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Embrace Equity: Leading Change Together



An Exploratory Research Study on The Implementation of 3 Gender Equality Laws In the Corporate Sector In India

India ranked 143rd out of 153 countries in the Gender Gap Report of 2022. Employment rates in India are 27 percent for women and 79.1 percent for men, showing that gender equality is still a pipeline dream for India's corporate sector. In fact, women only account for 18 percent of India's labour income.



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INTRODUCTION

India ranked 143rd out of 153 countries in the Gender Gap Report of 2022.¹ Employment rates in India are 27 percent for women and 79.1 percent for men, showing that gender equality is still a pipeline dream for India's corporate sector.² In fact, women only account for 18 percent of India's labour income.³

There are several laws in place to promote women's participation in the workforce. This includes Article 14 of the Indian Constitution that confers the right against gender-based discrimination on all Indian citizens. Yet gender inequality in the corporate sector persists. At Pacta, we undertook a research study under the aegis of UN Women to assess the implementation of three recent laws that promote gender equality in India's corporate sector.

The study focused on three aspects of gender representation in the corporate sector:

Part A- Women on Boards

- Compliance with the one woman director mandate (required under Section 149 of the Companies Act, 2013 read with Rule 17 of the Securities Exchange Board of

¹ World Economic Forum, 'Global Gender Gap Report 2022' (July 2022). <https://www3.weforum.org/docs/WEF_GGGR_2022.pdf> accessed 6th Feb 2023.

² International Labour Organization, 'Which countries have the highest gender gap in the workplace?' (n.d.) <https://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/enhanced/WCMS_556528/lang-en/index.htm> accessed 6th Feb 2023.

³ Lucas Chancel and others, 'World Inequality Report 2022' (n.d.). <https://wir2022.wid.world/www-site/uploads/2022/03/0098-21_WIL_RIM_RAPPORT_A4.pdf> accessed 6th Feb 2023. The full study can be accessed here: <https://www.pacta.in/Un-Women-Final.pdf>

India (Listing Obligations and Disclosure Requirements) Regulations, 2015)

- Type of board positions of women: promoter-directors, executive directors or independent directors
- The number of women directors appointed/resigned during the period of 2015-16 to 2020-21
- Ratio of number of women directors to the total number of directors on the board

Part B- PoSH Compliance

- PoSH Internal Committee's composition
- Number of complaints filed and disposed between 2015-16 to 2020-21

Part C- BRSR Compliance

- Board meeting frequency to assess BRSR compliance
- Involvement of women directors in BRSR
- Compliance with disclosures requirements for women employees.

We used a mixed method approach, combining qualitative and quantitative analyses. For the quantitative component, our sample size was 301 companies for 6 years from 2015-16 to 2020-21, selected through a random sampling of the NSE 1000 companies. Banking Companies, Non-Banking Financial Companies and PSU's were eliminated from our sample. We also divided the companies into Tier A, B and C based on the market capitalization. We scraped data from the annual reports of these companies and combined certain data from the PRIME database.

For the qualitative component, we conducted semi-structured interviews with 73 stakeholders: Directors of the NSE 1000 companies- 49 (38 women and 11 men), Chief of Compliance or Human Resource Officers (8 men and 7 women).

MAJOR FINDINGS AND RECOMMENDATIONS

Part A- Women on boards

The corporate sector complies with the Sec 149 of the Companies Act (2013) read with Regulation 17, Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations (2015); 100% of the sampled companies across tiers A, B and C* have at least one woman on their boards.*Tier A (n=86), Tier B (n= 107), and Tier C (n = 108).

1. Gender Representation on Board

The quantitative analysis showed year-on-year growth in the share of women on boards whereas there was a downward trend for men on boards from 2015-16 to 2020-21. In terms of absolute growth, women on boards increased by 57% while it was just 5% growth for men on boards. Consequently, gender representation on boards has changed in recent years.

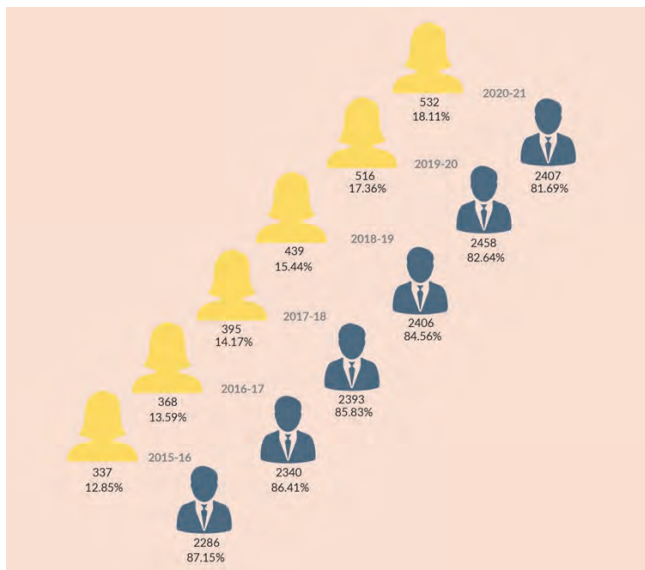


Figure 1: Board positions held by Women and Men in Sampled Companies (n=301).

However, despite an increase in women directors from 337 in 2015-16 to 532 in 2020-21, they are outnumbered by men directors. There are approximately two women directors for every nine men directors.

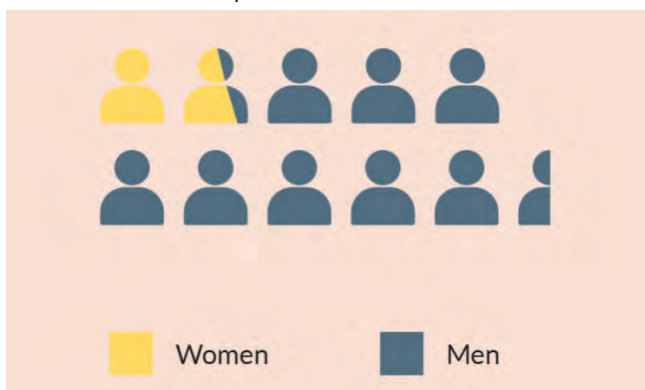


Figure 2: Ratio of Women and Men on Boards in India

2. Type of Board Positions Held by Women

Board decision making depends on the type of board positions held. Generally, women become Independent directors in a non-executive capacity. The SEBI Regulation in 2018-19 led to further increase in independent directors. But throughout the period of our study between 2015-16 to 2020-21, the number of women executive and promoter directors remained relatively stagnant. In 2020-

21, there were 111 independent women directors while 53 and 18 women were executive and promoter directors respectively.

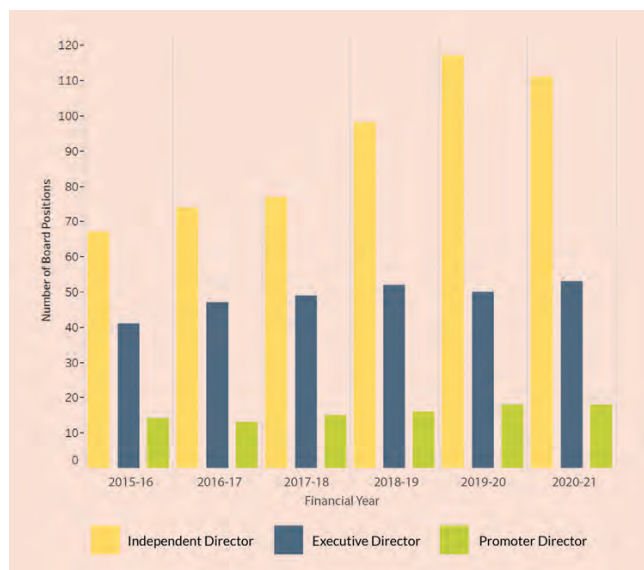


Figure 3: Types of Board Positions Held by Women

3. Hiring and Cessation.

The appointment of women on board in the sampled companies saw a steady increase from 2015-16 to 2019-20 and then a fall in 2020-21. The number of women on boards appointed each year outnumbered the number of women retiring and resigning from boards throughout the period. For every woman leaving the board, about 1.5 women have joined on an average. The rate of replacement remains the same throughout our study period.

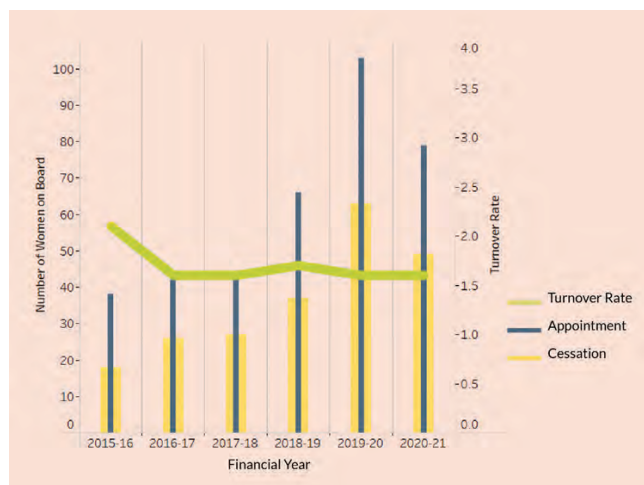


Figure 4: Hiring, Cessation and Turnover Rates of Women on Boards.

4. Women's representation in Board Committees

The representation of women on Board Committees is increasing steadily and the ratio of the number of men to women in different committees is declining. However, men still outnumber women across all Board Committees.

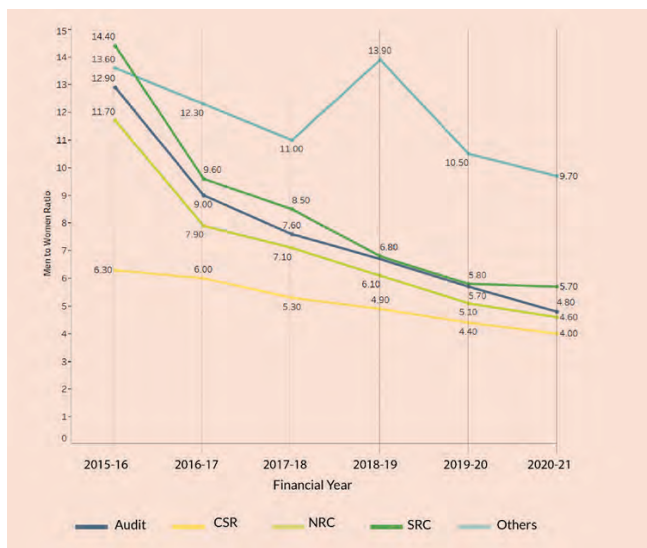


Figure 5: Ratio of Men to Women on Board Committees
(Audit=Audit Committee, CSR=Corporate Social Responsibility Committee, NRC=Nomination and Remuneration Committee, SRC=Stakeholder Relationship Committee)

The qualitative interviews showed that the allocation of women directors to committees can be attributed to personal qualifications, the nature of requirements, and the culture of the board. Although 78 % of our respondent directors said that gender does not play a role in determining selection to the Board Committees, the limited pool of women directors on Boards gets reflected in the Board Committees as well.

5. Participation of Women in Decision Making.

The participation of women directors compared to men directors was measured using their attendance at board meetings. There is little to no difference in participation at Board meetings across gender on average.



Figure 6: Weighted Average of Board Meeting Attendance by Women and Men on Boards for FY 2020-21.

Women directors were found to be comfortable to voice opinions in board and committee meetings. Hence, it can be said that women are on par with men in terms of decision-making. Responses from qualitative interviews indicated indifference to gender based-roles and expectations,

“Actually, when you enter a boardroom, you leave your gender at the door. You should if you don’t.”

The interviews also emphasized the importance of pro-women initiatives taken by women on boards including better opportunity, gender inclusivity, pro-women CSR initiatives, etc.

6. Experience of Gender Discrimination on Boards

42% of respondents expressed they felt discriminated against based on their gender.

“If you’re facing some issues or challenges, what do you do? Who do you go to? If you are vocal about your challenges, you’re branded a fussy woman. There is an inherent problem here – we don’t have any platform for women directors to come out and discuss challenges they face in their roles.”

If they favoured pro-women initiatives, they get labelled as activists,

“... Somebody would have the urge to say even before I say my name, ‘she is an activist’”

Most of our interviewees are at the top of the corporate ladder after navigating many hurdles. It is expected that women who are in the early stages of their career will face much more workplace discrimination.

8. Reasons for Low Representation of Women on Boards

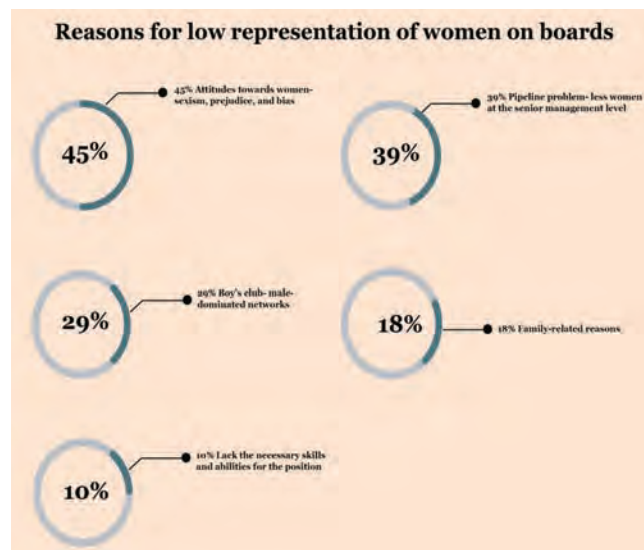


Figure 7: Reasons for low representation of women on boards

In order to improve the gender balance on Boards we make the following recommendations:

Recommendations

Transparent Hiring Practices and Reliance on Expertise, Not Networks for Hiring	Candidates must be selected based on skill and expertise through public announcement of vacancies. This allows merit-based appointments and encourages women to apply.
	Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 requires independent directors to be registered with the Indian Institute of

	Corporate Affairs independent directors' data bank prior to their appointment. But this databank is rarely considered while hiring directors. Gatekeepers can refer to this database instead of solely relying on their network.
Explicit Corporate Policy for Improving Gender Parity on Board	Corporates must improve gender parity on boards through an explicit policy that goes beyond the minimum compliance and regular commitment tracking. The government should encourage such corporate policies through incentives. Section 149 (10), (11) of the Companies Act, 2013 read with Regulation 25 (2) SEBI (Listing Obligations and Disclosure Requirements) states that the independent director's term should not exceed 10 years and the period of calculation would effectively begin only from the year 2014 irrespective of how long they held the position prior to 2014. Hence in 2024, many independent directors shall be retiring. ⁴ We recommend that this is the perfect opportunity to bridge the gender gap on Boards.
Networking Opportunities for Women	The corporate sector must have networking opportunities specifically tailored for women to help them upskill and increase their visibility.
Sensitisation of Men Board Members	Initiatives such as 'Mentor My Board' and 'Women on Corporate Boards Mentorship' and sensitization programmes for men directors/gatekeepers will help to gradually change attitudes and overcome conscious and unconscious bias. Sensitisation programs will also create a network of allies that support and drive gender diversity on boards.
Childcare, Eldercare, and Transport Services to Ease Domestic Burden on Women	Stronger government and corporate policy for childcare, elder care, and transportation services, will alleviate domestic burden on women and improve their workforce participation and retention. Further, gender-neutral paternity leave policies, so men employees take leave for childcare, will help lessen the domestic burden on women.
Increase in Quota to Bring Critical Mass of Women on Boards	Broadening the quota's scope to apply to executives, unlisted companies and other corporate entities can also help to increase women's representation on boards.

Part B - POSH Compliance

1. Compliance with the PoSH Act

Companies having 10 or more employees are required to constitute an Internal Committee. In 2018, the Companies (Account) Rules ,2014 Companies must report their compliance with the constitution of Internal Committees on their board report. 100% of the Companies surveyed

were in compliance with the requirement of an Internal Committee from the FY 2018-19 onwards.

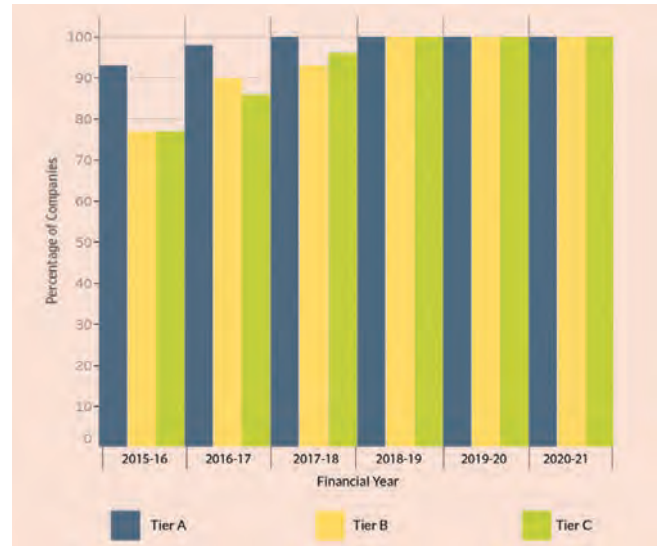


Figure 8: Percentage of Committees which made disclosure regarding formation of Internal Committees

Section 11 (4) of the PoSH Act, states that the Internal Committee must complete the inquiry within 90 days of filing of the complaint. The figure below represents the number of cases filed and disposed in the same year: it indicates substantial compliance with the statutory timeline.

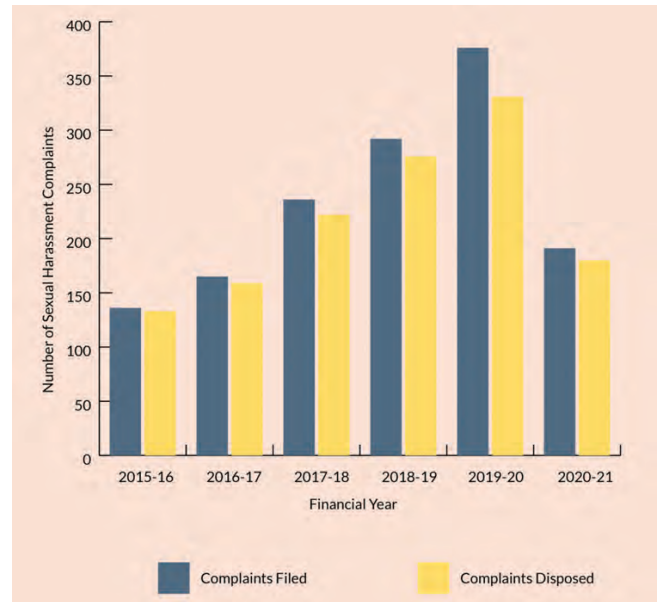


Figure 9: Number of Complaints filed and disposed in Sampled Companies (n=301)

2. Low number of Complaints ≠ Safe Working Spaces for Women

The number of complaints filed by the companies increased from 135 to 376 between 2015-16 to 2019-20.

⁴. Devjina Sengupta, 'India Inc on the prowl to replace 2k board members' Mint (29th Jan 2023). <<https://www.livemint.com/industry/human-resource/india-inc-on-the-prowl-to-replace-2k-independent-board-members-11675005518571.html>> accessed 6th Feb 2023.

However, post that the number of complaints reduced by almost half in 2020-21 (191 complaints). On an average, Tier A companies receive only 2.5 complaints every year (except in 2019-20 when the average number of complaints was 3.06) and Tier B & C companies receive 1 complaint per year. In fact, 84% of the surveyed companies (overall) reported nil sexual harassment complaints. Though the number of POSH complaints are low, it does not correspond to safe workplaces.

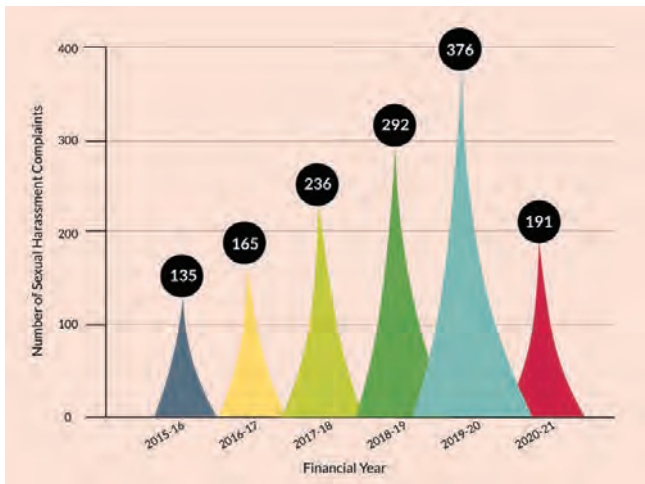


Figure 10: Number of Sexual Harassment Complaints Reported

3. Reasons for Low Numbers of PoSH Complaints

We interviewed 15 Chief Compliance Officers for PoSH and HR managers from the top 1000 Indian companies.

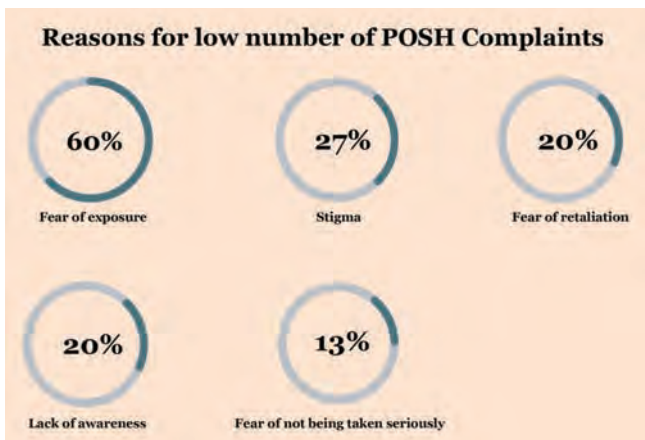


Figure 11: Reasons for low number of complaints under PoSH law

What our respondents think:

“... problem with PoSH [complaints] is that if one person [in the workplace] knows, everyone knows.”

“It’s a male dominated plant. We have woman employees, but they are less in number. Everyone respects them... senior employees treat them like their daughters.”

“They will have 1,000 offices, warehouses, factories, storerooms, marketing offices, where that one person who’s the boss is running his own system there. What is the probability of one girl stepping up and saying my manager in this office is doing this? Most of them in India are so scared about losing their jobs...”

“The general attitude is to treat the complaint as fake, or because of ulterior motives, but this is not true.

4. Limited Involvement of Board Members in Sexual Harassment Complaints

Under Section 134 (3) of the Companies Act, 2013, (post 2018 Amendment) the report presented by the Board of Directors before the Annual General Meeting of the Company should also include details of the PoSH cases. Qualitative interviews with 15 Chief of Compliance Officers found that although 93%, Companies present this report before the Board, only 64.2% of the Board of Directors further engaged with the report’s findings. One respondent mentioned that

“If there were no women in the room, the PoSH data would be quickly brushed over....”

Though compliance rates are high, women continue to face sexual harassment at the workplace. The following recommendations would enable a meaningful implementation of the law:

Recommendations

For Government	
Building Governmental Capacity	There is no information on how/if district officers process PoSH reports filed by companies. Building government capacity is crucial. For instance, a PoSH department in each state — with human, financial, and infrastructural resources — to track compliance and progress.
E-filing for Transparent Reporting Systems	E-filing of annual PoSH reports on a single window platform will help to ease confusion regarding the competent authority for filing the returns.
Accountability and Information Dissemination	Aggregate data on compliance by companies should be made publicly available for greater corporate transparency and accountability.
External Expert to Form Part of Quorum	Mandating that the external expert should be part of the quorum will also help to ensure that no Internal Committee proceedings are conducted without the presence of an impartial expert. This might provide a source of comfort to the complainant and fully leverage the expertise of the expert.
For Corporates	
Need for Deep Rooted Changes in Perceptions and Attitudes	Though the law has resulted in predominantly compliant companies, it is not clear whether women feel comfortable to come forward with complaints. Weaving in PoSH related provisions in companies code of conduct, whistle blower policies, and equal opportunity policies will ensure that sexual harassment compliance goes beyond tokenism and is not seen in isolation. Sexual harassment complaint investigations must be sensitively conducted without trivialising the complainant’s experience, and following a trauma-informed approach.

Part C - BRSR Reporting

1. Compliance with Reporting Mandates

India introduced gender disaggregated reporting for the top 100 companies in 2013-Business Responsibility Reporting (“BRR”). The SEBI (Listing Obligations and Disclosure Requirements) Regulations (2015) codified this reporting requirement. From 2016, the top 500 companies were required to comply with BRR requirements. In 2021, the Government notified a revised reporting mechanism called Business Responsibility and Sustainability Reporting (“BRSR”). It was voluntary for the NSE 1000 companies for FY 2021-22 and mandatory for them from FY 2022-23.

Although 60% of our respondents stated that their companies have a mechanism in place to ensure BRSR compliance, 53% of the respondents said their companies were unwilling to release the BRSR report voluntarily. So mandating disclosure is imperative to gathering this critical information. Data from BRSR reporting would be available from 2022-23 onwards.

2. Board Involvement in Business Responsibility Report Preparation

BRSR Compliance is more driven by board oversight in India than higher management. While 27% of respondents said BRSR process is driven by higher management with some board level insight, 47% of the respondents said BRSR compliance is entirely driven by Board members.

However, when you observe the gender of directors responsible for BRR reporting, just over one percent are women- Out of the 295 companies we studied only 29 had women in charge overseeing BRR requirements. The rest of the 166 companies had men in this role.

While women directors once appointed have been able to participate in corporate affairs and face little discriminatory action, gender still works against those who must traverse this journey to the top.

Recommendations

Awareness & Training Programmes	Awareness programmes should be conducted by the Ministry of Corporate Affairs and Training programmes should be conducted by Companies to highlight the significance of sex-disaggregated data, and ensure BRSR compliance in letter and spirit.
Strengthen Board Involvement with BRSR	Board agenda should include perusing the sex-disaggregated data from BRSR report to pro-actively drive policies addressing gender disparity within the company.
Processing and Aggregating Data for Informed Policy Decisions	BRSR will provide a rich information pertaining to the workforce and gendered patterns therein. The Ministry of Corporate Affairs must release aggregated data so that researchers can study gender practices in employment, career progression, remuneration, retention after maternity, and social security provisions. This will enable formulation of data backed policy.

CONCLUSION

It is well known that a quota system catalyzes the presence and participation of women. This holds true for affirmative action in the political and corporate context in India and abroad. Our research based on data pertaining to elite listed companies in India has shown that legal mandates are substantially complied with. However, this has still not created the critical mass necessary for a sustained and deep-rooted change in gender attitudes. For law and policy initiatives to achieve deep rooted change, it will benefit to design affirmative action to allow the creation of this critical mass. Our research has also proven that having women at the top translates into pro-women policies whose benefits percolate to the bottom of the pyramid.

While women directors once appointed have been able to participate in corporate affairs and face little discriminatory action, gender still works against those who must traverse this journey to the top. A unique opportunity to create this critical mass of women leaders is now before us - In 2014, the SEBI regulatory modification mandated that independent directors may hold office for a term of up to 5 consecutive years on the board of a company and shall be eligible for reappointment for another term of up to 4 consecutive years on passing a special resolution by the company. Thus, it is reported that thousands of independent directors would retire in 2024, and new directors would need to be appointed. If companies can commit to hiring women directors, this will quickly enhance the gender diversity of the boards, which will ultimately result in a positive trickle-down effect for women in India’s workforce.

(This article was written with support from Manasvini Ranganathan, Legal Associate at Pacta.)

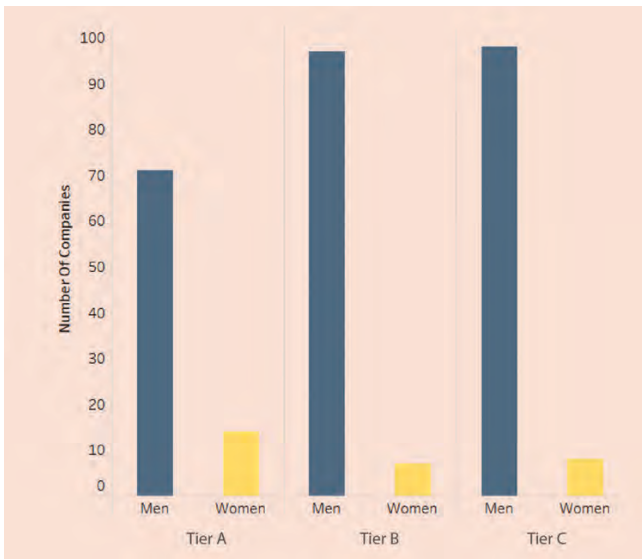


Figure 12: Director Responsible for BRR Disclosure Requirement (based on Gender).

Note: Information was not available for 1 company in Tier A, and 3 companies in Tier B, and 2 companies in Tier C.

Since mandatory BRSR disclosures are futuristic, we make the following recommendations to ensure that BRSR compliances translate into a source of actionable policy decisions at the company level and the MCA level.