

Corporate Board Diversity: A Comparative Legal Study

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Abstract

A significant concept of good corporate governance in the contemporary international business environment is diversity in corporate boards. In this paper, the author will examine the legal requirements of board diversity in the leading jurisdictions in India, the U.S., the U.K., and the European Union. It follows a comparative legal research design, which is based on secondary sources including statutes, regulatory provisions, policy reports and academic literature.

The results of the study show that despite the fact that the mandatory structures have been found to be helpful in increasing the representation particularly gender diversity, it is likely to face challenges such as tokenism and lack of enforcement. Consequently, voluntary and disclosure-based methods foster flexibility but could lead to slower improvement. The study also determines the key barriers including cultural barriers and structural barriers which are impediments towards meaningful inclusion. It concludes that a moderate solution with legal requirements and institutional support and cultural change is the key to sustainable diversity. Another area that is highlighted in the research is the necessity of harmonizing global diversity norms to reinforce the corporate governance practices across the world.

Keywords: Corporate Board Diversity, Corporate Governance, Gender Diversity, Comparative Law, Legal Framework, Board Composition, Inclusion, Global Governance

1. Introduction

Diversity in corporate boards has become an important element of the contemporary corporate governance as the inclusiveness, accountability, and efficient decision-making are increasingly becoming the focus of the corporate organization. Over the past few years, policymakers, regulators, and researchers have come to realize that a diverse board (with different members in terms of gender, ethnicity, professional experience, etc.) is more suitable to deal with complex business issues and improve organizational performance. Board diversity is not only about representation; it reflects the notion that different views will lead to better governance results and sustainability over the long term³.

Board diversity has been given legal status in jurisdictions with some countries providing statutory requirements and codes of governance to enhance inclusiveness. In India, an example of such institutionalized gender diversity is the establishment of “the Companies Act, 2013”, which designed that

³ “Ronald J. Gilson & Jeffrey N. Gordon, The Agency Costs of Agency Capitalism, 113 Columbia Law Review 863 (2013).”

at least one-woman director be appointed to the board of some types of companies⁴. These trends are pointing on a world-wide move to integrate diversity as a principle of governance as opposed to a voluntary company program.

The argument to encourage diversity on boards is based on ethical and economic grounds. Ethically, diversity is in line with equality and non-discrimination principles, which guarantees fair representation in decision-making organs. Empirically, it is indicated that the diversity of boards in companies is associated with the increased creativity of the company, risk management, and financial performance. Diversity also enhances confidence among the stakeholders as it shows an act of transparency and social responsibility. Diversity in corporate boards is therefore becoming a strategic asset as opposed to a mandatory compliance measure.

Although the norms of diversity are increasingly accepted, there are still a number of challenges in the implementation. Among the major issues, the phenomenon of tokenism can be mentioned, as the requirements of diversity are met formally, but not substantially. As an illustration, the nomination of one female director is not likely to translate into a significant contribution or influence to the board decision-making. Also, cultural prejudices, absence of a qualified talent pool, and the unwillingness to change in corporate organizations tend to prevent the successful achievement of diversity goals. These issues underscore the importance of effective legal frameworks and enforcement tools to promote real inclusivity.⁵

A comparative law analysis of corporate board diversity can be of good ideas on how various jurisdictions tackle these issues with the aid of legislation and regulations. Investigating laws like “Companies Act, 2013” in India, diversity disclosure in the United States and gender quotas in the European Union, it is possible to compare the effectiveness of different methods. Such a study also aids in best practices identification and creating more broad and integrated legal frameworks on a global scale.

2. Legal Framework in Different Jurisdictions

Law The legal environment that regulates the diversity in the corporate board has been developing quite differently in different jurisdictions, which has been influenced by the different socio-economic priorities, regulatory philosophies, and institutional development. Whereas certain nations have embraced compulsory quota-based solutions, other nations have recourse to disclosure norms and soft law mechanisms to promote diversity. This part gives a comparative discussion of the law provisions of corporate board diversity in India, the United States, the United Kingdom and the European Union with special focus on gender diversity as one of the key areas of inclusive governance⁶.

2.1 India – Women Director Requirement under the "Companies Act, 2013"

India has also adopted an active legislative stance on promoting board diversity, especially gender diversity by enacting the “Companies Act, 2013”⁷. Section 149(1) of the Act requires that board of directors of some categories of companies, such as listed companies as well as some specified public companies, to have at least one woman on their board. It is an important move towards making gender representation a constitutional aspect of corporate governance, and it is in line with the general constitutional concepts of equality and non-discrimination. The decision to introduce the mandatory

⁴ “Companies Act, 2013” (India), s 149(1).

⁵ “Companies Act, 2013” (India), s 149(1).

⁶ “Ronald J. Gilson & Jeffrey N. Gordon, The Agency Costs of Agency Capitalism, 113 Columbia Law Review 863 (2013).”

⁷ “Companies Act, 2013” (India), s 149(1).

requirement of women directors was made to respond to the historical lack of women in the corporate leadership roles. Before the passage of “the Companies Act, 2013”, women were very few in the corporate boards of India and their involvement was more of a voluntary act. The legal requirement has forced businesses to re-consider their board structure and fully involve women in the decision process. Besides the Act, the “Securities and Exchange Board of India (SEBI)” has enhanced this requirement under the name of SEBI (“Listing Obligations and Disclosure Requirement”) Regulations, 2015 that has added more rules concerning corporate governance of listed entities. In spite of these legal provisions, there are still challenges of substantive diversity. Opponents state that the one-woman director stipulation can result in tokenism where the female presence on boards is just a symbolic gesture and not a powerful one. Some companies have also promoted female family members of promoters to get in line with the law and this has brought doubt on the independence and effectiveness of such promotions. However, the legislative system has been essential in triggering a cultural change of appreciating the significance of gender diversity in the corporate governance.

2.2 United States – Diversity Disclosure Norms

Unlike the compulsory method used in India, the United States majorly depends on disclosure rules to enhance board diversity. There are no rigid quotas enforced by the legal framework but the transparency and accountability of the system is maintained by reporting requirements. The U.S. Securities and Exchange Commission (SEC) has come up with guidelines whereby companies are required to report how and whether or not diversity is taken into account when nominating directors in a regulation known as Regulation S-K⁸.

The disclosure-based strategy is based on the assumption that the market forces and the pressure of investors can push companies to more diversity. The regulatory framework tries to empower shareholders and other stakeholders by making them make informed decisions by requiring companies to publicly report on their diversity policies and practices. The institutional investors especially have been instrumental in promoting diversity in boards with most of them exercising their voting rights to affect the corporate governance practices. The state level attempts to make more rigid diversity requirements have been made in recent years. In California, there are laws requiring gender diversity in corporate boards, including California Senate Bill No. 826,⁹ requiring that publicly traded companies headquartered in California have at least some women directors, but this has been disputed in court, and has been held unconstitutional. All in all, the U.S. strategy is characterized by the desire to have flexible, market-oriented mechanisms instead of strict statutory requirements.

2.3 United Kingdom – Corporate Governance Code

The UK uses a soft law approach coupled with a firm institutional control. The most important tool that regulates the diversity of boards is the UK Corporate Governance Code, which works on a comply or explain basis¹⁰. According to this system, companies are expected to follow the recommended practices of governance such as ensuring that there is diversity in boards, or to explain why this is not so.

The Code highlights the necessity of diversity at the gender, ethnic, and professional backgrounds, as different points of view are viewed as an effective way of running boards. Alongside the Code, there are other programs like the Hampton-Alexander Review and the Parker Review where voluntary gender and

⁸ “SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015” (India).

⁹ “SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015” (India).

¹⁰ “UK Corporate Governance Code” (Financial Reporting Council, 2018).

ethnic diversity targets in corporate leadership are established. Government and regulatory bodies have enhanced these initiatives, and this has led to a cooperative approach to the promotion of diversity.

The “comply or explain” model offers flexibility while maintaining accountability. Companies are not legally compelled to meet specific diversity quotas, but they are required to disclose their policies and progress, which subjects them to scrutiny from investors and the public. This approach has yielded positive results, with a notable increase in the representation of women on boards of FTSE-listed companies. However, challenges remain in achieving diversity at senior executive levels and ensuring sustained progress.

2.4 European Union – Gender Quota Directives

One of the most aggressive moves towards the enforcement of board diversity has been taken by the European Union, which has introduced binding laws to enforce the idea. The gender quota directive which is formally referred to as the Directive on Improving the Gender Balance among Directors of Listed Companies is an effort by the EU to have gender equality in corporate governance in the member states or have women hold at least 40% of the non-executive directors or 33% of the total directors in a listed company¹¹.

The quota basis method is premised on the understanding that voluntary interventions have not been effective in dealing with structural inequalities. The EU aims at increasing the rate of change by making the targets mandatory to guarantee significant representation of women in the decision-making processes. Member states must enforce the directive in their country laws and put in place systems of monitoring and enforcement¹².

Although the directive has been commended to be effective in the increase of female representation on boards, it has also been subject to controversy on meritocracy and regulatory overreach. Opponents state that quotas can also be counterproductive to the principle of choosing candidates on merit, whereas advocates state that quotas are needed to address the structural biases and establish a level playing field. Regardless of these controversies, the EU policy has established an international standard of law-making intervention in advancing board diversity of corporations.

3. Comparative Analysis

A comparative analysis of the various jurisdictions, including India, the United States, the United Kingdom, and the European Union, in terms of the corporate board diversity structures depicts convergence and divergence of legal frameworks. Although every jurisdiction acknowledges the significance of diversity in enhancing corporate governance, the approaches used to realize this goal differ greatly. The differences are defined by legal traditions, market structure and socio-cultural contexts. The elaborated comparison assists in realizing how every system strikes a balance between the regulatory intervention and corporate autonomy and how effectively these methods manage to encourage meaningful diversity¹³.

Among the most important similarities in the jurisdictions is the recognition of diversity as the crucial element of successful corporate governance. Regulations and laws, both compulsory and voluntary, focus on decision-making and accountability through inclusion of different views. As an example, the need of India as specified under “the Companies Act, 2013” and the European Union directive regarding gender

¹¹ “Directive (EU) 2022/2381 on Improving the Gender Balance among Directors of Listed Companies.”

¹² European Commission, “Gender Balance on Corporate Boards” (Report, 2020).

¹³ “Ronald J. Gilson & Jeffrey N. Gordon, The Agency Costs of Agency Capitalism, 113 Columbia Law Review 863 (2013).”

balance have a common goal of having women at minimum representation in corporate boards. Equally, the United States, as per the United States Regulation S-K, and the United Kingdom, as per the United Kingdom Corporate Governance Code, demand that companies report diversity-related policies and practices. This common focus on transparency and inclusion is part of an international agreement that diversity will provide better governance results¹⁴.

Although there are these similarities, the nature and extent of legal interventions differ significantly. Mandatory approaches have been embraced by India and the European Union with different levels of strictness. India needs no less than one woman director on the board, but the European Union sets more ambitious goals with the help of the so-called Directive (EU) 2022/2381, which prescribes a certain percentage of female representation. The United States on the other hand is heavily dependent on disclosure norms without any quotas and hence the companies have more flexibility in their board composition. The United Kingdom takes a middle way approach with the so-called comply or explain system of making sure that people comply with the principles of diversity without any legal requirement. These differences point to the continuum of regulatory approaches, between hard law and soft law systems. The main point of this comparative analysis is the effectiveness of mandatory and voluntary diversity measures. These compulsory actions like those taken by the companies act 2013 and the EU directive have been successful in realizing short-term gains in the number of female individuals on corporate boards. These measures break the inertia and resistance to change as they force companies to act by creating clear legal requirements. Nonetheless, opponents state that compulsory quotas can make people engage in the superficial adherence when the business aims to achieve the required number instead of promoting an inclusive environment. The tokenism effect, whereby women directors are employed but not given a lot of influence, is commonly mentioned as a drawback of these methods¹⁵.

Voluntary and disclosure-based mechanisms, on the other hand, such as the one used in the United States and the United Kingdom, use the market and pressure exerted by stakeholders to make a change. Such strategies will help the firms to incorporate diversity within their governance system naturally, which will facilitate a culture of inclusiveness. Soft law frameworks offer the flexibility necessary to enable companies to customize diversity strategies to meet needs and circumstances specific to the company. Nevertheless, investor activism, societal examination, and corporate dedication play a crucial role in determining the effectiveness of these measures. Without effective enforcement mechanisms, change can be slow and unequal, especially in jurisdictions where diversity is not a stakeholder priority.

The other significant part of the comparative analysis is the role of enforcement and monitoring mechanisms. Compliance Mandatory frameworks typically include punishments or penalties in case of non-compliance and hence they ensure that there is an improved rate of compliance. The case point is that a company and its directors may be targeted in the course of the legal proceedings due to the inability to follow the requirements of the Companies Act, 2013. Similarly, EU directive imposes the obligation on the member states to make sure that they possess effective enforcement mechanisms. Its counterpart is voluntary frameworks, which are grounded on reputational incentives as opposed to legal punishments. The investors and the people can criticize those companies that fail to meet the expectations of diversity, but cannot directly punish them through the law. The trade-off between regulatory certainty and corporate flexibility is brought out in this difference.

¹⁴ “Regulation S-K” (United States), 17 C.F.R. § 229 (2023).

¹⁵ “Directive (EU) 2022/2381 on Improving the Gender Balance among Directors of Listed Companies.”

Board diversity measures also have a number of challenges in implementation across jurisdictions. The most notable one is the continued existence of structural and cultural obstacles on the way to the involvement of underrepresented groups in corporate leadership. There is also a problem of availability of qualified and diverse talent pool even in jurisdictions where it is compulsory. In addition, the practices of recruitment and promotion can be biased, which does not allow achieving the diversity programs. These challenges highlight the need of the complementary measures such as the establishment of leader’s programs and mentorship to assist in the pipeline of diversity candidates.

The other problem is the problem of tokenism that jeopardizes the aims of diversity rules. In other situations, organizations might place people in underrepresented groups into positions that only meet the government-mandated requirements but provide them with no meaningful position and power. This not only curtails the advantages of diversity but it brings into question the commitment of the corporations to inclusivity. Moreover, the cultural attitudes to diversity might be different, and this issue may influence the attitude to accept and implement legal steps. Resistance to change and deep-seated social norms can hinder the process, even when there are good legal structures.

A comparative analysis also shows that there is no universal method that could be considered effective. The effectiveness of diversity actions is related to both legal, institutional, and cultural aspects. There might be need to have mandatory quotas to bring change in jurisdictions where diversity is low whereas voluntary methods would be more appropriate in jurisdictions where there is good governance practice and stakeholder participation. Hence, a middle ground where regulatory intervention is combined with market-driven mechanisms would produce the most sustainable outcome. This kind of strategy can guarantee the adherence to the rules and the development of the sincere attitude toward diversity among the corporate frameworks¹⁶.

Table 1: Comparative Table: Corporate Board Diversity Frameworks

Jurisdiction	Legal Approach	Key Law/Regulation	Nature of Measure	Enforcement Mechanism	Key Challenge
India	Mandatory	"Companies Act, 2013"	Hard Law	Legal penalties	Tokenism
United States	Disclosure-based	"Regulation S-K"	Soft Law	Market-driven (investors)	Slow progress
United Kingdom	Comply or Explain	"UK Corporate Governance Code"	Hybrid	Reputational pressure	Limited enforcement
European Union	Quota-based	"Directive (EU) 2022/2381"	Hard Law	Statutory enforcement	Debate on meritocracy

4. Issues and Challenges

Although the idea of corporate board diversity is well established as a key component of good corporate governance, it still encounters a number of operational issues when it is being implemented. Among the most noticeable ones, there must be the difference between tokenism and actual inclusion. Although laws like the provision in “the Companies Act, 2013”¹⁷, require at least one female director, in most instances,

¹⁶ European Commission, “Gender Balance on Corporate Boards” (Report, 2020).

¹⁷ “Companies Act, 2013” (India), s 149(1).

companies are simply compelled to appoint underrepresented persons to comply with the law but this does not necessarily give them an opportunity to participate in decision making or give them influence at the board table. This leads to representation as opposed to inclusion which is substantive thus restricting the idealistic diversity in enhancing governance and organizational performance.

Lack of proper mechanisms of enforcement is another acute challenge. Even though various jurisdictions have developed laws and guidelines to facilitate board diversity, the level of implementation of these laws and guidelines varies greatly. In regimes based on disclosure-based systems, like those based on the United States disclosure system, Reg. S-K [8], or the United Kingdom Corporate Governance Code, compliance is not always enforced by the market or reputation but instead by the minimal compliance requirements. In jurisdictions where such laws are mandatory, poor surveillance and minimal punishment may decrease the effectiveness of these laws, thus negating their intended effects.

Cultural and structural barriers are also important barriers to the realization of true board diversity. Firm traditions and gender biases tend to restrict the chances of different people who may have varied backgrounds in the company by influencing the decision-making process. Traditional networks dominate leadership positions in most instances and limit access by other underrepresented groups including women. Furthermore, there is no strong flow of qualified candidates, which only worsens the issue because there are fewer people with different backgrounds to fill in top leadership positions. These institutional limits underscore the necessity of more institutional changes such as education, mentorship, and leadership development programs to enable diversity efforts.

Moreover, corporate culture may act as an obstacle to the effective introduction of diversity actions. Diversity requirements can be seen as regulatory liabilities and not strategic opportunities by organizations and thus can be met through superficial compliance. Such opposition is usually supported by the fear of meritocracy, in which the diversity programs are perceived to undermine the value of the most talented employees. Nevertheless, these views do not take into account that diversity and merit do not exclude one another but can be considered complementary to each other in terms of decision-making and innovation. To sum up, although legal frameworks have evolved considerably to ensure the promotion of diversity on corporate boards, such problems as tokenism, absence of enforcement, and cultural and structural obstacles still hinder their performance. To be able to tackle these issues, a holistic strategy that transcends beyond legal compliance and is aimed at inculcating a culture of true inclusion and equal opportunity into corporate governance systems is necessary¹⁸.

5. Findings and Discussion

Positive Impact on Corporate Performance: The researchers conclude that board diversity in corporations renders a considerable positive effect on the organizational performance. Homogenous boards create homogenous views and thus better decision making, innovation as well as problem solving. Gender-diverse boards are associated with better financial results, improved risk management, and transparency in companies. The introduction of women directors, which is required by the section of “the Companies Act, 2013”, has led to a more balanced discussion and corporate governance practices have become more dominant.

Enhanced Board Independence and Accountability: Diversity encourages autonomy in the board by minimizing groupthink and fostering judging of management decisions. The diversity of backgrounds and

¹⁸ European Commission, “Gender Balance on Corporate Boards” (Report, 2020).

experiences helps boards to break the conventional thinking, and thus enhance accountability and oversight functions. This has especially been pronounced in jurisdictions where diversity has been promoted actively via a legal or regulatory approach.

Variation in Legal Effectiveness Across Countries: Laws have varying levels of efficacy. The observation of a significant rise in the female representation on the corporate boards is due to the mandatory provisions including the ones laid down in the "Companies Act, 2013" and the Directive (EU) 2022/2381. Conversely, the disclosure-based models such as in the United States (Regulation S-K) are very dependent on investor activism and have seen slower developments. The effectiveness of the UK Corporate Governance Code is moderate, due to its generalization of flexibility and accountability in the compliance or explain concept.

Limitations of Mandatory Approaches: While mandatory laws ensure minimum representation, they may lead to tokenism if not supported by broader institutional changes. In some cases, companies comply with legal requirements without ensuring meaningful participation of diverse members in decision-making processes. This highlights the need for qualitative as well as quantitative measures of diversity.

Role of Market Forces and Stakeholder Pressure: Although mandatory laws provide a minimum representation, they can be used to result in tokenism unless it is accompanied by institutional changes. Companies in certain situations adhere to the law without necessarily involving the various members in the decision making processes. This shows the necessity of both qualitative and quantitative indicators of diversity.

Emerging Global Trends: Institutional investors, proxy advisory firms and social opinion are very instrumental in ensuring diversity in jurisdictions that have voluntary systems. Shareholder activism has been on the rise, whereby companies are being guided towards inclusivity in their practices despite the fact that the law does not compel them to be so.

Shift Toward Inclusive Governance Culture: The results show that there is a slow transformation of compliance-based diversity to inclusion based on values. Firms are starting to see diversity as a strategic benefit, as opposed to a control cost. This change is critical to long-term sustainability and the development of stakeholder trust.

6. Conclusion

Corporate level board diversity has now become a central feature of good corporate governance and increased recognition in various jurisdictions of how this diversity could enhance decision-making, accountability and organizational performance. The comparative analysis reveals that, whereas the countries or states such as India and the European Union have implemented the mandatory legal frameworks such as "the Companies Act, 2013" and the Directive (EU) 2022/2381, other countries such as the United States and the United Kingdom are guided by the disclosure norms and the soft law mechanisms such as the Regulation S-K and the UK Corporate Governance Code Each of the approaches has helped to enhance board diversity albeit with different levels of success.

The research finds out that diversity has a positive effect to corporate performance through innovation, lessening groupthink, and enhancing governance systems. However, the problem of tokenism, ineffective implementation, and cultural barriers are some urgent problems that yet cannot permit fully accomplishing the diversity goals. These issues imply that it is not enough to bring legal provisions but be properly determined to incorporate these issues in the corporate culture. Diversity measures can be effective not

only under the condition that they are stipulated by the law, but also when they are exercised and accepted in the organizations.

Besides, the need to balance global diversity norms should not be overlooked. Due to the globalization of business, the standards of corporate governance are supposed to be similar. The harmonization would improve the adoption of best practices, reduce regulatory differences, and guarantee the establishment of a more inclusive and equitable corporate environment across the globe. The most suitable approach will be a balance between the mandatory measures and the market-driven, gentle, and adaptable measures, which is most likely to give the sustainable diversity outcomes.

7. Recommendations

- Improve the existing legal frameworks to expand the minimum requirements of diversity to broader scopes, including ethnicity and professional experience.
- Improve the enforcement systems through imposing more rigorous monitoring, punishments against non-compliance, and higher regulatory control.
- Encourage an inclusive corporate culture through promotion of leadership development programs, mentorship programs, as well as diversity training in organizations.
- Encourage greater stakeholder engagement including investor activism and public disclosure as a way of holding themselves responsible and ensuring a sustainable increase in board diversity.

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