.india-briefing.com/news/understanding-the-mandate-for-women-directors-under-indias-company-law-30226.html/#:~:text=The%20second%20clause%20in%20Section,woman%20director%20on%20their%20boards.>  
[Mar. 26, 2024]



2. The company is required to conduct a general meeting and pass a board resolution with respect to women directors with board member's or shareholder's approval.
3. Apart from all these listed companies are under compulsion or obligation to report the proceedings of the meeting to SEBI within 24 hours of the conclusion of the meeting and they also need to update the same information on the website within two days of the meeting proceedings.
4. After approval from the members regarding the passing of the required board or general resolution, the company is required to file two types of forms under this with the Registrar of Company (ROC). A form namely MGT-14 needs to be filed within 30 days of the conclusion of the meeting and another form named DIR-12 needs to be filled within 30 days of the appointment of such women directors.
5. A form named MBP-4 needs to be filled by the company regarding the necessary entries with respect to Key Managerial personnel or Directors.
6. A women director can be an executive director or a non-executive director.
7. A women director can hold the office or has a tenure of up to the next AGM (Annual General Meeting) from the date of appointment. Women directors can also be re-appointed subject to the decision passed in the general meeting. Furthermore, the tenure of a female director is also subject to retirement under Section 152(6) of the Companies Act. This section mentions the provisions for retirement by rotation.
8. The women director can resign or retire at any time by providing a notice to the board members of the company.

## **DIFFERENT FOREIGN COUNTRIES THAT HAVE WOMEN REPRESENTATIONS FOR TOP-LEVEL MANAGEMENT**

### **COUNTRIES HAVING WOMEN REPRESENTATION IN COMPANIES:<sup>10</sup>**

1. Spain (Ley de Igualdad):

An Act known as The Gender Equality Act was passed by the Spanish Government in the year 2007. It states that all the public companies of Spain and IBEX-35 Companies (Most traded companies) need to have at least 40% of women representation on their board within 8 years (by 2015). These

---

<sup>10</sup> *Id.* At 1

were deemed mandatory for all the companies mentioned under this act.

2. Norway:

There was a directive passed by the Norway Government that there must be 40% women representation on the Board of Directors of a Company. The target was supposed to be achieved by the year 0f 2005 but even after the year 2005, the percentage of women represented on board did not cross an average of 24 per cent. So, the government imposed this regulation mandatorily on all private listed companies and gave them a time limit of up to the next 8 years which is the year 2015.

3. Iceland:

The Government of Iceland passed a notification that all publicly owned and publicly listed companies having more than 50 employees should have representation of 40 per cent of both the male and female on the board of the company.

4. Finland:

This provision was provided under the Finish Corporate Governance Code. It stated that all the listed companies should have at least one male and one female director on the board. The clause was enacted in the year 2008 and it was a mandatory clause for all the listed companies.

**COUNTRIES WHO HAVE PROPOSED LEGISLATIONS FOR**  
**WOMEN REPRESENTATION:**

1. France:

The Government of France passed a Quota Bill in the year 2011 which mentioned that all listed companies should have 20 per cent of women representation after passing the bill. The percentage of women's representation increases to 40 per cent within three years of passing the bill. The non-listed companies had different provisions under this bill. They have to achieve 20 per cent of women's representation on board within 3 years of passing the bill and they have to achieve 40 per cent of women's representation on board within 6 years of passing the bill.

2. Netherlands:

The government of the Netherlands (Dutch Government) passed a draft bill in the year 2020. The

bill mentioned that both Private companies and Public companies should have at least 30 per cent of both male as well as female representatives on the board of a company. Every company had to comply irrespective of their status of listing.

## **COUNTRIES WHO HAVE TAKEN AN ALTERNATIVE**

### **APPROACH:<sup>11</sup>**

#### 1. United States of America:

The Securities and Exchange Board of the United States of America have not passed any bill or any judgment for the portrayal of women's representation on the company's board of any category of company. But even if they have not passed any legislation regarding the same, they have still focused on the inclusion of women's representation on board. It is mandatory for all companies to reveal information regarding the nomination and selection of directors to ensure that there is gender diversity within the board of any company.

#### 2. Australia:

The Government of Australia has issued several recommendations from Corporate Governance regarding various aspects of Gender Diversity. The guidelines suggested that to ensure Gender balance in performance and reporting. According to their recommendation, every company needs to disclose the women representatives on the board of a company. They need to disclose all the present status to ensure that gender diversity prevails in their companies.

## **BENEFITS OF WOMEN ON BOARD (GENDER DIVERSITY)**

The International Labour Organisation reported that by 2025, promoting women's equality in business would boost the world economy by US\$5.8 trillion.<sup>12</sup>

The following are some advantages of having women on board, according to the report:

- a. It would help in the improvement of the financial performance of a company.
- b. Women on board help in making better decisions
- c. It helps in boosting customer awareness and analysis

---

<sup>11</sup> *Id.* At 1

<sup>12</sup> VINOD KOTHARI CONSULTANTS, <https://vinodkothari.com/2023/08/gender-diversity-in-the-boardroom/> [Mar. 26, 2024]

- d. It will improve the overall perspective of Corporate Governance
- e. It helps in nurturing and developing new talents or existing talents
- f. They bring in a different and fresh perspective
- g. Women are likely to be more effective leaders
- h. They serve as role models and inspirations for all aspiring women who intend to achieve something.

## **GENDER DIVERSITY UNDER CORPORATE GOVERNANCE**

There are seventeen goals under sustainable development goals set by The United Nations. Gender Diversity is one of the important aspects of the seventeen goals. The Securities Board of India has also made it obligatory for disclosure of gender diversity in companies to check whether they are fulfilling the required criteria or not. Women's representation brings a very different and varied perspective to the company. They bring fresh ideas to the desk with empathy and their intuitiveness.<sup>13</sup> According to reports the representation of women on board is increasing with an average of 24 per cent. As per the reports from the year 2021, France leads the developmental percentage under Women representations with 44.5 per cent and Europe and North America sit over the Global average percentage which is 34.4 per cent and 28.6 per cent.<sup>14</sup>

The reports regarding Women's representation in India have also increased. The percentage has improved from 6 per cent in 2014 to 14 per cent within the year of 2014. Currently, women directors account for 17.6 per cent of the board of the company. According to reports and studies, it suggests that India can reach 30 per cent of women representation on board by the year 2058.<sup>15</sup>

Amit Tandon who is the managing director of IiAS stated “By nominating 30% more women to boards, we have a rare opportunity to reset the pace of change in anticipation of the 2024 board refresh, which will mark the end of the grandfathering of Independent Directors' earlier term. Corporate India has to seize this chance to introduce more female diversity and restructure the board. To do this, boards must shift their perspective from only adhering to regulations to considering the

---

<sup>13</sup> INSTITUTIONAL INVESTORS ADVISORY SERVICES, <https://www.iasadvisory.com/institutional-eye/corporate-india-women-on-boards-1> [Mar. 26, 2024]

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



fraction of women present on the board as a whole. The minimum required goal must be 30%”.

Hetal Dalal who is the president and COO of IiAS also stated that “Corporate boardrooms benefit from the unique perspective, intuitiveness, and collaborative leadership style that women bring to the table. This emphasises the necessity for businesses to go beyond the legislative discourse on gender”.<sup>16</sup>

Data from the IiAS study:<sup>17</sup>

1. As per the reports in 2022 India had 4694 directors on the board. These directors included 827 women directors which is almost a percentage of 17.6. (NIFTY 500)
2. Apart from all this the percentage of two or more women on board constituted almost 48.6 per cent in 2022 under NIFTY 500 companies.
3. As per the 2022 reports women's representation was in excess of 20 per cent in 159 companies out of 500 NIFTY Companies.
4. PSUs perform poorly in these aspects and many also don't comply with the norms and the regulations.
5. The report also states that companies are voluntarily setting goals to create a gender-diverse board for a company.
6. 22 women are holding chair positions out of NIFTY 500 companies.
7. 25 women hold the position of Chief executive officer and 62 women hold executive directorship positions.
8. The average age difference between male and female coworkers is gradually closing, with women's average age in 2020 being 56.0 years and men's average age being 62.3 years.

## **CONCLUSION**

Women on board is a developing concept in India. Countries are taking up many approaches to the development gender diverse societies. Apart from all the members holding executive positions should refrain from indulging in any kind of preferential treatment or biasedness. Preference should be given to any person possessing the required set of skills and talents irrespective of their gender. In our

---

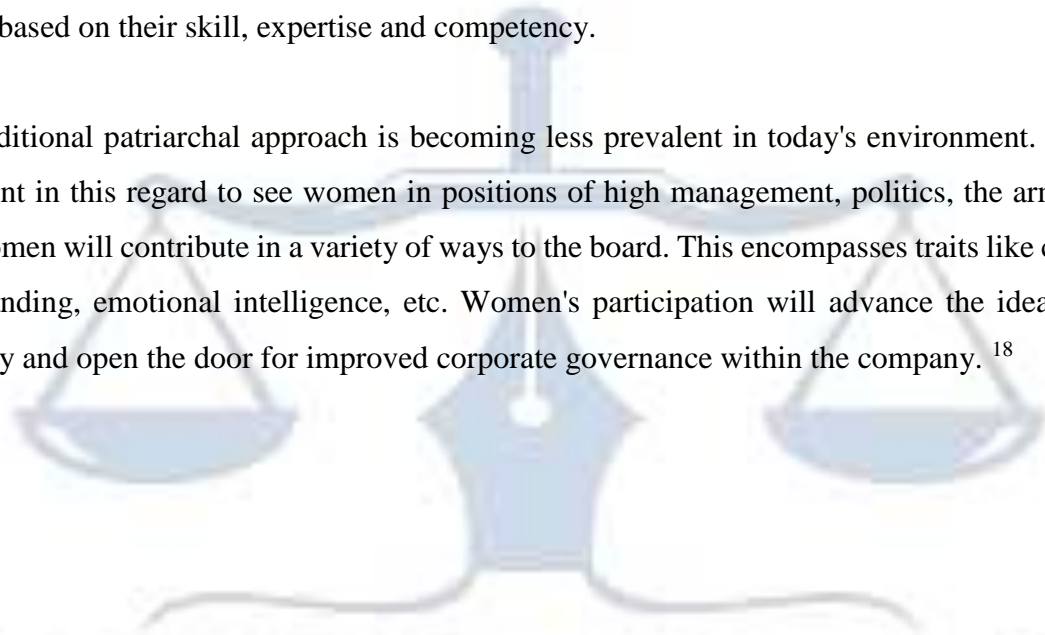
<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

country India various regions have different perspectives and different aspirations.

Let's take the example of Sushma working in Mumbai and Reena working in Mumbai. Both work in the same office but belong to different cultures. Different cultures in the sense Sushma was brought up in the modern environment of Mumbai. Her parents support her aspirations and support her dreams. But Reema was born and brought up in a village where her parents believe that a woman should get married as soon as possible rather than engage in a job environment and fulfil her dreams. This culture is what needs to be changed in our country. The time has come that women should be treated based on their skill, expertise and competency.

The traditional patriarchal approach is becoming less prevalent in today's environment. It is a bold statement in this regard to see women in positions of high management, politics, the armed forces, etc. Women will contribute in a variety of ways to the board. This encompasses traits like confidence, self-branding, emotional intelligence, etc. Women's participation will advance the idea of gender diversity and open the door for improved corporate governance within the company.<sup>18</sup>



WHITE BLACK  
LEGAL

---

<sup>18</sup> *Id.* At 1