



NSE-IGIDR International Conference on Corporate Governance

Edited Transcript
of

Keynote Speech and Panel Discussions

Mumbai, Jan 21-22, 2016

The views expressed in this document are of the respective speakers/panellists and do not reflect those of the NSE, IGIDR or the organizations that they are affiliated with. Neither NSE nor IGIDR guarantees the accuracy of the data included in this document or accepts the responsibility for any consequence of their use.



NSE-IGIDR International Conference on Corporate Governance

Edited Transcript
of
Keynote Speech and Panel Discussions

Mumbai
Jan 21-22, 2016

Copyright© 2016 by National Stock Exchange of India Ltd. (NSE)
Exchange Plaza, Bandra Kurla Complex
Bandra (East), Mumbai 400051, India

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means, electronic, mechanical, photocopying, recording, or otherwise.

This is a transcript of the NSE-IGIDR corporate governance conference, 2016. The views expressed in this volume are of the respective authors and do not necessarily reflect those of NSE or IGIDR. Neither NSE nor IGIDR guarantees the accuracy of the data included in this publication or accepts responsibility for any consequence of their use.

Contents

A.	<i>Preface</i>	v
B.	<i>Welcome remarks by Mr. V.R. Narasimhan, Chief Regulatory, Regulatory Department, NSE</i>	1
C.	<i>Keynote Speech: How much shareholder voting do we really need from a comparative perspective? by Dr. Marco Becht, Professor of Finance, Université libre de Bruxelles</i>	3
D.	<i>Presentation on “Gender diversity on Indian corporate boards: An exploratory analysis” by Dr. Subrata Sarkar, Professor, IGIDR</i>	14
E.	<i>Panel Discussion: Gender diversity in corporate boards: Implications for corporate governance</i>	19
	<i>Panellists: Mr. Y. H. Malegam, Chairman Emeritus, NSE</i>	
	<i>Ms. Kalpana Morparia, CEO, JP Morgan, India</i>	
	<i>Mr. Shailesh Haribhakti, Managing Partner, Haribhakti & Co. LLP</i>	
	<i>Ms. Preetha Reddy, Executive Vice Chairperson, Apollo Hospitals</i>	
	<i>Dr. Subrata Sarkar, Professor, IGIDR</i>	
	<i>Dr. Jayati Sarkar, Professor, IGIDR</i>	
	<i>Moderator: Dr. Subrata Sarkar, Professor, IGIDR</i>	

Preface

While the onus of maintaining and raising governance standards in any jurisdiction lies with all the stakeholders, stock exchanges worldwide play a particularly key role, given their traditional mandate to monitor their listed companies' compliance with listing and disclosure requirements. In this respect, NSE has been no exception. Indeed, to improve governance standards, NSE has gone beyond these regular channels and taken initiatives to influence policy debates by involving regulators, practitioners and academics. Toward this end, NSE jointly with the Indira Gandhi Institute of Development Research (IGIDR) has taken a research initiative, whose aim is to provide a platform for industry and academia to complement each other and to give research support for effective policy making. As part of this initiative, an international conference on corporate governance was held on January 21 and 22, 2016 in Mumbai. The conference *inter alia* involved a keynote speech by Dr. Marco Becht (Professor of Finance and the Goldschmidt Professor of Corporate Governance, Solvay Brussels School for Economics and Management), a presentation by Professor Subrata Sarkar from IGIDR and a panel discussion.

Dr. Becht lectured on the degree of involvement of shareholders in the decision making of firms. In countries like the UK, shareholder voting is needed on major decisions whereas in the US, it is delegated to the board. He drew attention to the large corporate acquisitions in the UK as it is one of the most important decisions taken by a firm because many have led to bankruptcy of the acquiring firm. He finds that shareholder voting or the threat of the same imposes a valuable constraint on the board and the management in UK. However, the analysis is relevant for widely held firms and cannot be generalized to an Indian setting where family held firms are common.

Dr. Subrata Sarkar discussed an exploratory analysis on "Gender Diversity on Indian Corporate Boards" which was a prelude to the panel discussion was on "Gender diversity in corporate boards: Implications for corporate governance". India fares very poorly in comparison with the rest of the world on this. Dr. Sarkar made a business case for having women directors because as the number of women on the board goes up, the market value of the company goes up too. A natural extension of this finding would be to find ways to increase representation of women in boards which can be done by either having a quota like the minimum one women director regulation or by mandatory disclosure where the market will put a premium on firms having women directors which would incentivize firms to appoint women directors. However, family controlled firms nominating a female member on the board just to comply with the regulations remains an issue.

I would like to thank all the panelists for their valuable contribution. I am also grateful to Professor Subrata Sarkar for his presentation and also for playing a wonderful role as moderator in the panel discussion. The deliberations of the conference has been captured in this edited transcript and we believe that the transcript would be useful for industry participants, academics and policy makers.

Nirmal Mohanty

Head, Department of Economic Policy and Research

National Stock Exchange of India Ltd.

Welcome Remarks

Mr. V.R. Narasimhan, Chief Regulatory, Regulatory Department, NSE

Good evening. On behalf of the National Stock Exchange, I welcome Professor Marco Becht, the professors from IGIDR, the eminent speakers on the discussion panel, and the members of the audience to the second annual NSE IGIDR Conference on Corporate Governance.

Corporate governance is perhaps the most widely discussed topic worldwide and good corporate governance is the minimum expectation of the people. However, probably because of certain prevailing confusions, corporate governance is coming under increasing regulatory focus. Managers sometimes get confused about their trustee relationship, and start behaving like owners of corporates; majority shareholders sometimes act as though they own the entire company; directorship is confused with rent on the position held; and the supporting structures such as auditors are at times confused that their role is that of a professional holding particular job, which has to be discharged mechanically, instead of recognizing their fiduciary responsibility. All these confusions in extreme cases result in scams such as the Satyam scam.

The thrust of the corporate governance regulatory framework is in reality very simple: people in management ought to realize their fiduciary responsibility in the application and use of resources, treat human resources as members of their family, customers as respected guests at home, shareholders as legitimate owners, community as neighbourhood, and directors as well-wishers. If this is done, if everybody realizes this, good corporate governance is an automatic and assured result. However, in reality, we need the regulatory framework to achieve these results. The struggle of the regulatory framework if you see, right from its inception till the current regulations, has been to construct a structure that will facilitate or rather enforce good governance regime in corporate India. The new listing regulations are very prescriptive in nature. There are prescriptions about board composition, the duties of the board, and the subjects to be presented to the board of directors and what should be presented to the board of directors for decision making. The regulations also include the expectation of active participation of the directors in the board, the evaluation of the board of directors both individually and as a group, and a prescriptive code of conduct for directors to help ensure objective and visionary participation and quality discussion. All these subjects have to receive the attention of the board. Everybody in the Board should actively participate to frame a set of objectives and design a very effective decision-making process.

Prescriptions do not end there. The regulatory framework further prescribes the establishment of sub-committees in the board such as an audit committee, a stakeholders' committee, a nomination and remuneration committee, a risk committee, a CSR committee, and so on, which would help the board to devote focused attention and to expertly handle specific issues. The topics for consideration of the Board and each of these committees are decided, and the board of directors and the sub-committees are expected to devote a certain amount of time and attention to these topics.

To reduce the tendencies among majority shareholders to appropriate benefits in the form of entering into layers of related party transactions, the Companies Act and new regulations prescribe the approval of the audit committee and shareholders, with a rider that interested majority shareholder shall not vote on the resolution. Thus, one more prescription has been put in place.

Some important steps have been taken in the area of disclosure. The disclosure regime of the Companies Act and the regulations has brought in a level playing field among investors--in terms of information available for them to take a decision about their investments in IPOs and secondary market. The distinct regulations today have a very clear-cut path towards enforcement by empowering the exchanges to ensure that the corporate governance regulations are enforced in the form of advisories and in the form of penalties, such as promoter freezing, suspension of the company, etc.

I think the current regulatory framework is accompanied by an effective enforcement mechanism, taking the corporate governance regulation regime to a higher plane.

Though we have an improved regulatory structure, there is a need for us to have interactions of this nature, involving corporates, academics and regulators. Everybody should keep interacting and improve his or her awareness levels, so that we can achieve what regulations want to achieve in a more benign and soft way. Thank you.

How much shareholder voting do we really need from a comparative perspective?

Professor Marco Becht, Université libre de Bruxelles

First, I would like to thank you for the kind invitation. This is my first visit to India. I have learnt a lot about Mumbai and while preparing for this conference I also learnt a lot more about corporate governance in India, but I cannot really call myself an expert about your country and shall be grateful to be corrected if there is anything I get wrong.

The topic of the talk tonight is: How much shareholder voting do we really need from a comparative perspective? When you consider comparative perspectives in corporate governance there are many possibilities because countries and systems can be so different. Tonight, I choose to make an analogy with politics. To trace the origins of the word “corporate governance” for a survey article my co-authors Patrick Bolton, Ailsa Röell and I picked up finance books published in 1900–1910.¹ These finance books did not talk about corporate governance, but they talked about “corporate government”. So they were aware at that time that there was an analogy between government in politics and the government of corporations.

That is the system I will use to classify countries. If you think about politics, one method of differentiating political systems is the way or the degree to which the electorates who vote in government delegate power to that government. In some cases, they delegate a lot of power to the government and the executive; in other cases, they retain some direct decision making power. In politics, the latter is called a referendum: decisions cannot be taken by the government; decisions are meant to be taken by the electorate through a direct vote. Recent examples include the exit vote about whether Scotland should leave the United Kingdom. It is not a decision that Mr. Cameron will take; rather, the British people will vote and decide.

In corporate governance, we have a very similar arrangement. There are countries that follow a strong delegation model: they delegate most of the powers of the shareholders to the board that they elect. The main function of the shareholders is to elect a board; subsequently, almost all decisions are taken by the board on behalf of the shareholders. A prime example of this is the United States, the shareholders delegate most powers to the board, which will then take decisions. Another example is Germany, where the shareholders appoint a supervisory board that appoints the management that takes most decision, with the consent of the supervisory board.

The degree of delegation in the UK is more moderate because shareholders in the UK retain quite a lot of decisions for which they cast direct votes. Let me first give some examples though of decisions that are commonly taken by shareholders in all systems. These include changes to the corporate

¹ Becht, Marco and Bolton, Patrick and Röell, Ailsa, Corporate Governance and Control (October 2002). ECGI - Finance Working Paper No. 02/2002. Available at SSRN: <http://ssrn.com/abstract=343461> or <http://dx.doi.org/10.2139/ssrn.343461>

contract such as changes in the purpose of the company, and very deep changes to the articles or the constitution. Shareholders also vote to appoint or remove directors from the board in most systems, otherwise no delegation would be possible, so there is a lot of international consensus here.

There are several topics where there is no international consensus about what shareholders get to vote on and what they do not get to vote on. For example, in the case of board remuneration (executive remuneration), there has been a shift internationally from the board taking the decision on behalf of the shareholders to the shareholders taking a direct decision. Shareholders either vote in an advisory capacity or have a binding vote in some countries on either the remuneration policy or the package and so on. In some sense, the shareholders are saying that they don't trust the 'corporate government' anymore and want to take that decision themselves. Other decisions of this nature include capital issuance. In many countries, the board decides capital issuance, while in countries like the UK, shareholders vote on this because there is a threat of dilution they might want to veto. In the US, the board decides about voluntary delisting, while in the UK, the shareholders get to vote on it.

Finally, there are large corporate acquisitions, which is the main topic of my talk tonight. When a company intends to buy another company, in the US, the board takes the decision on this, while in the UK and some other countries, shareholders get to vote on this, if certain conditions are met.

Since I am in India, I informed myself a little bit about what the situation here is, and whether India is a country that follows a strong delegation model or a weak delegation model. I was given a list of 19 corporate actions that require 50% majority, and 32 corporate actions that require super majority. I understand that in India, you moderately delegate to the board. Shareholders here seem to decide on quite a few things by themselves, although it takes quite a large majority to vote things through.

The countries that I am going to look at are the UK and the US, where widely held corporation is the norm, which is not true in India and continental European countries, where families, founders, and business groups are very important. The latter structure brings in another dimension. In a family-controlled company, not delegating to the board and letting the shareholders decide, basically means that the family decides. In such cases, you have another issue: the conflict between the family and the free float, whether the institutional investors and the free float should have a special decision.

Let me turn to the more specific question of large acquisitions. Out of a catalogue of important decisions, why are corporate acquisitions potentially one of the most important decisions to study, and why is it an important question whether the board should decide, or whether shareholders or others should decide?

The finance literature gives clues. Corporate acquisitions are one of the most dangerous decisions for shareholders that companies take. If you look at the list of corporate bankruptcies in the world or the graveyard of corporations and you dig to the root cause, it is very often the case that a serial acquisition policy that was put in place by (very often) flamboyant CEOs led the company to ruin.

Swiss Air is an example of a company that went on an acquisition spree, which ultimately brought the company to bankruptcy.

Finance scholars have found a lot of evidence that when companies make an acquisition announcement in the US, the target shareholders gain, while the acquirer shareholders lose on average. This is a paradox, and there are different theories about this. One is the agency view that this is because the CEOs and at times the board were not acting in the best interests of the shareholders because they were conflicting. One basic conflict is that the CEOs of large companies get paid large amounts of money, and if you want to get paid more, you might want to grow your company and run a larger company, because then you get paid more money. Now that is not being kind to CEOs; maybe that is not the reason why they are doing it. There is another theory from a behavioural finance perspective, which says that they actually do not know what they are doing; they are by nature very optimistic, which is why they are hired, and they optimistically go out, and think they can do this. And you probably know the story of kissing toads. According to Warren Buffett, some CEOs kiss a toad thinking that it will magically turn into a prince because the CEO has a magic kiss. And then the CEO ends up being surrounded by toads that did not convert into princes.

There is a very good research paper by Ulrike Malmendier and Geoff Tate,² where they had access to a unique dataset of CEOs personal investment decisions. They compared the decisions that the CEOs made when using other people's money (corporate money) and when using their own money. They found that CEOs who make very aggressive acquisitions are also aggressive about their own investment behaviour. So there is no conflict there; they behave with their own money just like they behave with other people's money, which is evidence in favour of a behavioural explanation for overly optimistic acquisitions.

While it might matter in a moral sense, in a functional sense (what happens to the shareholders), it not important whether the acquisition decision is based on agency or behaviour; the result is the same. The executives make acquisitions that are bad for the acquirer shareholders. So how can we stop this from happening? Well, you might say that the board should do this. I just explained to you that in the US, this decision must be delegated to the board; yet, there are so many instances of bad acquisitions in the US. This would seem to imply that the board is not doing its job with regard to corporate acquisitions. Is there anything else that we can do? The obvious answer is to give shareholders the vote (a referendum vote) in order to have a check on these acquisitions.

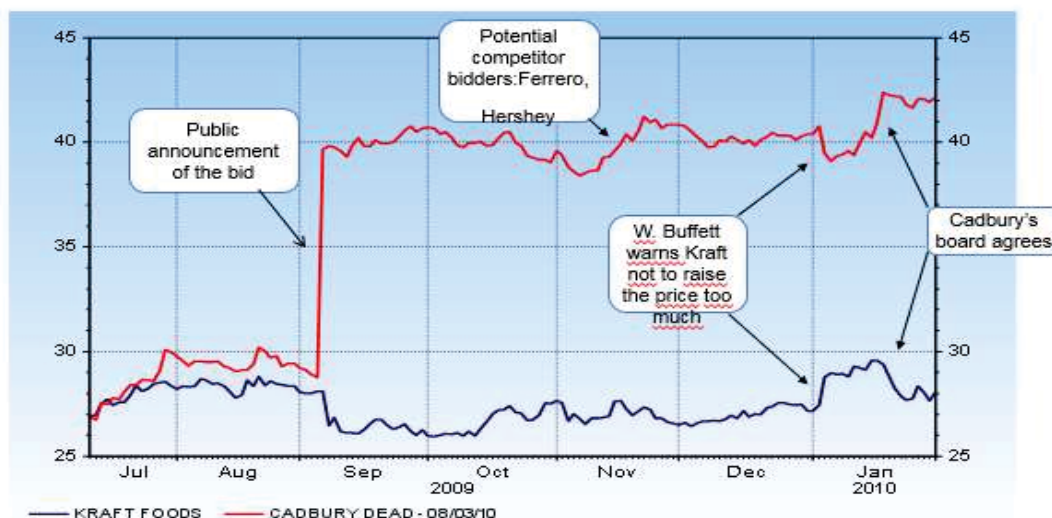
There is a paper as a background to this which you can read. I am not going to go through the entire paper, which is a scientific paper. I am going to present only the main findings. The question of voting on acquisitions has been studied in the US but the results are inconclusive because there is no "referendum vote" on corporate acquisitions. There is only a referendum vote on capital issuance: when the company issues more than 20% equity, the shareholders get a vote, and that is what people

² Malmendier, U., & Tate, G. (2008). Who makes acquisitions? CEO overconfidence and the market's reaction. *Journal of Financial Economics*, 89(1), 20–43. <http://doi.org/10.1016/j.jfineco.2007.07.002>

study. Hence the decision to let shareholders vote is discretionary for the management, because the management decides how the deal is funded.

I give you the example of what is called Warren Buffett's last vote, which is the acquisition of Cadbury PLC by Kraft Inc. Warren Buffett was a major shareholder in Kraft. When Kraft announced its intention to take over Cadbury, the typical acquisition story happened (See Figure 1 below). The red line is the Cadbury stock price, which shot up. The blue line is the Kraft stock price, which shot down. Warren Buffett held a significant position in Kraft and because Kraft was planning to fund part of the deal by issuing new shares there was supposed to be shareholder vote. The proxy material for the vote was already sent out because of the funding method. And look: the stock price of Kraft went up of course because people thought that the probability of Kraft actually making the acquisition was diminished, which was good news for the acquirer shareholders (assuming that Kraft was paying too much, which is what the market reaction implied). But then, the Kraft CEO changed the funding terms and used more cash, and Warren Buffett got to vote. Then they did the deal. So the United States is not the place to look if you want to find out if shareholder voting can stop bad acquisitions: Only decisions the shareholders like are funded with equity issuance (put to a vote); acquisitions that the shareholder might find overly optimistic are funded by cash or debt and never have to be approved by the shareholders.

Figure 1: Kraft Inc's acquisition of Cadbury Plc



Source: Thomson Reuters Datastream

What about India? How does this work in India? While preparing for today, I had the benefit of reading an excellent note from the NSE Corporate Governance Centre, which talks about corporate governance related to acquisitions in India.³ And it seems that not only is there a vote, but you have also given the minority shareholders a vote, which is a separate vote in schemes. This is the first time I have heard of such a thing. So India seems to be ahead of the UK in terms of schemes because

³ NSE, Quarterly Briefing October 2013, No. 3

UK does not consider the problem of families. The SEBI seems to have come a long way with these two schemes.

The place that we studied is the UK, because the UK has a very clear rule on voting on acquisitions, which is called the class test.⁴ This is included in the listing rules. The ‘class test’ essentially says that when an acquisition is relatively large, and the risk of the acquisition is relatively large for the acquiring company’s shareholders, the shareholders must have a vote if you are listed on the premium segment of the London Stock Exchange. What do we mean by relatively large? There are lawyers involved in defining what is relatively large. In the UK, this has changed a bit over the years. They have four ratio tests: two of them relate to market value pace (sizes), and two of them relate to accounting, so basically assets type sizes. I shall explain the most intuitive test, which is the test of consideration of the deal to market capitalization ratio. If your market capitalization is 100 billion, and you pay 26 billion for the target, that is more than 25% of your market capitalization, then the deal must go to a vote. If you are offering only 24 billion, then you do not have to vote, because it is a Class 2. So if it is more than 25%, it is Class 1, and if it is less than 25%, it is Class 2. If it is class 1, shareholders get to vote, and if it is Class 2, they do not.

Can the management do it like in the US and game this vote? That, however, seems like a difficult proposition because there are four ratios.

How does it work in practice? We talked to people in the City of London to get an idea. It seems that the first thing that companies do—that is, the CEO does when he or she wants to make an acquisition—is to go to a broker for funding. The broker will give the company an idea whether it is a Class 1 or Class 2 deal. So whether the deal eventually has to be voted on by the shareholders will already be on the executives’ mind. When they go through the motions, and talk to the board and the advisors, they will always think about how much they can offer, and whether it is a good deal because when they go to the market, they would eventually face a shareholder vote. This happens in the pre-announcement phase. And then, there is a public announcement, which we can observe.

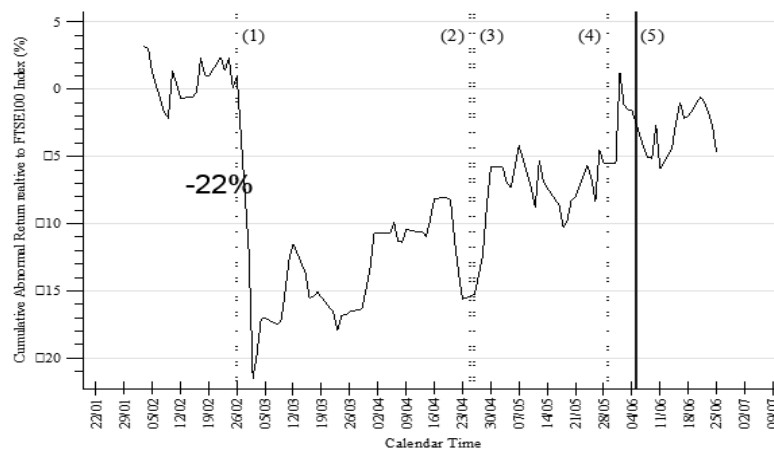
Post the announcement for Class 2 deals, nothing happens in terms of voting. Class 2 deals can still fail because something else happens, or they can get withdrawn. But for Class 1 deals, there is a period between the announcement and the actual extraordinary general meeting where the deal is voted on, where the companies react, and they will market the deal to the market, where there will be a vote.

This does not always work. A rare example is Prudential’s attempt to take over AIG’s Asian assets (See Figure 2 below). When that deal was announced, the stock price went down relative to the index by an astonishing 22%. Did the CEO of the Prudential pull the deal? No, he said “We think the market is wrong, the deal is a good idea.” Then opposition was voiced, and the opposition grew, the stock price went back up because people perceived that the probability of deal was lower. Now the fat black vertical line (5) in Figure 2 shows the date on which the vote was scheduled. It was

⁴ Becht, Marco and Polo, Andrea and Rossi, Stefano, Does Mandatory Shareholder Voting Prevent Bad Acquisitions? (March 15, 2016). Forthcoming, Review of Financial Studies, Available at SSRN: <http://ssrn.com/abstract=2443792> or <http://dx.doi.org/10.2139/ssrn.2443792>

already announced when the vote would take place. As you can see, the stock prices stayed up, and then there is a crucial moment (2 and 3), which is when the Institutional Shareholder Services (ISS) together with other proxy advisors advised against the deal. It was clear that the deal was likely to fail to get the required majority and consequently, the CEO revised the offer down. However, now the price was too low and the target did not accept the offer. The deal was off the table. It never got through to the vote, and the stock price went back to where it was.

Figure 2: Prudential's failed bid for AIG Asia



How can we study this more systematically? In our study, we first compare the performance of Class 1 and Class 2 deals, because if there is a constraint or a restraint that Class 1 imposes (for example, on over optimistic CEOs), we should see a difference between Class 1 and Class 2. However, Class 1 and Class 2 by definition are different in relative size and this is something we must control for. We can also compare across the US and the Atlantic.

Figure 3: Sample distribution of total number of announced deals

Total number of announced deals = 1264

	Number	Within Group %
Class 1 Transactions	383	
Withdrawn deals	20	5%
Other (acquired by another bidder etc.)	31	8%
Voted at EGM	332	87%
Completed deals	332	87%
Class 2 Transactions	881	
Withdrawn deals	9	1%
Other (acquired by another bidder etc.)	95	11%
Completed deals	777	88%

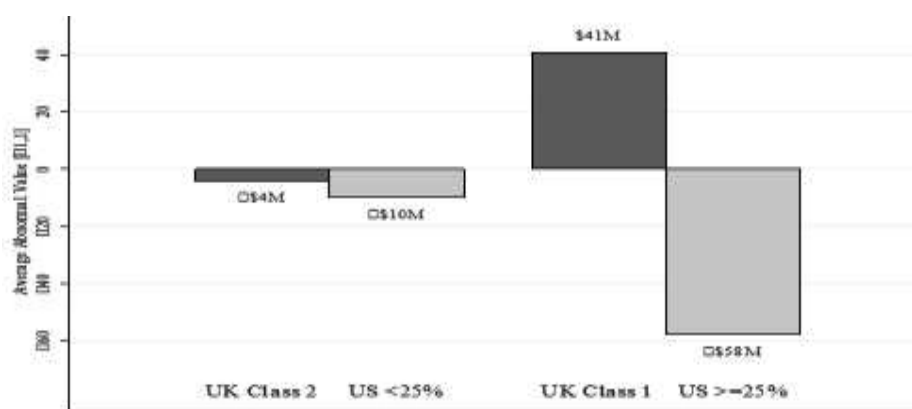
Before I show you the main result, what about the composition of deals? I want to draw your attention to the fact that, of the 383 announced Class 1 deals, most actually go through to the AGM; about 332 (See Figure 3 above). How many of these deals are actually completed? The answer is 332 as well. This means that no Class 1 deal in our sample gets voted down. Two interpretations are

possible. You can say that this is a useless rule, if nobody ever votes this down, it does not matter; or it is like very tough bank resolution. The central bank is so threatening that nobody ever wants to misbehave or get in trouble with the central bank. So here the AGM is such a powerful constraint that nobody ever wants to go through for getting voted down at the AGM, and that is actually the reason why we do not see Class 1 deals getting voted down.

So what about the numbers? The bottom-line is that Class 1 deals in the UK do better than Class 2 deals (See Figure 4 below). Class 1 is the dark positive upside dark grey bar on the right with an average value 41 million US\$ and Class 2 deals are the small dark negative bar on the left. In the US the light grey bars are both negative, which is consistent with the general finance literature.

Figure 4: Gains made by acquiring firm

Acquirer Average Abnormal \$M Returns by Relative Size and Country



Source: Becht, Marco and Polo, Andrea and Rossi, Stefano (2014); “Does mandatory shareholder voting prevent bad acquisitions?” ECGI Finance Working Paper No. 422

The conclusion is that it seems the Class 1 vote or the threat of the vote imposes a valuable constraint for acquirer shareholders on the board and the management in the UK. There is a caveat that I mentioned before: this is valid only for widely held companies. We do not know what the result would be for family controlled business.

Let me say a few more words about the possible policy implications. So the first question is, should you now go away and say, well mandatory voting on acquisitions for everybody is a good idea—is that the conclusion? That is not what our paper says. The London listing authority has decided to make voting mandatory for everybody. If shareholders of some companies might think that they do not need this, what is more appropriate for them? You could have companies that grow very quickly, or where there is a lot of board control anyway, and they do not want to go through the hoops and loops of this voting. And the shareholders deliberately decide to forego this right, and delegate this to the board. Maybe they should have the right to opt out of this rule, provided always that there is no market failure in the way shareholders write corporate instructions, and they can write them efficiently. Perhaps London is going too far by making this mandatory for everybody by assuming a market failure in the way shareholders write charters.

In countries like Germany, shareholders couldn't write this kind of provision into the corporate structure, even if they wanted to. In such contexts, maybe there should be a longer menu, and shareholders should be enabled to write such provisions into the statute if they wanted to do that.

Another thing that I could think of is that shareholders might not want to have a mandatory vote on this; maybe an advisory vote would be sufficient. Now I think this could be particularly important or potentially attractive in the context of family owned businesses, if it turns out that families also take wrong decisions on this. There was one major scandal in India, which involved an acquisition by a family controlled company. Maybe giving the float a mandatory vote that could block the deal is not such a good idea; giving them an advisory role might be good because it would bring in proxy agencies; there would be an external opinion that is given. It could be interesting for the family to learn what the other shareholders think. So advisory votes might be an idea that even markets having mainly family controlled companies, might want to experiment with.

Thank you.

Nirmal Mohanty: We will take questions from the audience now.

Participant: What is the period that you covered in your study?

Marco Becht: The data was from 1993–2010.

Participant: Have you considered different kinds of shares in companies with large non-voting equity, voting equity, or countries like Switzerland where there is a peculiar rule (if you are a Swiss citizen, your share has a vote; if you are not Swiss, your share does not have a vote), and things like that?

Marco Becht: Well, this study was on the UK market, and as you know the institutional investors for UK basically eliminated non-voting shares. It is almost exclusively one share, one vote. The Class 1 rule has been in place for many years. We did not study other countries. So this goes a little bit back to the question that the companies are not widely held and at different times with control structure whether they impact on acquisitions anyway, because the fact that they have no control over the board.

Participant: The analysis of acquisitions in the US (class 1 and class 2) shows that they have failed miserably in providing shareholder value, and that proves a point that we need not necessarily look at the best; i.e. what is being practised in the US. With this analysis, where you say that in both class 1 and class 2, shareholders have lost their money or companies have lost value, is there any change being propagated in the US about this, or is the board still given free rein?

Marco Becht: A referee for a US journal pointed to a debate among US legal scholars in the 1980s. There were clearly two camps: one camp said that voting on

acquisitions by shareholders would be a good idea, and the other camp opposed this. The camp that said this approach would not work said that it is impossible to organize an AGM within a reasonable amount of time after the announcement of a deal. I showed you with the London timelines that it is possible to do this. One of the referees said that our results might not be true because if it held for the US, the shareholders would have already written a Class 1 rule into the statutes, and since they have not, our results cannot be true. Well, yes, the shareholders in the United States could write this provision into the charter. But they can only do this with board approval, which is likely to make it a non-starter. With regard to your first point, yes, as a European, I do think the US does a lot of things that are very good and is worth looking at.

Participant:

There is one aspect of voting on which I would like to have your views. Voting is always a percentage of people who can vote. There are many shareholders who do not vote. If there is a related party, and the related party does not vote, or if there is a multinational company in which the parent has 75% of the vote, and you need a 50% vote from the balance 25%, it means really that 12.5% can defeat a proposition. So would it not make much more sense to say that there should be a minimum negative vote, that means that the people who do not vote are presumed to be voting in favour, which would make it a much more equitable basis of voting than a pattern where you say that you must have x% of the people voting in that situation?

Marco Becht:

I think what you proposed might be a very good idea that you in fact take the negative, you need to have an expression of negativity around the deal rather than having two people who have not come along to take the decision. This of course is always a problem when you have an election, when you have a voting mechanism as the decision mechanism that does require people to turn up. So your point is very well taken. For countries that want to adopt this rule or even shareholders who want to write it into their statutes, I think these are all topics that everyone should be thinking about. And we had related party transactions on the slide, but I did not want to talk about it because in Europe, we had a proposal of related party transactions and voting on related party transactions. Related party transactions and voting decisions are very complex issues and would require a separate discussion.

Participant:

As you just mentioned, institutions blindly vote as recommended by the proxy firms once the proxy advisory firms have made up their minds. So at the end of the day, the fate of the company is really going to be controlled by the proxy advisory firm on what is probably in the best interests of the

shareholders. And unless you are an activist institutional holder, we are not going to disagree with that, because then you will have to give a rationale. So is that really in the interests of all shareholders?

Marco Becht:

From what I hear proxy advisers are controversial not only in Europe but also in India. Questions have been asked about their role. There is a very active debate going on. The positive view is that proxy advisers are informed, and they advise, and shareholders with a relatively small holding who otherwise do not vote can vote based on an informed opinion. The proxy advisor might be misguided, but at least they are informed. It depends though on how many votes are actually based on their advice. I think it is also a question of concentration: having just one or two advisers and then their decision commanding 15% or 20% or 25% of the votes might be a bad idea. In Europe, this goes back to the institutional investors that should have a responsibility vis-à-vis the ultimate beneficiaries to act as owners. The emphasis is on stewardship; i.e. if they are given a lot of voting rights, then these rights should be exercised in a competent and professional way. There is then the question of who is going to pay for this. Can you actually afford to pay a corporate governance person? This is another debate about who takes these decisions for the ultimate owners. In the UK, comparing the systems that are out there, it seems to work relatively well but even in the UK there is room for improvement. In other markets with major institutions, it could work as well.

Participant:

Being a proxy advisor myself, I have a different view. We are a non-profit company, and we say that as long as you are independent, free from conflict, and you only advise, it is ok. The investors do not go blindly by your advice. Unlike in the US where they have an auto vote system, in India we do not have an auto vote system. The investors take our reports, and many times, we find that many of the investors would do differently from what was advised in our report. As long as we do not become active and we do not propagate, we only issue our report and advise that this is our view, it is ok. The investor then takes a decision. I do not think the proxy advisors are going to influence their decision in any manner because ultimately it is a vote cast by the shareholder, we are only a service provider. So I do not agree with you that we influence the vote.

Marco Becht:

You have a free riding problem in this case. In countries like the Netherlands, smaller firms have even formed associations in order to overcome the free riding problem where they pool the corporate governance decisions together, and they employ people, because individually they cannot afford

to employ somebody, so jointly they employ a person who looks after governance professionally.

Acquisitions are, of course, particularly problematic because you are competing with the advice of the investment banks, and the deals are particularly difficult to analyse. So the challenge for the proxy advisory industry is that they actually have to hire people who are at least as competent as or more competent than the investment bankers. Normally, the remuneration of such people is much beyond what proxy advisors can afford.

Participant:

I have two points to make about proxy advisors. First, if a proxy advisor is appointed, should his advice not be confined to his client? Or can he go public with his advice? Quite frankly, if he goes public with his advice, he can influence a lot of voters. Second, is there sufficient interaction between the proxy advisor and the issuer, or is a fair chance being given to the issuer? Does the proxy advisor say that he (she) does not approve of the transaction and then justifies why he (she) does not approve of the transaction to the issuer, or does he (she) just go out and give an advice? Because in practice, I think this is a big risk. There could be questions of competence, there could be questions of bias, and there can be many other questions. Now so long as a proxy advisor is appointed by someone, that is a risk which that person takes, and it is for him to decide whether to follow that advisor. But when a proxy advisor makes a public statement in the press or elsewhere, or he loves his advice to be made public, I think that is a little unfair to the public.

Marco Becht:

Let me answer the question by going back to my original theme of strong versus moderate board delegation systems. Even in the strong delegation system where shareholders only take the basic decision of appointing people to the board, proxy advisors are important for advising on whether shareholder should appoint an individual to the board. And then of course, there is a small catalogue of basic decisions common to all systems on which they also advise. So I think proxy advisors will play an important role even on the small catalogue of decisions. If you move to a system where you extend the list of decisions that shareholders take directly – you go from strong delegation and to a system of moderate delegation with “referendum voting” - then the proxy advisors are even more important and influential, and the questions that you have asked in the end are even more important. Given the general interest in the topic that has come out of this discussion I recommend to the NSE to organise a future session on the role of proxy advisors. Thank you.

Gender Diversity on Indian Corporate Boards: An Exploratory Analysis

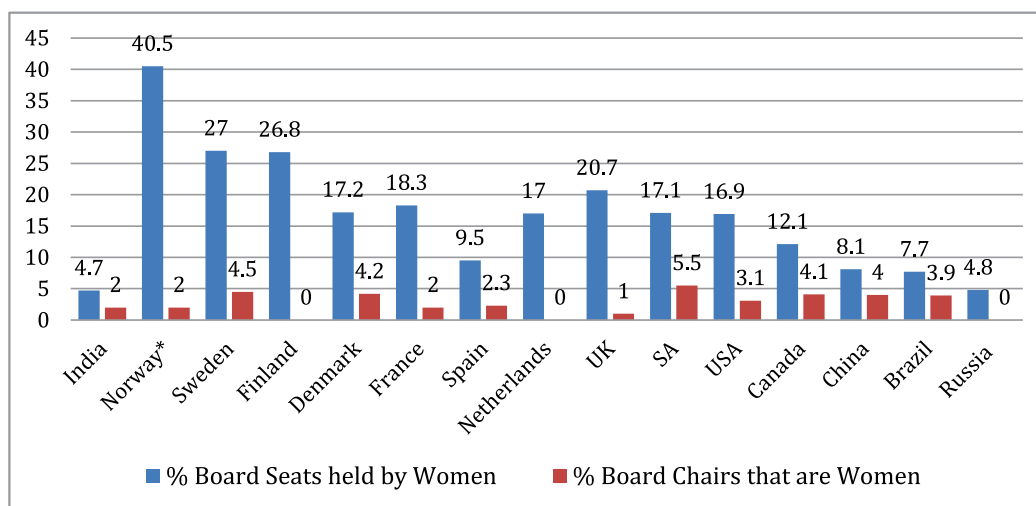
Professor Subrata Sarkar, IGIDR

Good evening. This work forms a background for the panel discussion on Gender Diversity on Corporate Boards that we will have later this evening. This is joint research by Jayati Sarkar and Ekta Selarka. Since Dr. Jayati Sarkar is not well, I will present on her behalf.

This is an exploratory study of gender diversity in Indian corporate boards, which shows where India is in comparison with the rest of the world, and what the issues are. First, though we always try to think that this is a women's issue (why do so few women join Indian corporates?), it really is a gender diversity issue. If the starting point is 50% (i.e., women constitute 50% of world population), we should have about 50% women on corporate boards. If the number is "very" less, it means that women are under-represented. Is there a way that we can have a more balanced representation? I want to first emphasize the fact that it is not a women's issue; it is an issue of under-representation starting from an equality perspective.

We have had women on company boards. But why are there so few women compared to men on boards? Is gender quota an effective way of increasing women's participation? Are there alternative ways through which we can remove some of the obstacles that women face in moving up the corporate hierarchy? These are some of the questions that we are going to discuss.

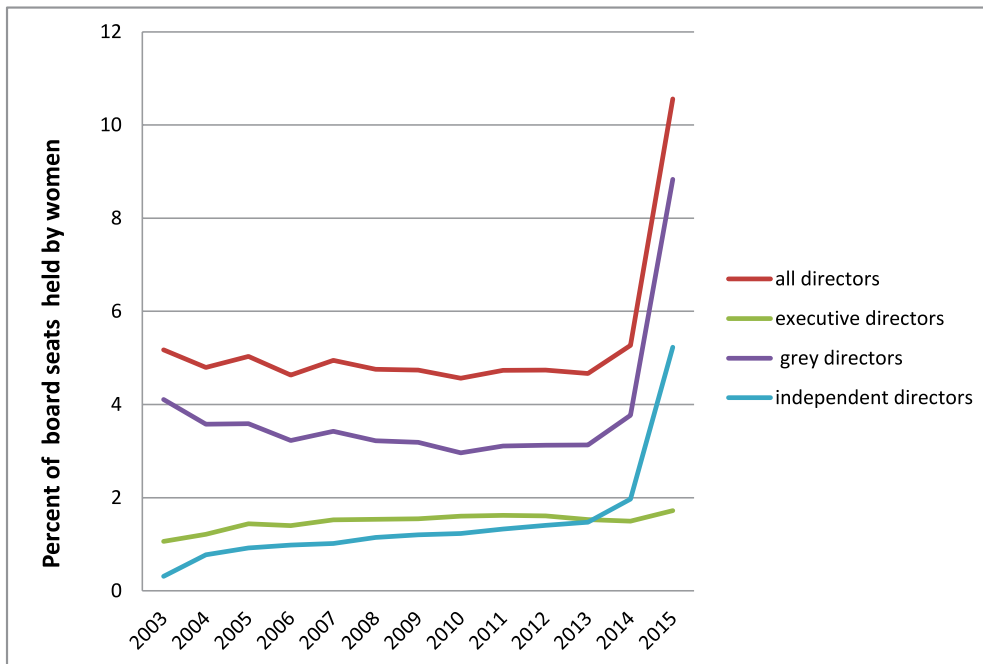
Figure 5: Percentage of board seats held by women in select countries



Source: <http://www.catalyst.org/knowledge/women-boards>

Figure 5 gives a snapshot of select countries that have seats held by women in 2013. Norway, Sweden, Finland are the Scandinavian countries where the percentage of women in the corporate scene is much higher. These are the countries that have mandatory regulations about the representation of women in corporate boards. India here is an exception in the sense that the data for India is for a period (2013), when our Companies Act was yet to be implemented.

Figure 6: Effect of regulation on the percentage of board seats held by women in India



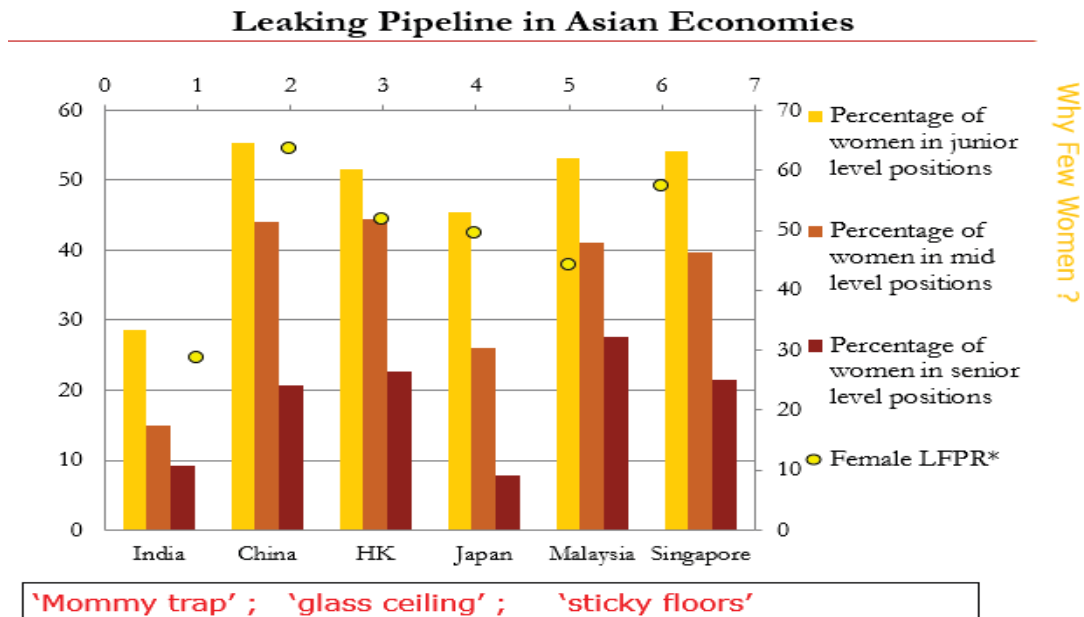
This analysis is based on the listed companies in India (from 2003 to 2015). While the Companies Act, 2013 has been implemented with effect from April 1, 2015, the final date for compliance with the provision relating to appointment of women directors (that at least one woman should be appointed on the board) was March 31, 2015. Figure 6 refers to the percentage of female directors in companies' boards. The directors on the board are divided into executive directors, independent directors and grey (non-independent non-executive) directors. Now, who are grey directors? A lot of family directors are possible in India, who could be related to the promoters. Further, a chartered accountant who is getting paid for his professional work, for example, may be a director on the board. All these types of directors are called grey directors. In the chart, you see a spike around 2014, where everybody is trying to comply with the regulations. So, it is a good sign that the corporate sector is really trying to comply with the regulations.

Now, let us examine the extent of women participation at different levels in the organization: junior level to middle level to senior level, across different countries. Look at Figure 7 below. You will observe that the height of the graphs is different for different countries, with India being the lowest. But one thing is common among all countries. As we go from low-level to mid-level to high-level positions, the percentage of women decreases. The tiny circles that you see in the chart represent average participation or the labour force participation of women. So the question is: why are there few women on corporate boards or in high-level positions, in general? The next question is: why do we have more women in the early stages?

First of all, why should we have women on corporate boards? There are two arguments. One is what you may call the business case: that it pays to have more women on the board, in the sense that the performance of the company improves when there are more women on the board. Secondly, there

is the normative consideration for promoting gender diversity. This has nothing to do with women exclusively. If there were fewer men and more women, we would have promoted men. It simply means when you start a company, we must make the situation equal in terms of the participation of men and women.

Figure 7: Women participation at different levels in organizations



Source: Francesco, Mahtani (2011); *Gender Diversity Benchmark*⁵

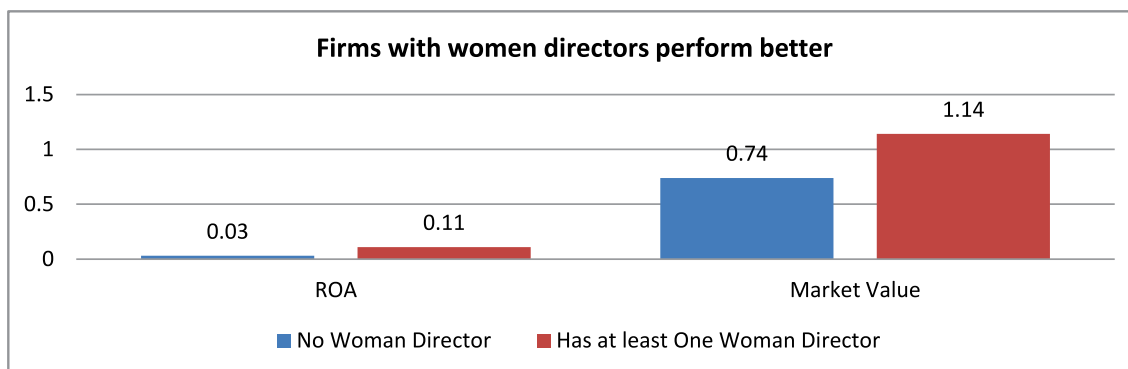
Now, see Figure 8a below. There are two sets of bars: one represents return on assets (measured as the ratio of profit before depreciation, interest and tax divided to total assets), which is a short-term accounting measure and the other represents market value (measured as price to book value of the share), which is a long term forward looking measure. The blue bar is the average rate of return on companies that have no women directors and the red bar is the rate of return of companies that have women directors. You can see that the red bars are a little bit higher than the blue ones suggesting that women directors do make a difference in market value of the company. There could be endogeneity issues here: for example, better performing companies may be acquiring more women directors just to showcase good governance but with no effect on performance, reversing the causality. If this is true, then controlling for this factor, could make the difference in performance between the two sets of companies, ones with women on board and those without, to be smaller or simply vanish. This is a separate exercise done by the authors which shows that controlling for endogeneity, the above differences persists, so that there is indeed a causal effect from women directors to company value. The chart is just a representation of the final fact.

Now, look at Figure 8b below. All companies have been divided into 4 categories of companies: namely, companies with 'no women', 'one women', 'two women', and 'more than two women' on

⁵ http://www.communitybusiness.org/images/cb/publications/2011/GDBM_2011.pdf

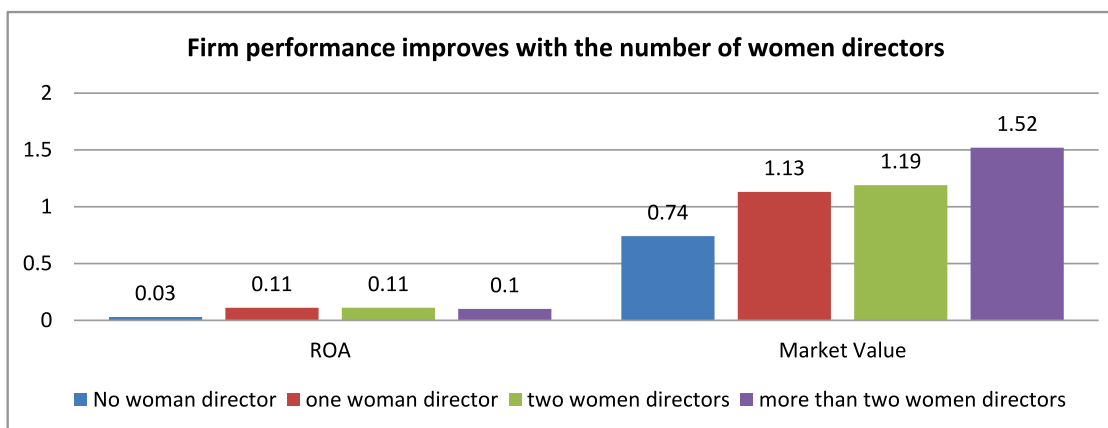
their respective boards. The attempt here is to determine whether there is some minimum critical mass of women which is necessary for improved performance of companies. The figure shows that it is not enough to have regulations to include 'at least one woman'. For women to make a substantial contribution, there is a need for some minimum critical mass. If there is a board size of roughly 10, we have one woman who you want to hire. The chart shows that as the number of women on board goes up, the market value of the company goes up. Thus, evidently, some critical mass is important.

Figure 8a: Firms with women directors perform better than those without



Source: Praxis Database & Prowess

Figure 8b: Firms with more women directors perform better



Source: Praxis Database & Prowess

Now, let us turn to increasing the percentage of women on boards (gender focus). If there is documented evidence that one gender is represented less, and that appointing more of that gender increases the corporate value, then the normal question that arises is: how do we go about increasing the representation of that gender group? One way to do this is through affirmative policy actions; namely, mandatory quota for women at the board level. The second way is mandatory disclosures. Mandatory disclosure in this context means that you must disclose how many women you are having on the board. Why is this necessary? Because if the market perceives that women really have higher value, then your disclosure of percentage will allow the market to reward or punish the company, and an appropriate market value shall automatically be set. Now of course, the third

approach is not to have any mandate at all: either for appointing directors or for disclosure. You may voluntarily do either or both of them.

When the Companies Act introduced this provision of mandating at least one woman on each board, we thought “Why should we have a quota?” An economist will say that if you are efficient, you will not require a quota. The idea is that if you are good at what you do, you get to be on the board irrespective of your gender. In reality, however, women’s participation in boards improved only after some form of regulation in this regard came into being. By the way, many countries have regulations in this respect, while some countries are considering including these regulations in their statutes. Notable exceptions include the UK, the US, and Australia

When we analyse the data, we get some interesting insights. The average board size in India is about 9.5; so the mandate of one woman is on an average equivalent to 10% representation. In a majority of companies, we notice that there is only one woman on the board, which is what the regulation mandates. This indicates that not many companies are proactively including more than one woman on boards. On the issue of whether women select the industries or the occupations based on their capabilities or preferences, you will notice a different sort of distribution of women according to industry. For example, in case of financial services, we see huge representation of women in India. In fact, we have several news items that India beats US in financial services for women. Compared to this, presence of women is very low in engineering activities and R&D activities.

Another issue that is made in India many times is that when the regulation requires the inclusion of one women on the board, the promoters will include their spouse, sister or other relative on the board. What does data show? The distribution of all the new directorship of women that were added during April 1, 2015 to December 31, 2015 shows that 67 percent of them were independent directors. Of course, you can question the actual independence, but at least in terms of the classification, this is the factual position.

We can probably discuss during the panel discussion what you feel about women on boards in India, and its implications for corporate governance. People justify the regulation for one woman director saying that if you suddenly make it 35%, where will you find so many women? If you say 35%, we will need on an average three women for every board. Given so many listed companies, where we will get so many women? Further, as a result of the regulation, will there be only a token increase in women’s presence in corporate boards as a matter of compliance or will there be better corporate governance? Also, for a critical mass should we specify the regulation in terms of percentage or in terms of a number? These are some of the questions that the panel can discuss.

Panel discussion: Gender diversity in corporate boards and implications for corporate governance

Panellists: Mr. Y. H. Malegam, Chairman Emeritus, NSE

Ms. Kalpana Morparia, CEO, JP Morgan, India

Mr. Shailesh Haribhakti, Managing Partner, Haribhakti & Co. LLP

Ms. Preetha Reddy, Executive Vice Chairperson, Apollo Hospitals

Dr. Subrata Sarkar, Professor, IGIDR

Dr. Jayati Sarkar, Professor, IGIDR

Moderator: Dr. Subrata Sarkar, Professor, IGIDR

Subrata Sarkar: Good evening, ladies and gentlemen. Welcome to the panel discussion on “Gender Diversity in Corporate Boards: Implications for Corporate Governance”. We have a very distinguished panel today. The panellists are reputed people in their respective fields; more importantly, each of them have served on the boards of many important companies in India, and therefore, are in a unique position to speak on this subject. Each panel member will present an opening observation for about seven to eight minutes. And then we will discuss some of the issues that are raised. We will then have about 15 minutes to take questions from the audience. I request Mr. Y.H. Malegam to begin the panel discussion.

Malegam: Let me start off by saying that I welcome having women on the board. Almost all the major companies where I have been on the board have had women members much before it became mandatory to include women under the Companies Act. Having said that, I must confess that I have some reservations about making it mandatory, because to some extent, it is a little demeaning that a person joins the board, and she has a feeling that “I am here not because of my own merit, I am here because I am a woman.” And I think that I have this feeling because I do not like to categorize people. I do not like to consider people as women, or men, or accountants, or lawyers; I like to treat them as individuals. And if an individual has the qualities required to become a member of the board, then he or she should be made a member of the board. Having said that, I think we need to understand why in the past, there were so few women on the board. I think it is a matter of history. In our country, it is only in the last 20 or 30 years that we have seen women taking on senior positions in commerce and industry. They have always been prominent in educational institutions, but we have

had really very few technocrats. Therefore, the pool from which directors came in was rather restricted. That pool has widened significantly. As you had observed, why is it that a large percentage of women directors are in the financial services board? That was the area where women initially started. They achieved positions of seniority in financial services much before they achieved positions of seniority in manufacturing organizations, for example. They would have achieved seniority in service industries, in marketing, in the retail business. You would find on further analysis that there are more directors in these sectors. I feel that having an overall quota that is applicable to all companies irrespective of the nature of their business is wrong. You must allow the women directors to gravitate to those companies where they will perform or will provide much better expertise than the male directors. In short, what I am saying is that we should not have a mandatory requirement to include either a minimum number or a minimum percentage of women directors. On the contrary, we should create peer pressure. We should say that if you do not have women directors, you have to explain to the shareholders why this is the case. We have detailed rules about corporate governance in Clause 49. One of the consequences of that is that corporate governance in Indian companies has become a matter of form, and not really a matter of substance. In many countries, corporate governance is not a mandatory requirement; instead, guidance is given, and then there is peer pressure. The companies are asked to explain to shareholders why they have not followed certain provisions of the code. That would be my suggestion for gender diversity.

Preetha Reddy:

The times are changing and women are getting as much respect—maybe even more—than men on boards do, but I would reiterate that the choice of including a woman on the board has to be because there is a focus on excellence, a focus on merit, and because they are equal partners. A lot of women, especially in the south, are against the quota because they feel that they should be given equal opportunity and equal respect. Making it mandatory for women to be included on boards is to me a double-edged sword. More women would be included because companies need women directors. But the individual need not necessarily be qualified to contribute to the board that she is on; she may simply fill up the position. I hope that this will change over time, because it is a great beginning. It probably is a way to give women a foot in the door, but I am looking at a time when they are equals. Gender diversity is actually required for a well-rounded board. I sit on a fairly large company's board in the US, and I must say that I enjoy every moment of it. The head of the audit committee is a woman.

It may be interesting to see how many women head the audit committee of a company's board. I head the quality and technology committee of a medical devices board. It is a very respectable position because I think women can focus as much as the male counterparts in technology, science, and outcomes, and it is really important for them to have a level playing field. If you ask me today if women really have equal respect on the board and a level playing field, I would say on a scale of 10, they are probably still only at 5. I am waiting for the day when it will move to 10.

Kalpana Morparia:

I have a slightly different take on the whole diversity issue. Professor Sarkar spoke about gender diversity and women on boards. I feel we should take this discussion to an even higher level, and talk about diversity on boards, not just gender diversity. Given the way corporate governance has evolved in India, there is a club of people that you invite to the board: there could be some lawyers and some retired bureaucrats. We need a diverse board across academic backgrounds, across professional expertise, and gender certainly plays a role there. I can name a handful of companies that have actually searched for individuals based on the diverse skills that they need on the board, and I think that is an evolution that we should definitely go through. Like Mr. Malegam, I am dead against quotas. I was a member of the SEBI Committee several years ago, where they brought this proposal just before the amendment to the Companies Act. There was a proposal to make it mandatory to include a female on every listed company Board and I was one of the people who most vehemently opposed that because I believed it would demean women. I think there is only one institution in this country that requires a quota system for women, and that is the Indian political system. Representation for women in India's largest legislative body is required because that is a door that is shut, and unless you create a quota for women, they will not be able to open the door. But other than that, I do not like quotas. We must create an environment where we do not see a drop in female representation, when 30-40% women joined the work force, then that percentage drops to 20%, and then that drops to 10%, and actually when corporates intervene to see why women are dropping off, why are they are moving out, what hand-holding does the company need to do when the mommy trap comes in. Some of the social stigmas that are there within families need to be addressed. JP Morgan, I know, plays a big role in this intervention. Increasingly more Indian firms are focusing on ensuring that it is not just about hiring women, but also about ensuring that they stay and do not drop off. So, once you have that trend, you will see a very natural progression in women's representation.

Shailesh Haribhakti: I'd like to thank NSE and IGIDR for this opportunity. My position is very close to what Ms. Kalpana mentioned, because I believe it is very important to live the purpose of the board with its structure and with who should be on that board. Increasingly, the purpose of the board is not to protect a particular interest, it is not to ensure that compliance happens; rather, it is to ensure that there is a balance between all the economic interests that look into the corporation. It is the responsibility of the board to bring about that balance. You cannot have this balance unless you have significant diversity and the skill sets that are required to deliver those results, measured by the incremental market cap, incremental value, the ability to ensure that you are in compliance with the environmental laws, in compliance with what is expected by society of a good corporate citizen. When I think about that, I can sense that it is extremely important to have diverse perspectives, which can only be brought about by diversity in the boards. Also, this diversity should not come about not merely because of gender. I think there is a whole pool of academics who are not being approached to join the board of companies. You have people of great public standing being on the board of companies, but they are like stars on a Christmas tree: they are decorative, but they are not really contributing anything. So that has to change.

Malegam: Now, where can the women directors potentially come from? There are effectively three sources in my view. One is families. I think bringing in a woman from the family is not really the answer. The second is an independent outside director being brought on to the board. There, I feel Indian companies need to have more professional advice with regard to the nomination of directors. If you create a culture whereby companies identify professionals as directors who will add value, then there will necessarily be a good batch of women coming in, because talent is available equally between women and men. The third category, which is also a source, is that you internally promote executives to the board. An increasing number of women are reaching positions of directors and chairpersons within organizations. If you look at banking, for example, today, the chairperson of the State Bank is a woman, the chairperson of Axis Bank is a woman, the chairperson of ICICI Bank is a woman, the person nominated as the CEO of Standard Chartered is a woman. Twenty years ago, a lot of the women MBAs went into finance or marketing. It is this group who then rose to become directors, and there is no reason why this should not happen. Even today, there are people going into engineering, but they may not be in the same proportion. Therefore, maybe you will not have the same number of women directors in manufacturing companies. So, you have to look at some

segments, not at the total. If you do that, I feel you will find a much more encouraging picture than you get by just looking at the total.

Subrata Sarkar: If you look at the distribution of women in boards across industries, you will see that their presence is much higher in financial services industry compared to that in other industries. This to some extent negates the general impression that women are entering corporate boards in all industries and not just in financial services.. Now, if many industries have under representation of women on their Boards, then there must be some reason as to why it is so.

Jayati Sarkar: If we make it more general, it was essentially creating a bigger pool of capabilities. So, essentially they complement each other rather than substitute. Now, these are very controversial issues to say whether men are better than women, or women are better than men. The basic take that I get from the literature is essentially that women have skills; sometimes, they say that in terms of diligence, in terms of monitoring, they fare better than men. Men are better in terms of say risk taking, decision making, etc. So that is where I think the need for gender diversity comes in. But the evidence of that is not clear. So, if you look at studies with respect to Norway, where there is a 40% quota, and there is a study that tracked performance for 10 years, we do not find any evidence that women add to performance. The results are definitely not negative, but gender-diverse boards do not necessarily improve performance. If you look at the US, basically they make a difference in terms of the governance capabilities that go with having more women; for example, there is better Board attendance, but it does not necessarily translate into better performance. So one needs to make a distinction between better governance, and better performance. Our study shows that as of 2015, having more women on boards positively affects market value but not necessarily profitability. What is more interesting is that merely adding women directors do not add significant value, but adding independent women directors does add value. So, this is something where there is some evidence of the impact of gender diversity. So, overall, the evidence is mixed. It does not necessarily translate to performance. We have to look at the quality of governance.

Shailesh Haribhakti: I would like to endorse and underline that point. I would strongly recommend that it is important to have independent women directors on boards. But I would like to sort of balance that by saying that it is important to have competent individuals on every board.

- Jayati Sarkar:** Yes. Competence is absolutely important. Gender diversity may help to get a bigger picture view of the aims and objectives of a company.
- Shailesh Haribhakti:** I think what is required on boards is a great chairperson who brings things together, and the ability for people to express themselves freely. If that atmosphere is created, and the team is built, then the board will function in a way that makes everybody happy.
- Subrata Sarkar:** I want to drive the following point: nobody likes quota because it makes one feel that I am on the Board only because of quota and not because of my intelligence. What is the alternative? What if you don't have quota? In many countries, you don't have quota. Over time, based entirely on ability, if there is competence and other things are equal between men and women, we will see a significantly higher percentage of women on corporate Boards. However, if you look at academic analysis, you will find that this is not the case. Women are very poorly represented on corporate Boards even in very advanced countries. If self-selection was unconstrained, then we will see women coming up, and there will be a higher percentage. If this happens, nobody would want quota. But if it does not happen then it must mean there are some factors that are preventing women from succeeding. What are these factors and how do you deal with them? We have all heard of mommy traps, sticky floors, glass ceilings, and now glass walls, which are basically social and institutional conditions that prevent women from progressing in their career. A beginning can be made with quota and then in the long run we can work consciously to remove the impediments that women face.
- Kalpana Morparia:** I think a good approach is for the regulator to say that this is our advice. If you do not do it, explain why not. The more rational approach is to say you should do it and if you cannot do it, explain! If they cannot explain, they will be shamed. So it is name and shame. The societal changes will take a number of years. When we award companies as "best company" and so on, is there any recognition in terms of the number of women on the board? What is it that you are doing as an organization to facilitate that? I think over the next 10 years, we will create such a vibrant pool in the senior levels that it will be a natural thing to have many more women in the company.
- Preetha Reddy:** I have noted that sometimes women are more cautious as compared to their male peers, possibly considering the liability that comes with being on a board.
- Subrata Sarkar:** Mr. Malegam, what is your view? I understand that quota is an issue.

Malegam:

On all the boards on which I have been, I have not noticed any difference. I cannot categorize and say that women are more risk-averse or less risk-averse, or that women have done this or not done this. They are individuals. You have individual members of the board who are very risk-averse, and you have individual members of the board who are willing to take risk. I have not noticed any particular difference. I think the real problem is that all our efforts with regard to corporate governance have certain gaps, which have now been quickly addressed. Corporate governance persists on the basis of the board's directions and controls, and the fact that the board is answerable to the shareholders. If the board is answerable to the shareholders, shareholders must be willing to take the responsibility of making the board answerable. In many countries, institutional shareholders take this responsibility. They act as a catalyst around whom the shareholders gather to enforce their rights. Unfortunately, in India, institutional shareholders, mutual funds, etc. are not taking up their responsibilities. If they believe that there should be gender diversity on the board, why is it that these institutional shareholders are not enforcing that? Why are they not voting for or nominating women directors to the board? Why is it left to the board to decide? Why are they not strengthening the nomination committees of the board? I think we have to address this issue on a wider level so that are we able to bring in the substance of corporate governance. It is the responsibility of the board to select board members who add value. Whether that person adds value has nothing to do with whether that person is a man or a woman.

The second thing is that the pool from which women directors are going to come is growing, as I said earlier. It will be a useful exercise to identify companies that have greater public participation and an active shareholder forum, and then see whether this change is taking place or not. Also, this diversity should not be merely on the basis of gender; it should come out of disciplines. I think there is a whole pool of academics who are not being approached to join the boards of companies. As was mentioned earlier, many directors are like stars on a Christmas tree: they are decorative, without really contributing anything. So that has to be changed. Even if an equal number of men and women start out after graduation and join enterprises, a larger number of women drop out for domestic reasons. So automatically, in that group, a larger number of men progress to a higher level. In other countries, perhaps a larger number of families have two earning members. If that social change takes place in India, then automatically it will get reflected in the number of additions to the board.

Shailesh Haribhakti: I do not want to sound suspicious, but I think it is also because we had a chairman like Mr. Kamath, and before that Mr. Waghmore, who saw this much earlier than most people. Because of the visionary approach that was taken by a few people such as Dr. Reddy, I think the future is going to be very different from the past. We are looking at things from the perspective of the institutes. But as I stand here today and look to the future, I think there has been a far greater spread, a more or less even spread. I see more chartered accountants, highly qualified, better performing chartered accountants in India. I see highly performing women coming out of MBA schools. I can see that is going to flow right up. So if you look at the past, you can understand why there were more women in financial services. As we see this large number of competent gamut of people moving up the ladder, I am seeing so many examples of males wanting to take on the role of giant wheel: there are companies which are giving vacations to males to take care of the child. That is now becoming something which is not completely out of the ordinary. So there is going to be a whole lot of change, which is going to drive a very different outcome. At that stage, nobody will even remember that there was a quota. Everything will be driven by competence; everything will be driven by efficiency in the best countries. I think they have done a whole lot to make this atmosphere viable to bring about the forces that will drive. I like Mr. Malegam's analysis on the three sources from where the directors will come. The natural thing that will happen is there will more participants.

Subrata Sarkar: All right. We can now take some questions from the audience.

Participant: I am Brinda Jagirdar. I have one comment and one question. I completely agree that diversity is much beyond gender diversity. For example, I was invited to be on the board of an automotive company, which was full of hard-core engineers. The company was an award-winning organization. So, I wondered why they invited me. But they said, engineering is easy, it is economics we want to understand. So what you bring to the table is important. My question here is on the slide that showed the relationship between returns and market value on one hand and gender diversity on the other. I want to know which way was the causality.

Jayati Sarkar: We did account for the possibility that better-performing firms have more women on the board, and after controlling for the possible reverse causality, we found that greater gender diversity positively impacts market value, but not necessarily accounting performance. Our results on returns on asset or profitability are weak, but our results on market value hold good. So

essentially, my sense is that the market values a more gender-diverse board. The other strong result that we get is that we find a positive effect only when there are independent women directors and not just women directors.

Participant:

I am Ravindra. I am a General Counsel in Exchange NSE. My question is to all the panellists who are against the quota system. First, we are in an age where we are trying to save the girl child and to encourage greater participation of women in education. So under the Companies Act, would this panel not see this as a way towards empowering women? My question has nothing to do with the kind of contribution they make, regardless of where they come from. Would the panellists consider encouraging women as such being a positive influence for their elections to the board, given and the prevalent social environment?

Kalpana Morparia:

Can I answer this? Actually it amazes me that the Parliament voted for having at least one woman director on corporate boards while they have still not voted to allow a certain percentage of women represent the people of India in the Lok Sabha. I think that shows that just getting a woman, one woman to be on a board is not going to elevate woman empowerment to the level that actually getting 33% women in India's legislative assembly would do.

Participant:

Have not the leaders of industry failed us in allowing the legislature to pass this law (that mandates at least one woman on the board), while the industry has been vehemently opposing any reservation on the basis of caste or religion for a very long time? In allowing the legislature to do this, have we not opened the doors for the legislature to later bring in reservation in the name of caste or religion?

Speaker:

Reservation is already there in getting admissions in colleges. Legislation is saying that women have to be opted on to boards mandatorily. I think from a woman's point of view, it is definitely not the right thing to do. I think the appointment has to be on the basis of excellence, merit, knowledge, and diversity that really qualifies.

Participant:

Actually my question is: Have you not opened the doors for the legislature to bring in reservation later?

Speaker:

Absolutely not. The entire mistake is ours to call this a quota. This is not a quota. That is what I said at the beginning of my observation. This should not be seen as a quota. This is the first step towards encouraging the participation of women. There is no definition in the Companies Act for this "quota". It is not a quota. This is just a way to encourage participation.

Speaker:

You call it encouragement. One can also call it creating awareness. So what we have clearly seen in the whole country is that irrespective of the level of development, there is a high rate of attrition among women from the middle to senior level and the junior to middle level. Possibly, individual companies cannot intervene to make the workplace more enabling for women. A study showed that women who finally make it to the top are more capable than the men at the top, on average.

Subrata Sarkar:

All right. As we have completely run out of time, we will bring the discussion to an end here. Thank you everyone for your kind participation in today's session.

Notes

Notes



NATIONAL STOCK EXCHANGE OF INDIA LIMITD

Exchange Plaza, Plot no. C/1, G Block, Bandra-Kurla Complex, Bandra (E) Mumbai - 400 051.