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COMPULSORY WOMEN DIRECTOR: AN ARBITRARY RESERVATION*

“The intelligent ruler makes the law select men and makes no arbitrary appointment himself; he makes the law measure merits and makes no arbitrary judgment himself.”
Martin Luther King, Jr.

Article 14 of The Indian Constitution, 1950 forbids class-legislation but it does not forbid reasonable classification. The classification however must not be “arbitrary, artificial or evasive” but must be based on some real and substantial bearing a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted that between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

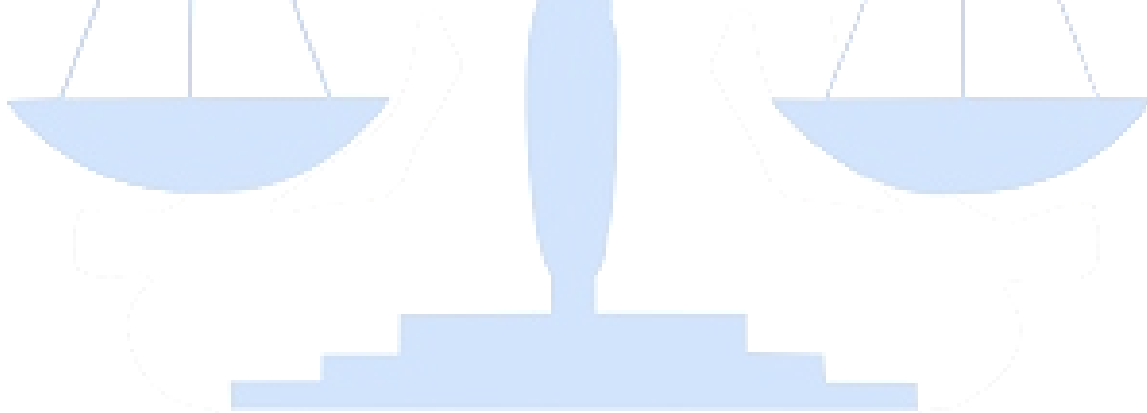
The Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 deals with women director on the board. With regard to Section 149, the following companies shall appoint at least one women director on the board. Firstly, for every listed company and every other public company having paid-up share capital of one hundred crore rupees or more or turnover of three hundred crore rupees or more. Even Section 149(1) of Companies Act, 2013 deals with women director stating that every company shall have board of directors who are individuals with minimum number of three directors in case of a public company and two directors in case of a private company and one in case of One Person Company. The new incorporated company should follow this rule within six months and for the companies already incorporated should comply with this norm within a year with this policy. Further if found that there is vacancy in the post of women director, such vacancy has to be filled as early as possible and it should not be later than the next immediate board meeting or after three months from the date of the post being vacant, i.e. whichever is later.

The question at hand after this policy is whether this reservation is an example of class legislation or is based on a ground of reasonable classification. It is evident that the policy of reservation granted only the basis of gender, stands vitiated, not qualifying as a reasonable

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classification. The intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group is missing because according to Census Report of 10 years between 2001-2011 show that women's proportionate increase in growth of education rate is more than that of men. Even it is found that in Hindu undivided family the concept of Karta would fail if there is compulsory appointment of women director. However, in absence of clear of eligibility criteria of such women director the whole concept of the same shall turn out to be arbitrary in relation to the concept of this principal. In most companies, mostly the wives or daughters of the Directors be appointed and how effective their say will be in governance of the company cannot be determined. It may end up being a little same like the initial "Panchayati Raj" era where the husbands of the female sarpanch would majorly govern the villages. The policy makers should come up with strong eligibility criteria in terms of education, age, experience and reporting framework of governance undertaken by such Women Director. Certain resolutions should be made to be approved only if supported by a Woman if it requires a women's wisdom. This shall also heighten the chances of employment of qualified female personnel who have less or no chance to step up the corporate ladder. Mere inclusion of "Women Director" will not support the cause unless proper framework to ensure that is properly implemented is made.

“The constitutionality of an act or statute is challenged when the composition is found to be arbitrary therefore if the company's nominal head is found to be arbitrary, the organisation's validity may be challenged.”



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