The message of importance of gender diversity in the corporate sector was made clear by the installation of “fearless girl” bronze sculpture facing the charging bull statute in New York City. The Statue was installed to promote the message of workforce diversity and to promote corporations to employ more women in their boardrooms. For the effective management of the company it is well accepted that there must be directors belonging to different age groups, different functional expertise, and different educational backgrounds but the benefits of gender diversity are generally ignored.

Generally, diversity may be characterized in Boardroom of two types: Demographic Diversity and Cognitive Diversity. Cognitive diversity includes diversity in education, values, knowledge, affection, perception, and personality whereas demographic diversity means diversity in age, gender, etc. Many companies are now focusing more towards more workforce diversification in their boardrooms to send a message to their investors that it is a progressive company and recognizes merit. Increased diversity of boards creates a more effectual board as it broadens the “range of perspectives and expertise” leading to a better performance of the organization, enhancing resources access, and a better financial value. Furthermore female participation in boards can affect the quality of the monitoring role which in turn would lead to better financial performance of the firm. Although the existence of women in corporate boards might lead to a possibility of increasing shareholder’s value provided women provide an additional perspective in decision making. But there is also a chance of negative influence if the inclusion of female members in boards is because of legislative norms or societal pressure to achieve equality of sexes.

Research relating to the effect of women on boards and its effect on profit is rather equivocal. Although there exists various research that found there is positive relationship between these two variables i.e gender composition of board has a positive relationship with board’s effectiveness, but there are also various researches which found out that there exists a negative relationship between the two. Furthermore, there are also few researches which suggest that both of these variables are “methodologically complex” and there exists no relationship between them.

Benefits of Gender Diversity:

1. **Improves performance:** EU’s commissioner in charge of justice and gender equality, Věra Jourová said that “Women have a very good talent for long-term, sensible spending [and] for crisis-solving because they can come up with proposals for negotiation and compromise. It is a necessary balance to

the approach of men: attack and escape."\[6\] As per the analysis done by Ronald J. Bruke women directors introduced a variety of backgrounds and expertise to their director responsibilities.\[7\] Companies that had gender diverse board displayed more stock market returns, higher return on equity higher pay-out ratio and higher valuation.\[8\]

2. Responsive to Market: The benefits of having a more gender diverse boards is that the such companies has a better understanding of customer’s needs which in turn results in a more informative decision making. It has been continuously pointed out that a increased representation of a particular group does not necessarily mean a better skill or talent but a organization that has at its hand a better diverse talent pools has been seen to have a workplace of more openness, rational decision making and merit.\[9\]

3. Strong Corporate Governance: Studies have shown that the presence of Women Director on the Board improves the Governance in a company and brings stability. Stable board with equal participation of male and women directors, aids in identifying the criteria for calculating strategy, follow the procedure of conflict of interest and observe the Corporate Governance Scheme. Furthermore, the focus on customer and employee satisfaction, corporate social responsibility would ensure board accountability and transparency.\[10\]

4. Balanced style of leadership: This is has been a well-accepted fact that both men and women in Boards have a different style of leadership. Terjesen mentioned in its research all likely differences between women and men in their leadership patterns and also provided that women in Boards are more likely to exhibit participative leadership, better collaboration talents, more likely to debate and ask questons, play an active role on their boards, etc.\[11\]

**Approaches followed for increasing Women on Boards**

**Quota Approach or Legislative Approach for gender diversity:**

The famous quota approach is based upon the concept of “equality of outcome approach”, according to which primary importance is given to the final results and the means to achieve those results are of secondary importance. Under the quota approach, the government through legislation fixes a minimum number of women required to be present in a company’s board i.e a fixed quota and failure to do so leads to sanctions. Such sanction may either range from being soft penalties or a harsher penalty.

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12. Example of more soft approach can be seen in the penalties adopted by Spain whereby failure to comply of quotas leads to “no consideration for public subsidies and state contracts”.

13. Example of a harsher penalty can be seen in the approach taken by Norway, which imposes the sanction of deliating the company from the stock exchange of the country or headquarter reallocation to some other country.
The quota system forces the corporations to quickly respond and develop, identify, retain, promote women into leadership and executive roles. The system of quota approach can also be referred to as Legislative Board Diversity. Quota approach is followed by European Union and has been implemented in countries like France, Norway, Belgium, Netherlands, Spain, Iceland and Italy.

**Study of Norwegian Quota System**

Norway is the best example of quota-based approach. Norway was the first country in 2008, to introduce a system of quota for women in company boards. On December 19, 2003 the Norwegian Government passed a legislation under which different quotas was fixed for minority gender on the board as per the no. of directors in the company; it was required that there must be at least “40% representation of either gender in the corporate boards”\(^\text{14}\). The companies who were primarily state owned needed to comply with it by 2006 while public limited liability company’s needs to comply with it by 2008. Further, sanctions provided by Norwegian Govt. for non-compliance ranges from refusal to register board, imposition of fines until non-compliance, and in case of continuous noncompliance court may also order company’s dissolution through court’s order.

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(1) On the board of directors of public limited liability companies, both sexes shall be represented in the following manner: 1. If the board of directors has two or three members, both sexes shall be represented. 2. If the board of directors has four or five members, each sex shall be represented by at least two members. 3. If the board of directors has six to eight members, each sex shall be represented by at least three members. 4. If the board of directors has nine members, each sex shall be represented by at least four members, and if the board of directors has more members, each sex shall represent at least 40 percent of the members of the board. 5. The rules in no. 1 to 4 apply correspondingly for elections of deputy members of the board of directors.”

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**Effect of quota approach on Norway:**

*Increase in Directorship:* According to a research done in 2015\(^\text{15}\), the legislation has allowed more women directors to gain experience in the company’s leading to an increased and high proportions of women directors. Moreover, the long-term effect of the law include is converging number of male and female director in the country.

*Experience and Education:* Females increasingly are becoming more educated and experienced in comparison to their competition male directors leading to companies, finding it more easier to find more capable women directors.\(^\text{16}\) So, as per the Resource Dependency Theory of Corporate Governance the company would go for more women directors as they are the more qualified half, in theory.

**Problems faced in Quota System**

The sole reason for the success of quota system in Norway is because of the stronghold that Norway already enjoys in respect of equality of sexes in its society\(^\text{17}\). Norway already reflected a society which is based upon the concept of gender equality. Practices of promoting female employment can be seen in policies of Norway through its earlier schemes like gender quotas in political parties, committees, panels, etc. Countries in which do not already enjoy such equality of sexes may find it difficult to enforce such scheme.

a) *Decrease in Firm’s Value:*

Although this a controversial result but there are few researches that suggest mandatory quotas

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may force the company to appoint inexperienced or unqualified directors for the mere purpose of fulfilling the legislative guidelines. As per the research led by Ahern and Dittmar (2011) it was concluded that introduction of such quotas in Norway imposed pre-conditions on the choice of directors that leads to economically large declines in value.

b) Problems of tokenism:
The biggest drawback of this approach is the problem of tokenism. In number of countries, it has been observed that the companies appoint female directors merely because of their gender to comply with the norms and not for the purpose of gender diversity. Even after the introduction of the quotas in Norway there are various studies that show that the percentage of women directors have been fairly stable. The reason behind this is because of concept of “golden skirts” i.e many experienced and qualified women directors now sits on the board of two or more company as compared to earlier, causing a less percentage increase in total no. of women directors in the country as it was predicted.

One more issue that comes with the introduction of quota is the concept of “glass ceiling” effect. With the introduction of quota system what simply happens is there will be a more gender diverse boards, but this approach will not invariably lead to a larger number of females in the pools among which the directors shall be selected. So gender diverse boards is not directly proportional to the opportunities that female may receive in the appointment in the board.

The major issue with quotas is that they are directed to make change in quantum or statistics but not the attitudes of the corporations. Because of the attributes of this approach, although looking at the number it may seem like corporation are moving towards the objective of gender diversity, but in reality, the major cause or roots of the problem may lie inherent in the corporations altogether. Because of this reason my opinion is that quotas might not be the best way to tackle the problem of gender diversity on Board.

**Regulatory Approach for Gender Diversity on Board.**

Under the Regulatory approach, a large number of activities like Corporate Governance Codes, govt. targets policy, govt. agency requirements, listing rules for stock exchange. Generally, there may be two types of approaches that are followed: 1. Comply approach (company is required to follow such recommendation, but there no sanctions mentioned in the code for such non-comply.) and 2. Comply or Explain Approach (As the name suggests, the company is expected to follow a certain code and in case of non-compliance the company is asked to show the reason for not following such code). The comply or explain approach is based upon the presumption that, there should be no strict norms of corporate governance for corporations instead norms should be more according to the needs of the company leading to a more efficient governance. This theory is against the theory of “one size fits all approach” and is more based upon the “equality of opportunity approach”. In respect of Gender Diversity this approach lays down that every company must follow the recommendations for gender diversity and those companies who doesn’t follow the recommendation must specify in their reports.

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reasons for not adopting such recommendations. Various countries like Australia, United Kingdom, Canada, Belgium, Finland, France, Germany, Hong Kong etc.

**Study of Australia’s Comply or Explain Approach:**

In Australia, The Australia Securities Exchange (ASX) introduced “ASX Corporate Governance Council Principles and Recommendations (Principles and Recommendations)” in 2003 and a recommendation in relation to board diversity were introduced in 2010. These corporate governance principle essentially lay out the standard corporate governance practices for listed companies on Australia Stock Exchange leading to good governance outcomes and meet the reasonable expectations of most investor in most situation. The code is based on the “if not why not approach”. Under these principles if a company decides that a particular principle or recommendation mentioned will not be in the best interest of the company, then company may proceed with not adopting such principles. Nevertheless, the company must state in their reports why it is not following such principles.

2013 ASX’s Recommendations lays down that every corporation should have a “diversity policy” that lays down the policies for achieving a diverse board and analyse the progress made by the company towards it. Further it provides the company to make a disclosure report containing the objective target (“measurable objective”) taken by the company, any committee of Board formulated to achieve diversity and company’s progress in achieving such goal.

24 Australia has taken a much wider approach in it construing the ambit diversity which includes in its ambit variables of disability, age, ethnicity, cultural or religious backgrounds, gender identity and sexual orientations. Further the code provides for various suggestions what a company’s diversity policy may include ex: Beneficial effect of diversity in labour market, company’s commitment towards diversity, key factors for the company to measure success of diversity objectives.

Even, Women on Boards and Chartered Secretaries Australia follows the ASXCGC recommendations and in pursuance of this they pledge to achieve a representation of 40% of under-represented gender on the Board by 2015.

**Effect of ASX Corporate Governance Principles and Recommendation:**

1. **Increase in Diversity Policies:** In Australia, since 2013 with the introduction of Regulation there has been an increasing number of companies who are opting for formulating diversity policy. The most noteworthy growth in relation to adoption of policies’ was in ASX 501+group. There was also increase in the number of companies that disclosed the measurable

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23. That is why it is called “if not why not approach”.

24. ASX Corporate Governance Council Principles and Recommendations (Principles and Recommendations) Regulation 1.5 of ASX Corporate Governance Council Principles and Recommendations, 2013 “A listed entity should:

   1. (a) have a diversity policy which includes requirements for the board or a relevant committee of

objectives to measure their progress. A very small percentage of the companies opted for setting quotas of female directors as objectives, while other focused more upon taking up schemes such as “pay equity review”, “employee satisfaction survey, etc. 26

2. Increased Gender Diversity: Before the introduction of the recommendation, women on Board in 2006 were only a mere 9% that increased to a whopping 20% in 2015. 27 There was also increase in the number of Female Senior Executives from 15% in 2012 to 19% at 2015.

3. If not why not: Majority of the companies that didn’t follow the recommendations or didn’t take up any diversity policies submitted their explanation that mostly related to either because of early stages of development of company or because of the size of the company. Moreover majority of companies that didn’t follow recommendations expressed their intention to adopt a diversity policy in future.28

Study of United Kingdom’s Approach:
The first step by UK in the direction of gender diversification on Board was taken on May, 2010, when the Corporate Governance Code was amended to include benefits of a gender diverse Board while selecting NEDs(Non-Executive Directors) . Later on in Feb 2011 “Davies Report” was published that was formed to review the current position of women on Boards headed by Lord Davies of Abersoch. The main recommendations were:

1. Directed the FTSE 350 for fixing a percentage of females that companies aims to achieve on Boards. The report suggested a minimum target of 25% expecting that the companies shall endeavour to achieve even more.

2. Disclosure by the companies about the statistics relating to gender diversity in Board and Senior Executive Positions and in the whole company.

3. Disclosure of the progress made by company annually with regards to their policies and measurable objectives relating to gender diversity.

4. Disclose in its Annual Report to mention the work of nomination committee and disclose the process it has employed for selection.

5. Formulation of “Voluntary Code of Conduct” by search firms that are based on gender diversity.29

Problems of Regulatory Approach:
1. Definition of Diversity: Diversity being such a wide term it is easy for the company to interpret it either in terms of skill, work experience, diff of viewpoint, personal qualities or in terms of national origin, gender, race. The issue with corporate governance code is that they do not define what all is included in the concept of diversity. Only half of the companies in US (Comply or explain model) while hiring directors considered ‘diversity’ in respect of socio-demographic terms of ethnicity, gender, race. Etc. While other companies took up their own meaning of diversity with most citing prior director experience rather than including sociodemographic characteristics.30 Various authors has also recommended

26. See Id.
that definition of the term ‘diversity’ needs to be amended to include within its ambit socio-demographic characteristics.\textsuperscript{31}

2. \textit{Less Investor Engagement}: The whole comply or explain approach is based on the premise that the investor will look into the corporate governance practices adopted by the company before making their investment decisions. There is an assumption that investor shall contemplate insufficient explanation for non-compliance by the company in a negative manner. There are number of researchers who found that most of the investors before making their investment decisions do not take into consideration the explanations or corp governance practices adopted by the company.\textsuperscript{32}

3. \textit{Poor Informative Qualities}: One more shortcoming of this approach is that the companies generally give poor informative quality of explanations while answering their reasons from departing the standards of corporate governance. Such an quality of explanations by the company may create problems for the investor as such information plays a priority factor for investors in making their decisions.

\textbf{Gender Diversity: Indian Perspective}

\textbf{History of Mandate of Women Director}

The first reference of the introduction of gender quotas under the Companies Act, 1956 can be traced back to 2003, in the Companies (Amendment) Bill, 2003 that followed the proposals of Naresh Chandra Committee under which Section 252 of the 1956 Act was proposed to be amended. The new proposed Section 252\textsuperscript{33} contained a new provision by which every public company having a paid-up capital and free reserves of five crores rupees or more; or a turnover of fifty crores rupees, or more shall have such number of women directors as prescribed by Ministry of Corporate Affairs. But this amendment Bill received a lot of criticism by chambers of commerce, industry groups, and moreover certain anomalies were also pointed out by certain experts. As a result of this backlash The Companies Amendment Bill was withdrawn by the government for its review or rectification by MCA (Ministry of Corporate Affairs).\textsuperscript{34}

Thereafter there was no reference made for gender diversity in boards under the Company Bill, 2009. Finally under Companies Bill, 2011 the provision on women director mandate was introduced whereby India adopted a quota approach for achieving gender diversity on Board.

\textbf{Gender Diversity in India: Legal Compliances:}

Under Chapter XI, Section 149(1) of the Companies Act, 2013 a new provision was included which provided that such classes of company shall appoint at least one woman director. Classes of company for which the appointment of one woman director is necessary are: 1) Every Listed Company. 2) Every other public company having paid up share capital of One Hundred crore rupees or more, OR turnover of Three Hundred crore rupees or more.\textsuperscript{35}

\begin{footnotesize}
\begin{enumerate}
\item 33. Section 252(1) of Companies Act, 1956, No. 1, Acts of Parliament, 1956 (India)
\item 34. Subhash Chandra Das, Corporate Governance in India: An Evaluation, 29, 3\textsuperscript{rd} Edition, 2012.
\item 35. Rule 3 of The Companies (Appointment and Qualification of Directors) Rules, 2014
\end{enumerate}
\end{footnotesize}
Gender Diversity in Boards and Corporate Governance

The Standing Committee on finance in its 57th Report on Companies Bill, 2011 mentioned that the provision relating to woman director under Section 149(1) is “such indicative provisions which will make the companies more alive to giving salience to the female gender in the realm of corporate governance. It is also in line with the Government policy to encourage women’s participation in decision making at every level in the society.”

The time given to company for compliance with such requirement was one year in case of companies mentioned under Sec 149(2) and six months for companies incorporated under the act and which are covered under 149(1). Neither the act nor the rules provide any specific criteria or qualifications for the candidature as Women Director of any corporations.

Clause 49 of Equity Listing Agreement between a company and the stock exchange also provides for mandating the requirement of appointment of one woman director and through the circular issued by SEBI dated Sept 15, 2014 this provision of women director was to be made applicable with effect from April 01, 2015. Regulation 14 of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 also provides the same one woman director mandate.

Suggestions made by the Uday Kotak Committee.

Kotak Committee or Securities Exchange Board of India(SEBI) Committee on Corporate Governance was formed on June 2, 2017 having Mr Uday Kotak as its chairman was formed with main objective of “improving standards of corporate governance of listed companies in India.” The committee also addressed the issue of Gender Diversity on Board and accepted the importance or beneficial impact of gender diverse boards in the process of decision making.

It also addressed the fact that with introduction of Section 149 of Companies Act, 2013 and SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 the under representation of women directors in India has improved to an extent i.e. (Total percentage of women directors in NIFTY 500 companies was 5% on 31st March that improved to 13% as on 31st March, 2017) but it is still not comparable to the international standards that India wants to achieve.

In lieu of its objective the Committee recommended that “every listed company to have at least one independent woman director on its Board of Director”.

In perusal to the recommendation of the Kotak Committee SEBI introduced SEBI(Listing Obligations and Disclosure Requirements) (Amendment) Regulation, 2018 on 9th May 2018 whereby under Regulation 17 of SEBI(LODR), 2015 an explanation was introduced. The explanation made it mandatory for all the top 500 and top 1000 listed entities to have at least one independent woman director by 31st March, 2019 and by 31st March, 2020 respectively.

In Clause 49, the SEBI (LODR) 2015 regulation mandates that a company shall have an optimum proportion of not less than 25% of non-executive directors on its board and out of whom one female director shall be present.

38. 17. (1) “The composition of board of directors of the listed entity shall be as follows:
   (a) board of directors shall have an optimum combination of executive and non- executive directors with at least one woman director and not less than fifty percent. of the board of directors shall comprise of non-executive directors;
   “Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;”
April 1, 2019 and April 1.2020 respectively. The basis for determining the top 500 and 1000 listed companies was on the basis of “market capitalisation” at the end of previous financial year. A significant efforts needs to be made by the companies as on 11th October 2017 only 38% companies will have to appoint one independent women directors.39

Conclusion
As per the research conducted by the Prime Database Group, out of the total of 1,716 listed companies the total number of directors are 10,792 and out of this only 1,654 directors were female amounting to an total approximate of 15%. So India still needs to take following measures:

1. Problem of Tokenism: The first precondition for the quota system to work is that the concept of gender diversity on Board must be accepted in spirit and not just as a matter of law. The companies should not only comply with requirements just on the basis of the mandatory check the box requirement. The major problem that was anticipated with regards to the introduction of quota in India was that the companies will fulfil the requirement by appointing any female family member as women directors in non-executive capacity just to comply with norms. As per the research conducted by Prime Database groups, in the NIFTY 500 on 98 women directors were related to promoters i.e 16%40. In these groups of 16% only half of the women directors were in executive capacity.41 Looking at this data it can be seen that earlier concerns of the experts has turned into a positive directions as most of the women directors appointed are not related to promoters and hence take active decisions in the management of the company. One beneficial step taken to reduce the problem of tokenism is the inclusion of one women independent director but this requirement should be over and above the existing one woman director mandate and also the requirement of 1/3 Independent Directors. This might have a significant impact over the existing position in India.

2. More Stringent Quotas or Critical Mass: While other have opted for a more stringent quota for women directors like 40% in case of Norway, 30% in case Netherland, 40% in case Iceland and Spain , India has adopted a much lenient approach of fixing quota to a mandate of only one women director. In the UK, the 30% Club launched in 2010 has set a goal to achieve a minimum of 30% women on the FTSE-100 boards – currently that figure stands at 27%, up from 12.5%. The 30% Club has now extended its original target – it has set a goal of 30% women on FTSE-350 boards by 2020 (currently at 23.2%)42. Although it can be argued that such high percentage of quotas cannot be fixed like that of Norway because of lack of such expertise women in India. But keeping in mind such an existing problem still a quota percentage should be fixed as per the number of directors in a company just like the Norwegian approach adopted to have a gender diverse boards. For example where number of directors are between 6 to 8 then female shall be represented by 2 members. To utilize the full benefits of gender diverse board a critical mass of women director is required to be in the Board. Various research have also pointed out that companies who had more than 3 women directors performed

41. See Id.
much better financially as compared to those companies who had less.\textsuperscript{43} In theory it has been suggested that in India a gender diverse board can be linked with the efficacy of the functioning of the board of directors as a whole.\textsuperscript{44}

3. **Diversity Policy:** Company on the basis of their “market capitalisation” or any other variable must be asked to adopt a diversity policy which deals with how and through which methods the company should tries to achieve this diversity. Moreover the term Diversity must be defined in the legislation so that company do not interpret diversity as per their standards. The Policy should mention various measurable objective to assess the company’s growth. Measurable objectives refers to objectives that can be quantitatively described or measured. Measurable objective will help the shareholders to analyse the efforts done by the company towards achieving gender diversity and also its effect. Furthermore, Companies should file a disclosure report containing the measurable objectives and progress in achieving such goal.

4. **Nomination Committee:** SEBI(LODR) Regulations, 2018 contains provisions relating to the nomination committee. Regulation 4(f)(ii)(5) lays down the functions of Board of Directors: “Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.” As per the current regulations the Nomination Committee need to have three directors, all directors of company shall be non-executive directors and at least 50% directors shall be independent directors.\textsuperscript{45} Part D of Schedule II which mentions the role of nomination committee lays down in (3) that role of Nomination Committee is to devise a policy on diversity of Board of Directors. As of May 2017 there is only 12.7% of women in the Nomination Committee, this number needs to be increased.\textsuperscript{46}

The author believes that the Regulation 19 needs to be amended and the Nomination and Remuneration Committee should mandatorily have at least one women independent director, as a much better effort may be made by the company towards the formulation of policy on diversity by BOD if there is an independent women director already in the committee.

Although since 2013 a significant effort has been made by India towards achieving gender diversity, number of women on Boards have increased from 5% in 31\textsuperscript{st} March 2012 to 13% on 31\textsuperscript{st} March 2017. But comparing position of India with the position of Europe we seem to be lagging behind a lot. Average proportion of directors in a country is highest in Norway i.e. 39%, 35% in Sweden, 23% in United Kingdom while lags behind at a stagnant rate of 13%\textsuperscript{47}. Furthermore, SEBI needs to clarify that whether the new independent director mandate is over and above the existing one woman director mandate or appointing an independent women director would fulfil the existing requirement under Section 149 of Companies Act, 2013.


\textsuperscript{44} Arunima Haldar, Reeta Shah, S.V.D. “Nageswara Rao, Gender Diversity in Large Listed Indian Companies”, 12, Corporate Ownership & Control, 573, 578.

\textsuperscript{45} Regulation 19 of SEBI (Listing Obligations and Disclosure Requirements), 2015.

\textsuperscript{46} Corporate India: Women on Boards, Prime Database Group, (12\textsuperscript{TH} August, 2018, 4:12PM) http://www.primedatabaselgroup.com/primegroup_logo/ Women%20Directors%20In%20India.pdf

\textsuperscript{47} See Ibid.