

ADR AS A MECHANISM FOR ENHANCING DIRECTOR ACCOUNTABILITY: A GENDER-BASED STUDY OF WOMEN DIRECTORS UNDER THE COMPANIES ACT, 2013

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Abstract : With the changing nature of the corporate landscape in India. Due to sophisticated economic framework and higher laws and regulations the level of dispute within India business has raised. The conventional litigation is sometimes time consuming and very expensive and this has prompted and increasing dependency on Alternative Dispute Resolution (ADR) procedures like arbitration, mediation and conciliation. These are more flexible and confidential methods of solving corporate especially of directors and internal management. The Companies Act 2013, highlights that directors have an important obligation to protect stakeholder's interests and to maintain excellent corporate governance with honesty. They are required to be accountable especially when it comes to mismanagement, duty breach or boardroom battles. In this regard, ADR is significant in dealing with such disputes in an efficient manner and at the same time corporate relations and stability.

The paper further discusses how women directors can empower accountability and decision – making in the corporate boards. India has gone a notch higher in inclusive governance with the implementation of mandatory requirement of women directors in some categories of companies. The ethical standards, balanced viewpoint and conflict- resolving skills of the ADR application in corporate conflicts.

The research is founded on the doctrinal research, using the statutory provisions, judicial interpretation, and regulatory guidelines in India. It concludes that ADR is an efficient instrument in solving disputes as well as making directors more accountable; nevertheless, the potential has been completely exploited yet because of the lack of knowledge and institutional constraints. Meanwhile, the active involvement of women directors also will be able to optimize the governance practices and even enhance the ability of the Indian corporate environment to resolve the dispute fairly and efficiently.

Keywords: ADR, Corporate Governance, Directors' Accountability, Women Directors, Arbitration, Board Diversity.

1. INTRODUCTION

The issue of business transaction complexity and the many investors interest in which they put their money into has brought about an increase in internal conflict in today's corporate world in this environment Alternative Dispute Resolution (ADR) has become a particular solution to take issue out of the normal courts system. ADR includes arbitration, mediation and conciliation which is put forth to present a quick, economic and private means at which to resolving disputes. Under the Arbitration and Conciliation Act, 1996, the mechanisms are legally accepted in India and are commonly applied in corporate and business affairs.

Corporate governance is the support of any properly – operating company that ensures a transparent, accountable, and fair decision-making. It comprises a set of guidelines and procedures that serve as a firm’s compass. Good corporate governance is not only a requirement in safeguarding the interests of shareholders, but also in ensuring that the citizens do not lose trust in the corporate world. The reforms in the legislation and regulation of the bodies like the Ministry of Corporate Affairs and the Securities and Exchange Board of India have empowered the standards of governance in India greatly.[1]

Board members which run the company day to day and make key decisions are the heart of this governance style. In their fiduciary role we expect them to be fully committed also to perform well and with care. Article related to the Directors’ responsibilities in the Companies Act, 2013 also reports that which is expected of the directors’ is a standard of responsibility and ethics. That they do not do which is against what is expected of them in terms of financial loss to the company, damage to the company’s name or loss of stakeholder confidence.

In the recent years, such inclusion has become significant in the appointment of women to the corporate boards to enhance better governance and to provide diversity in the decision – making process. Section 149 of the Companies Act, 2013 requires that there should be at least one-woman directors in types of companies.[2] This is an indication of a change towards inclusive governance and the inclusion of gender diversity as a way of improving boards effectiveness. Women directors have been perceived to play a major balanced role, moral control and enhanced resolution of conflict in the boardroom.[3]

Although the ADRs are gaining more relevance in the corporate dispute case, there is the huge gap in the research about the role of gender, especially the role of women directors in ADRs. The majority of the available research are on the legal and procedural elements of ADR without considering the effect of board diversity on dispute resolution and accountability. This doesn’t give a gender – based approach which would restrict a holistic explanation of the effectiveness of ADR in corporate governance.

This is the gap that the present study aims to fill by investigating the application of ADR as the means of enhancing the accountability of director’s particularly female directors in India. Objectives are:

- (i) To discuss the notice on applicability of ADR in business conflict,
- (ii) To investigate legal framework on the role of directors under the Companies Act, 2013,
- (iii) To look at what role of women plays as leaders in business, and
- (iv) to determine how much accountability and inclusive decision making in corporate boards can be improved through ADR.

2. LEGAL FRAMEWORK:

The Companies Act of 2013 and the Arbitration and Conciliation Act 1996 are the major law in India that form the basis of law on director’s accountability and dispute resolution. All these statutes set forth the roles of directors, the answer to corporate governance, and the mechanisms that have been used in the efficient manner of settling dispute.

The composition of the board of directors in the Companies Act 2013 has been formulated in way that ensures transparency diversity and accountability. The underpinning of the present Act is Section 149 which enables for the appointment of directors and also which reports that at least one-woman director is to be included in certain classes of companies. [4] Such a provision indicates a legislative interest of promoting gender diversification in corporate decision – making and enhance the quality of governance by introducing divergent view in the boardroom. Having women directors is not just a mere formality but it is meant to reinforce ethical conduct and also improve the quality of deliberation in corporate boards.

Also, with regard to board structure the Companies Act of 2013 does put forth on the roles and responsibilities of directors. Section 166 of the Act entrenches the fiduciary obligations of directors who are expected to act in good faith, with due care and diligence and in the best interest of the company, its employees, shareholders and society in general [5] These responsibilities are the basis of the accountability of directors because any lack of these norms can lead to a legal penalty. The legal establishment of such responsibilities is what keeps the directors accountable to their actions and decision by making them responsible in their corporate governance.

The statutory provisions are closely connected with the concept of board accountability. Directors are given the charge of running the management, meeting legal requirements and protecting the interest of stakeholders. Responsibility here means that any decision made by the director should be justified and they can be held responsible as a result of negligence, misconduct or breach of trust. The law system is they're for aimed at establishing a compromise between managers and regulation such that corporate power is not wielded irresponsibly.

ADR was set up in the India under the Arbitration and Conciliation Act 1996 and corporate governance laws. The Act regulates arbitration, during which mediation (via conciliation) and the other related procedures are provided as an alternative to the standard litigation. [6] The ADR mechanisms become especially applicable in business conflicts, whereby confidentiality, speed and maintenance of business relations are of paramount importance. Through enabling parties to settle disputes outside the judicial system, ADR saves on the judicial System because it offers adaptable solution to businesses.

ADR is also important in the leadership of directors when it comes to solving problems like conflict of interest among shareholders, mismanagement as well as breach of fiduciary duties. Corporate agreements usually have arbitration provision in the arbitration clause; thus, directors' disputes are resolved in a systematic process but in a efficient manner.[7] Nevertheless ADR as a number of benefits, but issues on transparency and enforceability are a factor that should be taken seriously.

On the whole, the integrated performance of the companies Act, 2013 and the Arbitration and Conciliation Act, 1996 form all overall legal framework that does not only identify the duties of directors, but also offer functional system of dealing with the conflict. The framework especially comes in handy when it comes to facilitating accountability and enhancing corporate governance as well as the increasing significance of the ADR in the Indian corporate world.

3. APPLICATION OF ADR IN COMPANY DISPUTE:

Incorporation of various stakeholders, intricate dealings and conflicting interests in the corporate world make conflicts unavoidable. Usually, these conflicts were solved in courts, but litigation has a tendency to be lengthy in duration and costly in terms of costs and was an open forum. Conversely, Arbitration, mediation and conciliation are same of the Alternative Dispute Resolution (ADR) mechanisms that have become effective alternative which are flexible and efficient ADR in India has been boosted by legal status under the Arbitration and Conciliation Act, 1996 making it very effective in the settlement of corporate disputes.[8]

Speed up resolution is what brings ADR to the fore over litigation. The business operations and the financial stability can be affected by corporate disputes that may be triggered when it prolongs. ADR procedures are normally not that formal and the parties can decide on timelines hence less delays involved in court proceedings[9].Beside ADR is a cost-effective method, because it reduces court costs and procedures. The renders it quite applicable to those companies that require practical solutions to dispute at the right time.

What we see in corporate disputes is they take many forms which in turn depend on the company structure and operation. Shareholders disputes is among the common ones that might entail dispute over voting rights, dividend sharing or ownership. This

conflict may greatly impact the company operation and they need to be addressed in time in order to prevent escalation. Shareholders agreement commonly employs ADR mechanisms, particularly arbitration that the conflict should be resolved effectively and privately.

There is also another critical group known as the boardroom conflicts, where there is a disagreement between the directors on matters of policy decisions, strategic direction or even on the management practices. Such clashes have the potential of disrupting good decision-making and influencing corporate governance. ADR gives an opportunity to hold a positive dialogue and negotiation, where the directors can settle disagreement in a corporative manner without sacrificing professional relations.

Mismanagement matter also forms a major field of corporate conflicts. Fraud, violation of fiduciary obligations or any other untoward behaviour of directors may have a dire legal and financial implications. Although some of the issues might need judicial intervention, ADR still stands to offer supportive role in settling the associated disputes especially those that relate to the internal management and issues concerning the stakeholders.

ADR has a number of advantages that render it to be especially applicable in the case of corporate disputes. Also, ADR in that it is a fast process which does not tie up for large amounts of time. This make resolution of disputes fast and the businesses move on with their operations without having it to be put in unnecessary limbo. Additional we observe that it is a very private matter which is advantageous. Another advantage of ADR proceeding is that unlike the latter, which are usually transparent these proceedings are confidential, thus preserving the business information and reputational interest.

Moreover, ADR assist in saving company connection. In business it is very important to sustain long term relationship among stakeholders. Litigation normally results in adversarial measures and ADR promotes collaboration and understanding. In particular, mediation and conciliation aim at the realization of amicable settlement, which may become the source of trust and collaborative relationship in the future.

Nonetheless, as much as there are these benefits, ADR lack limitations. Such problem as the absence of transparency and restricted access to appeal can be a cause of concern in some instances. Though ADR is a key player in resolution of corporate disputes it also is a balance between efficiency and fair outcome. It increased employment in India is indicative of a charge to more pragmatic and relationship-based conflict resolution approaches in corporations.

4. DIRECTORS ACCOUNTABILITY THROUGH ADR:

The accountability of the directors is the central element of the corporate governance because directors are responsible to administer the affairs of the company in a responsible and transparent way. It is against the background that Alternative Dispute Resolution (ADR) has become a significant process that doesn't only help resolve disputes but also to investigate the action of directors and whether they are behaving in accordance with their legal and fiduciary duties. ADR gives an adaptable and cost-efficient platform upon which the matters on Mismanagement, negligence as well as breach of duties can be resolved without the delay that would come with the conventional litigation process.[10]

Fixing the responsibility of directors is one of the main ways through which ADR enhances accountability. The Arbitration proceedings maybe used to question the conduct of the directors in accordance with their statutory obligations as provided in the Companies Act, 2013. The directors must be in good faith exercise due diligence and advances the interests of the company and stakeholders. [11] In case of conflict, ADR can help interested parties challenge decision and find solutions in a less adversarial but more formal setting.[12]

ADR is also a large-scale tool for resolution of disputes which arise out of breach of fiduciary duties. Directors have a duty of care, loyalty and good faith and breach of which may cause share holder and management conflict. Such disputes are dealt with by arbitration, which gives a binding solution as well as mediation and conciliation which may have a negotiated solution. As the major scholars explain the mechanisms of ADR are especially effective in the case of corporate conflict because they can allow balancing between the legal and business practicality.[13]

The other relevant point of ADR in corporate governance is provided by arbitration provision in company agreements. There are numerous firms that have introduced such provisions in their stockholders concerned or articles of association which mandate the settling of any disputes arising between directors by arbitration. Such provisions inculcate the aspects of certainty and minimisation of delays in the procedure since parties are already aware of the dispute resolution mechanisms. The statutory basis of arbitration in India is the Arbitration and Conciliation Act 1996, through which it is known that such agreements are legally enforceable.[14]

Beside arbitration, other settlement methods including mediation and conciliation have been an added value in the settlement of corporate disputes between directors. The process underlines the mutual understanding and collaborative problem – solving, which is why they come in handy especially when sustaining business relations. To the directors it means that conflict may be resolved without damage to the business organization and its operations. Accounts of ADR activities note that informal approach to corporate disputes usually result in more viable resolutions.[15]

This benefits notwithstanding, ADR has some restriction in promoting absolute accountability of directors. The absence of transparency is one of the most significant fears because the ADR processes are not usually public. Confidentiality is a good protection of business interest but at the same time may reduce publicity of corporate misconduct.

The other problem is that there is possibility of power imbalance amongst parties. In most of the corporate conflicts directors or major shareholders might be more powerful than the minority stakeholders. This asymmetry may influence the justice of the results of ADR, especially in mediation and conciliation where settlement is based on mutual agreement. [16] Also as reported by some scholars in the absence of proper protections weaker parties may be put into a position of accepting unfavourable terms.[17]

Thus, although ADR is a potent means of settling corporate conflict and enhancing efficiency, the importance of accountability among the director should be based upon the legal protection and ethical standards. After all, a balanced solution integrity both the flexibility of ADR and the concept of fairness and transparency can go a long way in improving the corporate governance and accountability.

5. THE ANALYSIS OF THE ROLE OF WOMEN DIRECTORS.

Women inclusion in corporate boards has been revealed as one of the developments in enhancing corporate governance in India. Gender diversity isn't just a box to tick — it's a real driver of better decisions and stronger accountability. Under the Companies Act, 2013 regulatory and the provisions of the Securities and Exchange Board of India, the need to have at least one women director in the board of listed companies has been highlighted, as an indication of changes in the way governance practices are being more inclusive. [18]

The availability of women directors helps in enhancing the decision making in companies. Diverse boards will be more apt to take into account a greater number of points of views. And there will be balanced and informed decisions. Scholars have also contended that gender diversity helps in lowering chances of groupthink and also increases independence of the board.[19] Women on boards bring different experiences and working styles that broaden discussion and raise overall board performance.

Besides decision-making, women directors are also essential in ensuring the ethical practices and accountability. Their existence has been coupled with improved compliance. That variety also tends to sharpen a company's focus on corporate social responsibility and lift governance standards. Studies support this idea; companies with boards where both men and women are present tend to be more open and act with a moral.[20] This specifically applies to the corporate sector in India whereby reinforcement of governance is an ongoing goal.

Women directors are also useful in matters of dispute resolution and conflict management in corporate structures. The access to the boardroom discussions can help them to reach some negotiation and consensus which are necessary components of Alternative Dispute Resolution (ADR). They are competent in mediation and conciliation processes due to skills, including communication skills, empathy, and collaborative problem-solving. But their contribution becomes especially important whenever problems start inside the companies, because women can help with fixing things and maintaining a good relationship at work.

Still, there are obstacles that block female board members from making strong difference. One major problem is when women are appointed to boards as tokens, frequently merely to fulfil legal obligations rather than to have any say in the matters. In these types of circumstances, women directors' existence has minimally effect on the board's power structure

The other issue is that women have a low involvement in leadership. Though women directors have risen with the mandatory requirements, the increase has not been translated to general and strategic managerial and decision-making roles. Indian corporate governance reports have reported that there has been an increase in formal compliance although there is still no substantial gender diversity.[21]

Also, social bias hinders many women from attaining high positions and less possibilities to be in control keeps them behind. If they do not get mentoring from skilled professionals, progress is slow. Such ingrained challenges quietly make it hard for female directors to do more.[22] These issues are indicative of necessity of transitioning symbolic inclusion to active participation.

Even so, appointing women to the boards can encourage the acceptance; their true influence relies on how much they take part in making decisions or fixing company problems. Enhancing and empowering their responsibility can go a long way in increasing accountability and effectiveness of ADR in corporate governance.

6. CHALLENGES IN USING ADR FOR DIRECTORS' ACCOUNTABILITY:

Although using Alternative Dispute Resolution (ADR) has turned into a good method for corporate dispute solving, it has not succeeded well for making directors answerable. A number of structural and procedural issues make it less effective as a complete and dependable accountability mechanism.

1. There is not enough openness the ADR procedures.

Lack of transparency is one of the key arguments of ADR (and arbitration in particular). ADR processes are confidential as compared to court proceedings that are typically publicly done. Such privacy restricts the examination of corporate conflicts between directors by the people. Such lack can cause wrong or poor management or can make people not follow the fiduciary duties. Which will not be detected, undermining accountability.

The scholars have noted that even though confidentiality upholds commercial interests, it equally presents issues relating to fairness and legitimacy because of non-openness in proceedings.

2. Different level of Power for Stakeholders.

ADR processes particularly mediation and conciliation are dependent on negotiation and mutual consent. In business disagreement directors or majority shareholders typically have significantly more authority than minority shareholders. Such an unequal position can also push weaker sides into an undesirable settlement.

Because ADR does not provide the procedural protection of the courts, it might not ensure minority interests properly. Being somewhat ineffective in creating real accountability of directors. [23]

3. Little judicial review of awards of arbitration.

The arbitral verdicts as final and binding for both parties and courts are only permitted to intervene on defined reason which been recognized under Arbitration and Conciliation Act of 1996. To a small extent, by the judiciary. To set the seal on the awards are completed speedily and difficult to argue, if directors behave inappropriately it might lead to facing difficulty. Courts are not usually allowed to remarry the merits of a decision made by an arbiter, and so injustices or mistakes are not rectified. Such a narrow scope by law might harm possibility of holding the directors responsible in very complex corporate matters. [24]

4. Openness in the fight against Corruption.

ADR and an arbitration are remarkable for confidentiality which preserves secret business details and reputation concerns. This same feature, however, brings about a conflict in case matters of public interest or corporate governance are concerned.

Legal literature indicates that the need to uphold confidentiality and transparency in court is a continuous conflict particularly when lawsuits are on horizons of corporate misconduct. However, the excessive confidentiality some time hide the director's inappropriate action.

5. Complications in carrying out Ethical Duties.

ADR is more of the dispute settlement as opposed to enforcement of the ethical standards. The system does nothing to address fundamental management problems like betraying trust or unethical action by Executives yet it might offer remedies like severance not private disputes resolution. Moreover, ADR is rather private, which prevents the formation of legal precedents. Which are necessary to regulate the actions of corporations and reinforce the accountability system. [25]

7. SUGGESTIONS / RECOMMENDATIONS :

In order to enhance the position of ADR in holding directors accountable, some enhancements are required.

To begin with, there is the necessity to raise awareness about ADR in directors. Litigation is more favoured by many because they are not familiar with ADR despite its efficiency. Its broader use can be promoted with the help of awareness programs and professional training. [26]

Secondly, there should be capacity-building trainings given to the directors who are women. Their engagement in ADR and governance of companies can benefit if they undertake a negotiation as well as dispute resolution trainings.

Besides, law conditions must be made stronger for the ADR and to make ADR fairer in operation. Trust in the system can be enhanced by clear procedures, enhanced enforcement of awards of arbitral proceedings and impartiality in proceedings. [27]

Moreover, the companies need to stop being tokenistic and provide real participation of the women directors. They could have strong impact on improving the governance standards by getting involved directly in both making decisions and also solving disputes. [28] Finally, institutional support of ADR needs to be improved with the help of the improved infrastructure, institutional arbitration encouragement, and integration of regulatory agencies.

8. CONCLUSION :

This paper has discussed the increased applicability of Alternative Dispute Resolution (ADR) to corporate disputes and enhanced accountability in the directors under the Companies Act, 2013. It underscores the fact that ADR mechanisms, which include arbitration, mediation and conciliation, offer a more efficient, more flexible and confidential alternative to the Traditional litigation process and thus allows the resolution of disputes in corporate set ups in a timely manner. [29]

The discussion also shows that ADR has a significant part to play in improving accountability by providing a formal platform through which the actions of directors, especially where the breach of duties and mismanagement are involved, could be reviewed. Nevertheless, its success is conditioned by such aspects as transparency, fairness, and existence of proper legal protection.[30]

How women directors contribute to better corporate governance is been shown in this study. They are included in a way that enhances balanced decision making. It is important to do ethical check for decisions, and for how solving of conflicts happen. However, such inclusion, in order to be effective, cannot be formal but active and involved in the process of governance.[31]

It might be said that a focus on ADR in business oversight will lean into deeper understanding soon. This transformation come about gradually rather than abruptly. Because predictable daily routine helps habits stick. With constant monitoring confidence grows. Strength grows via constant observation. Fairness best demonstrates in equitable treatment. Nobody floats beyond what binds us all. An integrated strategy comprising of strong ADR systems and substantial gender diversity can be of great use in supporting accountability, fairness, and efficiency of the Indian corporate world.

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