

**TOWARDS IMPLEMENTING BOARD GENDER DIVERSITY IN  
SRI LANKA**

**BY**

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## **ABSTRACT**

Corporate governance is an increasingly topical theme. The voluminous literature on corporate governance is specifically affirmed by International Financial Institutions (IFIs) in reasoning out that good corporate governance practices can develop the economy by attracting investors and securing foreign direct investment. Accordingly, these IFIs have included corporate governance reform as a condition for funding to developing countries. Sri Lanka is an illustrative example of a developing country forced by IFIs to improve its corporate governance practices as a step towards advancing economic growth. The Sri Lankan legislators have been incorporating corporate governance rules of the United Kingdom (UK) to reform corporate governance practices within the country. Among these, board gender diversity is acknowledged as a legal strategy that is capable of providing economic and equality benefits. The economic benefits are based on the contribution women directors can make towards advancing board effectiveness. The equality benefits underpinning this strategy depict the manner in which gender equality could be promoted by board gender diversity rules. While the UK corporate governance rules have incorporated this strategy, the Sri Lankan legislators have not considered this approach. This study builds on this gap and explores through a socio-legal lens the feasibility of implementing board gender diversity rules in Sri Lanka. It demonstrates that board gender diversity rules could be a valuable tool for corporate governance development and to promote gender equality in society.

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## TABLE OF CONTENTS

CHAPTER 1 – INTRODUCING THE STUDY .....	7
1.1 The context of the research.....	7
1.2 Methodological approach .....	16
1.3 Research Questions .....	21
1.4 Roadmap to subsequent chapters.....	27
CHAPTER 2 – CASE STUDY: SRI LANKA .....	30
2.1 Introduction .....	30
2.2 Key aspects of the geography, the population, and the economy .....	31
2.2.1 <i>Geography</i> .....	31
2.2.2 <i>Population</i> .....	31
2.2.3 <i>Economic growth and stability</i> .....	33
2.3 The corporate governance environment in Sri Lanka .....	34
2.3.1 <i>Corporate governance reforms</i> .....	34
2.3.2 <i>The corporate legal structure in Sri Lanka</i> .....	39
2.3.3 <i>The regulatory regime in Sri Lanka</i> .....	41
2.4 Women in Sri Lanka.....	44
2.4.1 <i>The traditional social status of the Sri Lankan woman</i> .....	45
2.4.2 <i>The changing role of the woman in Sri Lankan society</i> .....	46
2.5 Summary.....	49
CHAPTER 3 – THE BOARD’S ROLE IN CORPORATE GOVERNANCE .....	50
3.1 Introduction .....	50
3.2 The board as a core corporate governance organ .....	52
3.3 Agency problems as a consequence of ineffective board monitoring.....	54
3.4 Rules on board composition as a strategy to mitigate agency problems .....	61
3.5 Summary.....	68
CHAPTER 4 – THE DEBATE ON BOARD GENDER DIVERSITY.....	70

4.1 Introduction .....	70
4.2 Board gender diversity as a recurring theme on board composition .....	71
4.3 A global snapshot of board gender diversity .....	72
4.4 Rationales for women on boards .....	73
4.4.1 <i>The economic rationale</i> .....	74
4.4.2 <i>The social case for board gender diversity</i> .....	79
4.5 Summary.....	84
CHAPTER 5 – REGULATORY APPROACHES ON BOARD GENDER DIVERSITY .....	85
5.1 Introduction .....	85
5.2 The legal regulatory landscape on board gender diversity .....	86
5.3 The way forward to increase women on boards: a comparative analysis of the quota and disclosure approaches .....	91
5.4 Exploring the adoption of a one-size-fits-all model .....	96
5.5 Supplementing legal rules with systemic change .....	98
5.6 Summary.....	99
CHAPTER 6 – RESEARCH METHODOLOGY .....	101
6.1 Introduction .....	101
6.2 The theoretical perspective: the socio-legal approach.....	102
6.2.1 <i>The historical development of the socio-legal approach</i> .....	102
6.2.2 <i>A snapshot of research incorporating the socio-legal research</i> .....	105
6.2.3 <i>Application of the socio-legal approach to the study</i> .....	106
6.2.4 <i>Difficulties encountered in adopting the socio-legal approach</i> .....	110
6.3 Research methods .....	110
6.3.1 <i>Documentary analysis</i> .....	111
6.3.2 <i>Using interviews as a research method</i> .....	113
6.4 Data analysis: The thematic analysis method.....	120
6.4.1 <i>Braun and Clarke’s six-step guide to thematic analysis</i> .....	122
6.4.2 <i>Application of Braun and Clarke’s six-step approach</i> .....	124

6.4.3 Drawbacks of Braun and Clarke's thematic analysis method.....	136
6.5 Summary.....	137
CHAPTER 7 – EXPLORING THE SRI LANKAN PERCEPTIONS ON INTRODUCING BOARD GENDER DIVERSITY RULES.....	138
7.1 Introduction .....	138
7.2 The efforts to improve corporate governance in Sri Lanka.....	139
7.2.1 The influence of the IFIs on corporate governance reform in Sri Lanka .....	139
7.2.2 Positive progress on board composition rules.....	142
7.3 Examining the introduction of board gender diversity rules to Sri Lanka as a tool to promote better corporate governance .....	144
7.3.1 Exploring the Sri Lankan situation on board gender diversity.....	144
7.3.2 Exploring the benefits of board gender diversity rules to Sri Lankan corporate boards .....	146
7.3.3 Exploring deeper into the benefits of board effectiveness that assist Sri Lankan boards .....	149
7.4 Beyond the economic rationale: the social case for introducing board gender diversity to Sri Lanka .....	161
7.4.1 Sri Lankan social structure and gender inequality.....	162
7.5 The suitable legal regulatory framework for adopting board gender diversity rules in Sri Lanka .....	175
7.5.1 Choosing between quotas and disclosures in the Sri Lankan context .....	177
7.6 Summary.....	185
CHAPTER 8 – CONCLUSION .....	189
8.1 Summary of the study.....	189
8.2 Limitations.....	192
8.3 Future research paths .....	194
8.4 Concluding comments .....	194
APPENDICES .....	195
BIBLIOGRAPHY .....	238

## CHAPTER 1 – INTRODUCING THE STUDY

### 1.1 The context of the research

For a country that elected the world's first woman prime minister, women in leadership roles should be a common scenario in Sri Lanka. This, however, is not a reflection of the situation in the corporate arena in Sri Lanka with only 8 per cent women directors on public company boards.<sup>1</sup>

Board gender diversity rules promote the inclusion of a balance of male and female directors in corporate boards.<sup>2</sup> The adoption of board gender diversity rules has not been consistent globally as many countries still have a noticeable underrepresentation of women directors on public company boards.<sup>3</sup> However, there is a substantial weight of evidence and research that argues that gender-balanced boards are more effective in conducting board functions than male-dominated boards.<sup>4</sup> This point was well articulated by Christine Lagarde, the president of the European Central Bank when she commented on the ineffectiveness of the male-dominated board of Lehman Brothers Holdings Inc and mentioned that “the collapse of Lehman Brothers Holdings Inc would not have occurred if Lehman Brothers had been a little bit more Lehman Sisters.”<sup>5</sup> Sri Lanka is no exception to the global situation, with most public companies having male-dominated boards. However, Sri Lankan legislators have not yet acted to address this issue. This thesis analyses this gap in corporate governance and suggests the benefits that Sri Lankan public companies would possibly gain if more women directors were appointed.

The understanding of a country's corporate governance environment is a necessary precondition when determining whether rules on board gender diversity should be introduced and

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<sup>1</sup> Echelon Magazine “Breaking into the Boardroom” (2018) <<https://www.echelon.lk/breaking-into-the-boardroom/>>.

<sup>2</sup> European Commission “Report on the proposal for a Directive of the European Parliament and the Council – COM (2012) 614” (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)>.

<sup>3</sup> The term public company is used throughout the thesis to define companies issuing shares to the public; For statistics on women on boards in public companies see for example Deloitte Touche Limited “Women in the boardroom: a global perspective” (4th edn, Deloitte Touche Tohmatsu Limited 2019) <[www.deloitte.com/global-perspective](http://www.deloitte.com/global-perspective)>; The New York Times “Women on Boards: Where the US ranks” (2019) <[www.nytimes.com/2019/11/upshot/women-on-boards](http://www.nytimes.com/2019/11/upshot/women-on-boards)>; McKinsey & Company “Women on boards” (2019) <<http://www.gov.uk/government/usa>>; Lord Davies of Abersoch “Women on boards: 5-year summary (Davies Review)” (2015) Department of Business, Innovation and Skills UK 3 at 5 <[http://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/46440/4-pol-gender-diversity-quarterly-report-jun18-a4-web.ashx](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/46440/4-pol-gender-diversity-quarterly-report-jun18-a4-web.ashx)>. Statistics indicate that women directors occupying board seats in the Fortune 500 companies in the USA is only at 19.2 per cent. In the UK only 26.1 per cent of board seats in the FTSE 100 companies are held by women. In Australia, women's representation on boards of public companies listed in the ASX is at 23.6 per cent.

<sup>4</sup> B Choudhury “New Rationales for women on boards” (2014) Oxford Journal of Legal Studies 511 at 512; AA Dhir, *Challenging Boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) 34.

<sup>5</sup> C Lagarde “Women, Power and the Challenge of the Financial Crisis” (2010) The New York Times <[www.nytimes.com/2010/05/11/opinion/11iht-edlagarde.html?dbk](http://www.nytimes.com/2010/05/11/opinion/11iht-edlagarde.html?dbk)>. This statement is used to illustrate the breadth of the global conversation on corporate board diversity.

the form of such rules. This understanding assists in assessing whether such rules would be effective and compatible in the context in which they will be implemented. Accordingly, the analysis of this thesis closely discusses the Sri Lankan corporate governance environment.

To begin with, Sri Lanka is a developing country situated in Southeast Asia.<sup>6</sup> Since 2003, corporate governance developments in Sri Lanka were primarily driven to fulfil lending conditions imposed by International Financial Institutions (IFIs).<sup>7</sup> This is because from 1983 to 2009, Sri Lanka relied on funding from IFIs in order to maintain financial stability after a 26-year ethnic conflict greatly damaged the country's economy.<sup>8</sup> The reform of the country's corporate governance practices was seen by the IFIs as a step towards developing the economy, which was crucial for attracting investors and securing foreign direct investment.<sup>9</sup> This is evidenced in a report released by the International Monetary Fund (IMF) on Sri Lanka and in the Asian Development Bank's lending agreement to Sri Lanka. The IMF report states that "developments in corporate governance practices in the country will provide a safe environment for investment which can attract more foreign investors to invest in the country."<sup>10</sup> Similar lines of thinking were mentioned in the lending agreement between Sri Lanka and the Asian Development Bank which mentions that "improvements to corporate governance practices in Sri Lanka would promote economic growth as it assists in attracting foreign investment."<sup>11</sup>

Sri Lankan legislators historically have adopted company law and corporate governance rules of the United Kingdom (UK) due to colonial ties between the two countries from 1815 to 1948.<sup>12</sup> This transplantation resulted in Sri Lankan company law being based on

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<sup>6</sup> Sri Lanka Government "Official web portal of Sri Lanka" <<https://www.gov.lk/welcome.html>>.

<sup>7</sup> The World Bank "Overview of the International Financial Institutions" (2019) <<http://treasury.worldbank.org/en/about>>; S Guthrie and C Tether "The international financial institutions" (2019) 62(3) International Monetary Fund Bulletin 60 - The International Financial Institutions (IFIs) refer to the financial institutions that are established to promote public and private investment and foster economic and social development by providing funding particularly to developing countries. These institutions include multinational development banks such as the World Bank, International Monetary Fund (IMF), International Finance Corporation and even regional development banks such as the Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development. The Washington consensus policies apply to the IMF and World Bank.

<sup>8</sup> A Bandarage *The separatist conflict in Sri Lanka: Understanding the conflict beyond the iron law of terrorism* (Routledge 2009) 288; D O'Brian "Sri Lanka, Ethnic conflict, and the rise of a violent secessionist movement" (2012) <[www.e-ir.info/pdf/30376](http://www.e-ir.info/pdf/30376)>. This study concentrates on one of the consequences of the 26-year ethnic conflict, which is the country's economic deterioration and resulting effects of having to rely on funding from IFIs and comply with their conditions.

<sup>9</sup> Asian Development Bank "Sri Lanka: Financial Sector Assessment Report" (Manila 2005) 149; International Monetary Fund "IMF Country Report No. 05/337" (Washington DC) (2003) 149. These IFIs identify the improvement of corporate governance practices in developing countries as a step towards attracting investors and securing foreign direct investment. As Sri Lanka is a developing country, this condition is imposed on it.

<sup>10</sup> International Monetary Fund "IMF Country Report No. 05/337", above n 9 at 153.

<sup>11</sup> Asian Development Bank "Sri Lanka: Financial Sector Assessment Report", above n 9 at 149.

<sup>12</sup> LJM Cooray "Common law in England and Sri Lanka" (1975) 24(3) CUP 24; AV Tambinuttu "Sri Lanka: Legal Research and Legal System" (2009) GlobaLex 3 <[www.nyulawglobal.org/globalex/Sri\\_Lanka.html](http://www.nyulawglobal.org/globalex/Sri_Lanka.html)>. These articles identify how UK company law was introduced to Sri Lanka during the country's colonial rule. After gaining independence in 1948, the country continued mostly to adopt UK legal principles. These changes to corporate governance were mainly through a series of corporate governance codes enacted from 2003 to 2017. This study only analyses changes made in Sri Lanka before 2018.



UK company law.<sup>13</sup> As described in Chapter 2, at first, there was no separate legislation governing Sri Lankan companies, and UK company law of that period applied to Sri Lankan companies.<sup>14</sup> However, in 1861 Sri Lanka enacted its own Companies Act, the Joint Stock Companies Ordinance, to regulate companies, although this was still largely a reproduction of the UK Companies Act of that period.<sup>15</sup> From that point onwards, Sri Lankan legislators amended company law whenever necessary by incorporating developments introduced in UK company law.<sup>16</sup> This practice continued even after Sri Lanka gained independence, as reflected in the 2007 Companies Act in Sri Lanka, which continues to preserve the fundamental structure of UK company law.

These historical ties with the UK also influenced the development of Sri Lankan corporate governance rules drafted to fulfil the IFIs lending conditions. Chapter 3 illustrates this aspect, and for the purposes of this study focuses on the developments in relation to the board of directors. In particular, the study focuses on the managerial agency problems that are generated in public companies which may result from the ineffective monitoring of senior managers.<sup>17</sup> As discussed in Chapter 3, managerial agency problems often occur when directors either individually or together with senior managers take corporate benefits for their own personal benefit.<sup>18</sup> These managerial agency problems generally take place when companies have a dispersed ownership structure,<sup>19</sup> where there is a significant separation of ownership from control,<sup>20</sup> and shareholders have no economic incentive to monitor senior management in companies.<sup>21</sup> A common regulatory strategy to address this issue has been to delegate the function of monitoring senior managers to the board. However, when the board does not perform this task effectively, it results in managerial agency problems.

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<sup>13</sup> Cooray, above n 12 at 24; Tambinuttu, above n 12 at 3.

<sup>14</sup> Civil Law Ordinance No. 5 of 1852 (Sri Lanka) s 3. This Ordinance recognises the applicability of UK company law to Sri Lanka.

<sup>15</sup> Joint Stock Companies Ordinance 1861 (Sri Lanka) incorporates all the sections of the UK Companies Act 1844.

<sup>16</sup> Joint Stock Companies Ordinance 1867, 1888, 1893, 1905, 1907, 1909, 1918 (Sri Lanka). These statutes incorporated developments in the UK which were included in the Limited Liability Act 1855 (United Kingdom) and Joint Stock Companies Act 1856 (United Kingdom); Companies Ordinance No. 51 of 1938 (Sri Lanka) incorporated the UK Companies Act 1907. The current Companies Act No. 07 of 2007 incorporates the structure and governance of companies adopted in the UK Companies Act 2006.

<sup>17</sup> The term managerial agency problems is referred to in this context to agency problems that occur when directors either individually or together with senior managers expropriates corporate benefits for their own. See for example the discussion in R Kraakman, J Armour, P Davies, L Enriques, H Hansmann, G Hertig, K Hopt, H Kanda, M Pargendler, W Ringe and E Rock, *The Anatomy of Corporate Law* (3<sup>rd</sup> edn, OUP 2017) at 4; S Deakin, A Hughes and R Monks "Comparative Corporate Governance: An interdisciplinary Agenda" (1997) 24(1) *Journal of Law and Society* 34; S Perera *Corporate Ownership and Control: Corporate Governance and Economic Development in Sri Lanka* (World Scientific Publishing 2011) Ch 3 at 3. This publication identifies the managerial agency problems arising in Sri Lankan public companies.

<sup>18</sup> M Jensen and W Meckling "Theory of the Firm: Managerial Behaviour, Agency costs and Ownership structure" (1976) 3 *Journal of Financial Economics* 305; Kraakman, above n 17 at 35.

<sup>19</sup> Kraakman, above n 17 at 36. A company share ownership structure that consists of multiple shareholders holding small blocks of shares.

<sup>20</sup> Kraakman, above n 17 at 36.

<sup>21</sup> Kraakman, above n 17 at 36.

Sri Lankan public companies have a concentrated ownership structure where a majority of shares are held either by a single dominant shareholder or a concentrated group of shareholders.<sup>22</sup> In this type of ownership structure, managerial agency problems should be nonexistent because shareholders should have an economic incentive to take an active role in monitoring management.<sup>23</sup> However, this is not an accurate reflection of the Sri Lankan scenario as a rather unique situation exists where although shareholding is concentrated, public companies still face managerial agency conflicts resulting from ineffective board monitoring.<sup>24</sup> This is a classic example of a situation where corporate theories are not applicable in practice. This situation is the outcome of two different circumstances. The first is the low-level of shareholder involvement in monitoring board decision-making when companies expand and gain a higher level of complexities.<sup>25</sup> As most of the family-owned public companies in Sri Lanka have become complex conglomerates requiring expertise in conducting their business,<sup>26</sup> competent senior managers without ties to the existing shareholders have been appointed as executive directors.<sup>27</sup> Progressively this led to decisions being solely taken by executive directors without any shareholder control and led towards opportunistic behaviour by executive directors. The second circumstance relates to the appointment of family members who are not shareholders as executive directors.<sup>28</sup> The familial connections have often led to situations where these executive directors were not questioned by other board members or the shareholders, either due to the trust placed by family bonds or to avoid any disagreements among family members.<sup>29</sup> This has been used as a leeway by some of these family members

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<sup>22</sup> Perera above n 17 at 45. The author identifies the general reasons underpinning companies in Sri Lanka to decide on listing on the Colombo Stock Exchange. The key reason has been identified to be to raise additional capital to fund the company's growth/ expansion plans without being reliant on retained earnings or bank loans. Moreover, with the expansions of companies the existing shareholders consider listing as an option to ensure that the benefits of liquidity from listing to realise the value of their investment is easily available.

<sup>23</sup> Kraakman above n 17 at 45; BR Cheffins *Corporate Ownership and Control: British Business Transformed* (OUP 2008) at 344 at 56. For example, shareholders involvement in monitoring management can be identified where shareholders appoint and remove directors on the board.

<sup>24</sup> AR Anderson, SL Jack and SD Dodd "The Role of Family Members in Entrepreneurial Networks: Beyond the Boundaries of the Family Firm" (2005) 18 *International Business Review* 135; RC Anderson and DM Reeb "Founding-family ownership and firm performance: evidence from the S&P 500" (2003) 58 *Journal of Finance* 1301; Perera, above n 17 at 26; S Senaratne "Corporate Governance Reforms in Sri Lanka" (2011) *Sri Lanka Journal of Advanced Social Studies* 23. These articles by Perera and Senaratne identify that over 80 percent of Sri Lankan public companies are family-owned and among these companies, managerial agency problems have been common.

<sup>25</sup> Perera above n 17 at 26; Senaratne, above n 24 at 23.

<sup>26</sup> Perera, above n 17 at 12. The term conglomerate refers to a company which consists of different independent businesses.

<sup>27</sup> The term executive director is used in line with the discussion provided in Kraakman above n 16 at 36 and refers to directors who are involved in management functions.

<sup>28</sup> Perera, above n 17 at 26; Senaratne, above n 24 at 23; G Mapitiya, R Ajward and S Senaratne "Ownership concentration and the degree of compliance with Corporate Governance Best Practices of Public companies in Sri Lanka" (2016) *NSBM Journal of Management* 103.

<sup>29</sup> Perera, above n 17 at 26; Senaratne, above n 24 at 23.

who are executive directors to misuse corporate funds for their personal benefits knowing that their actions will not be challenged.<sup>30</sup>

Despite having a contrasting ownership structure to UK public companies, Sri Lankan legislators have adopted board composition rules for public companies similar to the rules existing in the UK.<sup>31</sup> Most of the regulatory strategies in Sri Lanka to address managerial agency problems comprise of rules requiring the board to be formed with a blend of executive directors and non-executive directors (NEDs)<sup>32</sup> and a requirement that the role of chairman of the board is not undertaken by the chief executive officer (CEO).<sup>33</sup> This was due to some of the prominent corporate scandals in Sri Lanka resulting from such rules not being followed.<sup>34</sup> Rules requiring a blend of executive directors and NEDs ensure that there is a sufficient number of NEDs able to monitor the decisions taken by executive directors due to their lack of close association with the company and the senior managers.<sup>35</sup> The requirement to appoint NEDs has extended to board committees relating to board nominations, determining senior management remuneration and audit processes.<sup>36</sup> Separating the roles of chairman and CEO is considered a necessity because where the CEO is also appointed the chairman of the board, there is a tendency for that person to control board discussions that prevent the board from performing its monitoring role effectively.<sup>37</sup>

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<sup>30</sup> Perera, above n 17 at 26; Senaratne, above n 24 at 23. The most prominent examples include the Ceylinco Limited and Pramuka Bank scandals. In the Ceylinco Limited scandal by the early 1990s the board of Ceylinco Limited consisted mostly of executive directors and there were only a few directors directly appointed by family members. The performance of the company was significant during this time and there were substantial dividends declared for the shareholders. Subsequently, due to the success of the company, board functions were mainly left to be conducted by the executive directors. This provided leeway for the CEO, CFO and some of the other executive directors of the company to divert corporate funds for their personal benefit and to approve such benefits to some senior managers for over a period of 11 years due to their dominance on the board. In the Pramuka Bank scandal, most of the executive directors on the board of Pramuka Bank were family members appointed by the major shareholder who were not shareholders themselves. The board did not question the actions of the CEO or the other executive directors who were family members even if there were indications of opportunistic behaviour in order to avoid the repercussions which it may give rise through disagreements among the family.

<sup>31</sup> Perera, above n 17 at 26; Senaratne, above n 24 at 23.

<sup>32</sup> The term NED is used in line with the discussion provided in Kraakman above n 17 at 36 and refers to directors who are independent of management and do not have any personal or financial interest in the company. The discussion on board compositions rules promoting the appointment of executive directors and NEDs is provided in Chapter 3, section 3.4.

<sup>33</sup> AR Wickramanayake *Company Law in Sri Lanka and developments* (A Wickramanayake 2012) at 47 identifies how the separation of the role of chairman and CEO has been included as a code governance rule in Sri Lanka.

<sup>34</sup> Daily FT “Lessons learned from corporate collapses” (2014) <[www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792](http://www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792)>. These scandals are discussed in Chapter 3 and mainly include the Ceylinco Limited scandal, Seylan Bank scandal and Pramuka Bank scandal.

<sup>35</sup> Kraakman, above n 17 at 67; M Moore and M Petrin *Corporate Governance: Law, Regulation and Theory* (Palgrave 2017) at 98.

<sup>36</sup> Kraakman, above n 17 at 78; Moore and Petrin, above 35 at 98.

<sup>37</sup> Forbes “Combined Chairman/CEO Roles: Easier than you think” (2014) <[www.forbes.com/sites/robinferracone/2014/03/05/combined-chairmanceo-roles-easier-than-you-think/#5aa3c6516e89](http://www.forbes.com/sites/robinferracone/2014/03/05/combined-chairmanceo-roles-easier-than-you-think/#5aa3c6516e89)>; OECD “The Board of Directors: Composition, Structure, Duties and Power: Company Law Reform in OECD Countries” (2000) <[www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf)>. These articles recognise the concentration of power of the board as a result of making a single individual the Chairman and CEO where board discussions can be dominated by such individual. The Parmalat scandal is considered a result of such coupling of the roles of Chairman and CEO; C Erdmann “The Parmalat Scandal: Italy” *Enron*’ The Guardian (2004) 580 <<http://www.theguardian.com/business/2004/oct/06/corporatefraud.businessqandas>>.

In 2003 Sri Lankan corporate governance rules incorporated the above-mentioned requirements on having a blend of executive directors and NEDs on the board and on separating the roles of chairman and CEO.<sup>38</sup> This initially was the outcome of the transplantation of the rules contained in the UK Cadbury Committee Report. Later, the rules concerning the appointment of NEDs to the board and board committees diverged from the UK on the basis of the threshold of NEDs to be appointed to the board. The current UK Corporate Governance Code requires at least half of the directors of boards of public companies to comprise of NEDs.<sup>39</sup> However, the Sri Lankan corporate governance rules only require the appointment of NEDs in a number equivalent to one-third of the total number of directors.<sup>40</sup> Moreover, the UK Corporate Governance Code requires the appointment of a majority of NEDs on the nomination committee,<sup>41</sup> and audit committees and remuneration committees to consist exclusively of NEDs.<sup>42</sup> However, the Sri Lankan corporate governance rules are less stringent requiring the appointment of a majority of NEDs to the audit committee,<sup>43</sup> one-third of NEDs to the nomination committee,<sup>44</sup> and for the remuneration committee the appointment of the chairman and a majority of directors as NEDs.<sup>45</sup> The lower threshold is likely due to the shortage of NEDs in Sri Lanka. Many professional directors in Sri Lanka hold multiple directorships which compromise their independence and their ability to fulfil the criteria needed to qualify as NEDs.<sup>46</sup> Another possible reason for the shortage is the disparity in remuneration between NEDs and executive directors which discourages directors from taking the role of NEDs.<sup>47</sup> However, this issue does not affect the board appointments in banks and finance companies because of the relatively small percentage of banks and finance companies in Sri Lanka, and in that case, there are stringent rules requiring a majority of the members of the board to be NEDs.<sup>48</sup>

Board gender diversity has been introduced in the UK and many other jurisdictions as another board composition rule.<sup>49</sup> There is no definitive evidence that suggests that board

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<sup>38</sup> Wickramanayake, above n 33 at 47 identifies that this is due to most developments in Corporate Governance concerning board of directors being in this area.

<sup>39</sup> Financial Reporting Council, UK Corporate Governance Code (2018), Provision 11 <<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>>.

<sup>40</sup> Code of Best Practice on Corporate Governance 2013 (Sri Lanka), Principle A.5.1; Colombo Stock Exchange, Listing Rules (2018), s 7.10.

<sup>41</sup> UK Corporate Governance Code (2018), Provision 17.

<sup>42</sup> UK Corporate Governance Code (2018), Provision 24 and 32.

<sup>43</sup> Code of Best Practice on Corporate Governance 2013 (Sri Lanka), Principle D.3.1; Listing Rules (2018), s 7.10.6.

<sup>44</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Schedule A.

<sup>45</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Schedule C.

<sup>46</sup> Perera, above n 17 at 113.

<sup>47</sup> Sri Lanka Institute of Directors "Review of non-executive directors in Sri Lanka" (2015) SLID Journal 23.

<sup>48</sup> Central Bank Rules 2008 (Sri Lanka), s 28.

<sup>49</sup> UK Corporate Governance Code (2018), Principle J; A Storvik and M Teigen "Women on Boards: The Norwegian Experience" (2010) Friedrich-Ebert-Stiftung at 8; P Spender "Gender quotas on Boards – Is it time for Australia to lean in?"

gender diversity rules have been introduced in the UK or any other jurisdiction specifically to address managerial agency problems. However, empirical evidence suggests that managerial agency problems may be reduced by having a gender-balanced board.<sup>50</sup> This research argues that managerial agency problems are less significant in gender-balanced boards than in boards that consist of solely male directors or a majority of male directors because generally male directors take a more lenient approach to monitoring senior management than female directors.<sup>51</sup> This situation is considered to be aggravated in companies with a majority of male executive directors on the board because their working relationships with senior management may interfere with the ability to effectively undertake their monitoring role.<sup>52</sup> Managerial agency problems have been found to be considerably reduced where women are executive directors. Research suggests that female executive directors' style of engagement at work is focussed on building work relationships rather than building acquaintances. This characteristic assists female executive directors to maintain a proper working relationship with senior management and accordingly does not undermine their monitoring role.<sup>53</sup> Moreover, as mentioned earlier, the appointment of NEDs is a step towards reducing managerial agency problems. However, in boards that consist of a majority of male NEDs, ineffective monitoring of senior managers is still considered to be more evident than in gender-balanced boards. This is because in many companies male NEDs are regarded to be acquainted with the male executive directors as they tend to be part of the same social networks.<sup>54</sup> Having gender diversity on the board has been found to be one measure that may address these issues. Female directors who are NEDs are considered to be careful in their social connections and more independent than male NEDs.<sup>55</sup> This has led to recommendations for the appointment of women directors as NEDs as opposed to men.

In addition, other research has considered the importance of including women directors on boards by focussing on the contributions women directors make to board monitoring and

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(2015) 20 Deakin Law Review 1 <<https://doi.org/10.21153/dlr2015vol20no1art496>>. These articles identify the approach in UK and other jurisdiction such as Norway and Australia that adopt board gender diversity rules.

<sup>50</sup> S Nielsen and M Huse "The Contribution of Women on Board of Directors: Goes Beyond the Surface" (2010) 18 (2) *Corporate Governance: An International Review* 136; AF Jurkus, JC Park and LS Woodard "Women in Top Management and Agency Costs" (2015) 64(2) *Journal of Business Research* 180; N Jadyappa, P Jyothi, B Sireesha, L E Hickman "CEO gender, firm performance and agency costs: evidence from India" (2019) 46 *Journal of Economic Studies* 2 at 482 <<https://doi.org/10.1108/JES-08-2017-0238>>; AF Jurkus, JC Park and LS Woodard "Gender diversity, firm performance, and environment" (2008) 6(2) *Journal of Business Research* 47; V Singh, S Terjesen and S Vinnicombe "Newly appointed directors in the boardroom: How do women and men differ?" (2008) 26(1) *European Management Journal* 48.

<sup>51</sup> Jurkus, Park and Woodard, above n 50 at 183; S Locke "Women on Board, Firm Financial Performance and Agency Costs" (2011) 58(3) *Journal of Business Research* 168.

<sup>52</sup> Jurkus, Park and Woodard, above n 50 at 183; Locke, above n 51 at 168.

<sup>53</sup> Jurkus, Park and Woodard, above n 50 at 183; Locke, above n 51 at 168.

<sup>54</sup> Nielsen and Huse above n 50 at 137; Jurkus, Park and Woodard, above n 50 at 183; Locke, above n 51 at 168.

<sup>55</sup> Jurkus, Park and Woodard, above n 50 at 186; Locke, above n 51 at 168.

overall board functionality. These benefits will be explored in Chapter 4 and are used to determine the benefits that Sri Lankan public companies could gain by changes in corporate governance rules.

The benefits of having board gender diversity rules can be assessed from both an economic and social perspective. The economic justifications are based on better corporate financial performance being attained by gender-balanced boards.<sup>56</sup> The positive impact of gender-balanced boards on corporate financial performance is often mentioned in literature, although there are also views that suggest a negative impact or no correlation between gender-balanced boards and corporate financial performance.<sup>57</sup> Owing to these economic uncertainties, this study explored other avenues to establish an economic rationale for board gender diversity. Strategic management research suggests that board effectiveness improves by including women on boards.<sup>58</sup> This research supports that having a gender-balanced board can improve board effectiveness in monitoring senior management and increase efficiency in overall board functionality in conducting board tasks, board processes, and acting cohesively.

There is also a social rationale for board gender diversity rules. This rationale emphasises the need to promote board gender diversity as a measure to advance gender equality in society.<sup>59</sup> As companies are critical actors in the public sphere, gender parity in board seats is considered an aspect that shows democratic leadership. This view is promoted by numerous international organisations such as the European Commission, Organisation for Economic Co-operation and Development (OECD), United Nations Women (UN Women), and the International Labour Organisation (ILO).<sup>60</sup> Further, board gender diversity rules have also been introduced in many countries to promote gender equality in society. Norway, Spain, and India are the most prominent examples in this regard.<sup>61</sup> The policy objectives put forward by these

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<sup>56</sup> DA Carter, BJ Simkins and WG Simpson “Corporate Governance, Board Diversity and Firm Value” (2003) 38(1) *Fin Rev* 33; NL Erhardt, JD Werbel and CB Shrader “Board of Director diversity and firm financial performance” (2003) 11(2) *Corp Governance: An International Review* 102.

<sup>57</sup> RB Adams and D Ferreira “Women in the boardroom and their impact on governance and performance” (2009) 94 *J Fin Econ* 291 at 292.; F Dobbin and J Jung “Corporate Board Gender Diversity and Stock Performance: The competence gap or institutional investor bias?” (2011) 89 *North Carolina Law Review* 809 at 819.

<sup>58</sup> DP Forbes and FJ Milliken “Cognition and Management: Understanding boards of directors as strategic decision-making groups” (1999) 24 *Acad Management Rev.* 489 at 490; S Nielsen and M Huse “The contribution of women on boards of directors: Going beyond the surface” (2010) 18 *Corp Governance* 136 at 137; explained in Chapter 4.

<sup>59</sup> Choudhury, above n 4 at 4; M Teigen “Gender quotas for corporate boards in Norway: Innovative gender equality policy” in C Fagan, MC Gonzalez Menendez and S Gomez Anson (eds) *Women on Corporate Boards in Top Management: European Trends and Policy* (Palgrave Macmillan 2012) 70 at 78.

<sup>60</sup> European Commission “Report on the proposal for a Directive of the European Parliament and the Council – COM(2012) 614” (2012) <CELEX\_52012PC0614\_EN\_TXT>; OECD “Report on the Gender Initiative: Gender equality in education, employment and entrepreneurship” (2011) <[www.oecd/social/481111145.pdf](http://www.oecd/social/481111145.pdf)>; United Nations “Women’s empowerment principles: Equality means business” (2011) <[www.unwomen.org/2011/women-s-empowerment-principles.en.pdf](http://www.unwomen.org/2011/women-s-empowerment-principles.en.pdf)>;

International Labour Organisation “Women in Business and Management: Gaining momentum Global Report” (2015) 4 at 5.

<sup>61</sup> A Sweigart “Women on boards for change: The Norway model of boardroom quotas as a tool for progress in the United States and Canada” (2012) 32(4) *Nw J Int’L & Bus* 82A at 87A; European Parliament “Spanish policy on gender equality: Relevant current legislation and policies” (2009) EU Directorate-General for Internal Policy Department 5

countries and the recommendations by international organisations are explored in this study and tested in the Sri Lankan context. This debate is crucial because in Sri Lankan society, the country's traditional patriarchal culture does not recognise parity among men and women and it creates barriers that prevent women from having equal access to employment as men.<sup>62</sup> This is evident by looking at the female directorship percentage in Sri Lankan public company boards, which is currently at 8 per cent.<sup>63</sup>

The empirical findings of this study suggest that the corporate community in Sri Lanka is optimistic about introducing board gender diversity rules and recognises the economic and social benefits that women directors could offer to improve board effectiveness and create a wider impact of promoting gender equality in society. Building on these empirical findings, this study seeks to identify a suitable legal approach to implement rules on board gender diversity in Sri Lanka. Most of the countries implementing rules on board gender diversity have either adopted a hard law or soft law approach.<sup>64</sup> Hard laws generally consist of legal rules that create enforceable rights and duties with non-compliance resulting in penalties, whereas soft laws consist of standards of expected behaviour. Board gender diversity rules implemented as hard laws consist of board gender quotas. Soft law on board gender diversity consist of disclosure rules. The choice between these approaches is dependent on the cultural/social setting, the motivations of legislators and the availability of qualified women.<sup>65</sup> Quota rules on board gender diversity are structured in a manner that requires companies to include a certain percentage of women directors on boards.<sup>66</sup> Disclosure rules on board gender diversity require companies to publicly report the gender breakdown of the board<sup>67</sup> and have been structured either as mandatory or voluntary rules.<sup>68</sup> Mandatory disclosure rules on board gender diversity compel public companies to disclose the gender breakdown of the board, whereas the voluntary rules require public companies to either report the gender breakdown of boards periodically or provide reasons for non-compliance with the rule. This study finds that considering the Sri

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<[www.europarl.europa.eu/studies](http://www.europarl.europa.eu/studies)>; KM Shaw "Is India Inc's new-found enthusiasm to have women board members a reflection of changing mind set or mere tokenism?" *The Economic Times*, April 2015.

<sup>62</sup> DS Vithanage "Understanding the nature and scope of patriarchy in Sri Lanka" (2015) 37

<[repository.stcloudstat.edu/socresp\\_etds](http://repository.stcloudstat.edu/socresp_etds)>; HMA Herath "Place of women in Sri Lankan society: Measures for empowerment for development and good governance" (2015) 1 (1) University of Sri Jayawardenapura Colombo publications <[mysip.ac.lk](http://mysip.ac.lk)>.

<sup>63</sup> Sri Lanka Institute of Directors "Gender diversity on boards – statistics" (2017) <[www.slid.lk/gender-diversity-boards/](http://www.slid.lk/gender-diversity-boards/)>.

As explained in Chapter 7 through the analysis conducted in this study it is identified that the 8 per cent of Sri Lankan women who have become company directors seem to part of a "privileged group" either being from elite families.

<sup>64</sup> B Choudhury "Balancing soft and hard law for business and human rights" (2018) 67(4) *International & Comparative Law Quarterly* 961.

<sup>65</sup> H Raleigh "Evidence from Norway shows gender quotas don't work for women" (2017) 35(4) *Nw J Int'l & Bus* 86; Forbes "Disclosures to bring women into the boardroom are missing the point" (2015) <<https://forbes-theconversation.gender/>>.

<sup>66</sup> Dhir, above n 4 at 34; Explained further in Chapter 5.

<sup>67</sup> Dhir, above n 4; Refer Chapter 5.

<sup>68</sup> Dhir, above n 4; Refer Chapter 5.

Lankan social setting, a voluntary disclosure approach would be the most appropriate. This is because the adoption of a quota approach could possibly lead to tokenism<sup>69</sup> resulting from the low number of qualified women in Sri Lanka. The desire to promote a voluntary disclosure approach was also supported by evidence that suggests how the Sri Lankan corporate community appreciates substantive change rather than mere statistical change.<sup>70</sup> As discussed in Chapter 7, this was a key reason to dismiss the adoption of a mandatory disclosure approach as it was not considered to provide public companies with the necessary flexibility to assess at their own pace the targets to achieve gender diversity on boards and analyse the outcomes without being subject to scrutiny by a regulatory authority. Due to the colonial influence on Sri Lankan laws, the voluntary disclosure approach was also considered suitable as it was similar to the approach followed in UK. Given the preference of Sri Lankan legislators to follow developments in the UK, there is the possibility of applying this approach in Sri Lanka.

Finally, this study argues that, together with legal rules, structural arrangements should be introduced in Sri Lanka to support the effective implementation of rules on board gender diversity.<sup>71</sup> These are necessary to curtail gender biases in society and to assist women to manage the double burden of a career and their domestic role. The most relevant structural arrangements would include increasing childcare facilities and promoting flexible working conditions as these areas require substantial improvements in Sri Lanka.

For the effective exploration of this thesis, it was necessary to adopt an original methodological approach and a set of research questions. The following sections outline these before providing an overview of the various chapters to provide an overview of the context of the thesis.

## **1.2 Methodological approach**

Qualitative studies on board gender diversity are often limited to a legal analysis and neglect the social significance underpinning the topic. This study addresses this gap and provides a contextual understanding of how the Sri Lankan corporate community would perceive the introduction of rules on board gender diversity. In conducting this analysis, it was necessary to adopt a theoretical framework that would explore the social significance of positive law by combining empirical methods with doctrinal legal research. This provides the

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<sup>69</sup> Dhir, above n 4; Refer Chapter 5. The term tokenism is used in the context of creating a symbolic effort to increase women on boards to give the appearance of equality. In the context of board gender diversity tokenism has been seen in instances where a few women hold multiple directorships in companies which creates the impression that there is female board representation although there is no increase in the actual number of women on boards.

<sup>70</sup> Refer Chapter 7.

<sup>71</sup> Refer Chapter 7.



platform to explore the consistency between the theoretical content on board gender diversity with the empirical findings. For this purpose, the socio-legal approach was used as the theoretical framework, supported by qualitative research methods and Braun and Clarke's<sup>72</sup> thematic analysis approach as the analytical method.

The socio-legal approach blends empirical methods with doctrinal legal research to gain a contextual understanding of the operation of law.<sup>73</sup> This expands the traditional approach to conducting legal research which is limited to primarily a legal analysis.<sup>74</sup> The socio-legal approach has rarely been used as a theoretical framing in legal research and has been criticised as an approach that fails to capture the true essence of conducting legal research. However, the roots of the socio-legal approach can be traced back to the sociological writings about the Industrial Revolution. Researchers who were writing about the social consequences of the Industrial Revolution examined the relationship between law and society.<sup>75</sup> Some of these studies include Max Weber's exploration of the origins of capitalism through an empirical examination of the legal changes that industrialisation produced in Germany,<sup>76</sup> Emile Durkheim's writings on the transformation of laws to increase the division of labour in French society,<sup>77</sup> and Eugen Ehrlich's empirical work on the legal culture of Austrian law during the Industrial Revolution.<sup>78</sup> These theorists considered that legal research conducted through the use of traditional legal theory and methods was inadequate to identify the issues emerging in society during the Industrial Revolution and identified the socio-legal approach as "the way forward" to conducting legal research. Since then, attempts have been made by law schools and law commissions in England and Scotland to promote socio-legal research by offering programmes in the area.<sup>79</sup> The most notable institutions dedicated to promoting socio-legal research include the Nuffield Foundation and the Oxford Centre for Socio-legal Studies.<sup>80</sup> These institutions offer law teaching courses to study the socio-legal approach, provide legal advice, and fund projects using this approach. These developments have influenced the use of

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<sup>72</sup> V Braun and V Clarke "Using thematic analysis in psychology" (2006) 3(2) *Qualitative Research in Psychology* 77.

<sup>73</sup> PA Thomas (ed) *Socio-Legal Studies* (Dartmouth Publishing 1997) 14; Centre for Empirical Legal Studies "Inquiry on Empirical Research Law – Consultation Document" (2004) 7 <<http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/empirical.pdf>>.

<sup>74</sup> Thomas, above n 73 at 14; Centre for Empirical Legal Studies, above n 73 at 7.

<sup>75</sup> CM Campbell and P Wiles "The study of law in society in Britain" (1976) 10 (4) *Law & Society Review* 547 <<http://www.jstor.org/stable/3053297>>; PA Thomas (ed) "Socio-Legal Studies: The Case of Disappearing fleas and bustards" in *Socio-Legal Studies* (Aldershot: Dartmouth Publishing Co. Ltd, 1997) 358.

<sup>76</sup> M Weber *Max Weber on Law and Economy in Society*, M Rheinstein (ed) (HUP 1954) 8.

<sup>77</sup> E Durkheim *The Division of Labour in Society* (1893) at 78.

<sup>78</sup> E Ehrlich *Fundamental Principles of the Sociology of Law* (1936) at 56.

<sup>79</sup> Thomas, above n 73 at 67 - These included the Law Commission of England and Wales, the Scottish Law Commission, the Warwick, and Kent Law schools and the Institute of Judicial Administration at the University of Birmingham.

<sup>80</sup> CM Campbell and P Wiles "The study of law in society in Britain" (1976) 10 (4) *Law & Society Review* 547 <<http://www.jstor.org/stable/3053297>>; P Thomas (ed) "Socio-Legal Studies: The Case of Disappearing fleas and bustards" in *Socio-Legal Studies* (Aldershot: Dartmouth Publishing Co. Ltd, 1997) 35; R Banakar and M Travers *Theory and Method in Socio-Legal Research* (Hart Publishing 2005) 5.

the socio-legal approach in recent studies.<sup>81</sup> To name a few, these include Dhir's study on the legal rules on board gender diversity,<sup>82</sup> Hendley's study on the impact of societal norms on seeking litigation as a method of dispute resolution on neighbourhood disputes in Russia,<sup>83</sup> and Cowan's work that identify whether social housing legislation should be drafted independent of societal perceptions.<sup>84</sup>

For the purposes of this study, socio-legal thinking was incorporated into the framing of the research objectives, research questions, and analysis of the findings.<sup>85</sup> The overarching objective of this study is to analyse the feasibility of implementing rules on board gender diversity in Sri Lanka. In order to achieve this aim, the study moved beyond a theoretical approach and looked at Sri Lankan societal insights and perceptions on introducing rules on board gender diversity by using empirical research techniques. Moreover, in drafting the research questions the aim was to reach results that would be sensitive to the context.<sup>86</sup> The research questions initially analysed the effect of legal rules on society, by gaining insights from a subgroup of the Sri Lankan corporate community on the impact of board gender diversity rules on the corporate governance rules. Next, the research questions explored the impact of social factors on legal rules, particularly the impact of the social and cultural norms in Sri Lanka on the status of women and their effect on developing rules on board gender diversity. This analysis supports an approach that recognise that rules on board gender diversity could promote social change. Moreover by analysing the cultural settings, availability of qualified women and the possible motivations that could underpin the introduction of board gender diversity rules in Sri Lanka, this analysis also identified that voluntary rules on board gender diversity would best suit Sri Lanka to achieve effective results.<sup>87</sup>

Qualitative research methods were used to support the socio-legal framework incorporated in this study. These methods assisted in capturing meanings, definitions, and descriptions of specific phenomena and to understand why and how they occur.<sup>88</sup> Primary and

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<sup>81</sup> Note: The example studies used in this study are specific to the use of the socio-legal approach and part of the publications by the Socio-Legal studies Association (SLSA). Studies by the US Law and Society association has not been used due to the current debate that this association is focussing on sociology of law approach rather than primarily focussing on a socio-legal approach.

<sup>82</sup> Dhir, above n 4 at 14.

<sup>83</sup> K Hendley "Resolving Problems among Neighbours in Post-Soviet Russia: Uncovering the Norms of the Pod'ezd" (2011) 36 Law & Social Inquiry 388.

<sup>84</sup> D Cowan and M McDermont *Regulating Social Housing: Governing Decline* (Routledge-Cavendish, Abingdon, 2006) 25.

<sup>85</sup> Discussed in Chapter 6.

<sup>86</sup> Thomas, above n 73. In this context the author refers to the need for research questions to be applicable and suitable for the context in which it is applied.

<sup>87</sup> Refer Chapter 7, section 7.5.1 for detailed explanation. This section detailed the manner in which Dhir's framework on the key factors in detrmineing between hard and soft laws was incorporated in conducting the data analysis.

<sup>88</sup> T McNulty, A Zattoni and T Douglas "Developing Corporate Governance Research through Qualitative Methods: A review of previous studies" (2013) 21(2) Corporate Governance: An International Review 183.

secondary sources were used for this purpose.<sup>89</sup> Generally, primary sources provide original information collected afresh in respect of a topic under the supervision and control of the investigator.<sup>90</sup> Secondary sources consist of pre-existing qualitative data collated by document analysis.<sup>91</sup> In this study, interviews were used as the primary source of data collection, and textbooks, journals, articles, and legislation were used as secondary sources. The secondary sources were subject to a documentary analysis based on O’Leary and Bowen’s guidelines.<sup>92</sup> Initially, documents considered relevant for the research were gathered over a period of 12 months. For this purpose, documents available online and at libraries were obtained and copies made where necessary. This led to the collection of a wide array of documents that generally covered the central themes covered in the research.<sup>93</sup> In this process, documents considered incomplete or of questionable authenticity were excluded. These documents were then categorised according to the research questions. In exploring the content of the documents, the entries which revealed similar analysis were noted and these findings organised into the central research questions. The findings from textbooks, journals, and articles recognising the board as an internal constituency of a company were used to explain the relevance of the board as a central corporate governance organ. For this purpose, literature on Sri Lankan corporate governance rules was specifically used to identify the developments in this space and how these rules might mitigate managerial agency problems. Next, literature on board gender diversity as rules on board composition was explored. This literature pointed to the economic and social benefits which board gender diversity rules could promote. Scrutiny of international legislation on board gender diversity was necessary to identify the legal methods commonly drafted to incorporate this concept. To analyse the case study, literature released by international bodies and the Sri Lankan regulatory departments describing the social and cultural environment was also useful. Finally, statistical documents issued by Sri Lankan regulatory authorities were used

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<sup>89</sup> McNulty, above n 88 at 183. Primary sources refer to original information collected afresh in respect of a field of study under the supervision and control of the investigator, and secondary sources consists of pre-existing qualitative data collated by document analysis.

<sup>90</sup> M Denscombe, *The Good Research Guide* (4<sup>th</sup> edn OUP 2010) 276.

<sup>91</sup> Denscombe, above n 90 at 283.

<sup>92</sup> Z O’Leary *The essential guide to doing your research project* (2 edn, 2014) SAGE publications 23; GA Bowen, “Document analysis as a qualitative research method” *Qualitative Research Journal* 9(2) (2009) 24. These guidelines outline steps to consider when conducting a documentary analysis during the planning process and when conducting the analysis.

<sup>93</sup> Discussed in Chapter 6. The central themes consist of perceptions on the existing corporate governance rules in Sri Lanka on board composition, perceptions on introducing legal rules on board gender diversity in Sri Lanka, perceptions on gender equality in Sri Lanka, perceptions on the social and cultural norms in Sri Lanka and what would be the accurate mechanism to implement board gender diversity in Sri Lanka.

to identify the labour force participation,<sup>94</sup> the literacy levels,<sup>95</sup> and the threshold of gender diversity in Sri Lankan boardrooms.<sup>96</sup>

Interviews were used to capture the thoughts and views of the corporate community in Sri Lanka on introducing board gender diversity rules.<sup>97</sup> For this purpose, a subgroup of members from the corporate community in Sri Lanka was identified. This subgroup consisted of 24 interviewees who were either board members and company secretaries of Sri Lanka's top 10 public companies with high market capitalisation,<sup>98</sup> senior members of the Sri Lanka Institute of Directors, Colombo Stock Exchange and the Securities and Exchange Commission,<sup>99</sup> and corporate lawyers with more than 10 years' experience.<sup>100</sup> To locate interviewees' details, the Sri Lankan government's official web portal,<sup>101</sup> the business directory of the Colombo Stock Exchange,<sup>102</sup> and the websites of the Sri Lanka Institute of Directors and the Sri Lanka Bar Association<sup>103</sup> were useful. To prevent any conflict of interest, known interviewees were excluded. The interviews were conducted using a semi-structured approach. This method provided the opportunity to conduct the interviews by having a set of pre-prepared questions and the possibility to add or change questions when conducting the interview. The pre-prepared questions for the purposes of this research were based on the themes emerging in the documentary analysis, which considered the corporate governance rules and board composition rules in Sri Lanka and overseas, the use of the concept of board gender diversity as a measure to improve board effectiveness and promote gender equality in society, and the regulatory measures adopted globally to implement rules on board gender diversity. All interviews were conducted face-to-face in order to create better interaction with the interviewees.

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<sup>94</sup> Department of Census and Statistics "Changing roles of women in Sri Lanka" (2014) <[http://www.statistics.gov.lk/samplesurvey/LFS\\_Annual%20Report\\_2014.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Annual%20Report_2014.pdf)>.

<sup>95</sup> World Bank "Education statistics 2019- Sri Lanka" <<http://datatopics.worldbank.org/education/country/sri-lanka>>.

<sup>96</sup> Daily FT "SLID Women's forum shines light on gender diversity" (2016) <<http://www.ft.lk/article/531663/SLID-women-s-forum>>.

<sup>97</sup> Denscombe, above 90 at 56.

<sup>98</sup> Refer Chapter 6. The business directory of the Colombo Stock Exchange was used to identify Sri Lanka's top 10 public companies with high market capitalisation. The websites of each of these companies were searched to identify their board members and company secretaries. In addition, the Sri Lanka Institute of Directors' website was useful to cross-check the list of directors of the top 10 public companies and to identify directors who were involved in forums and committees facilitating corporate governance reform.

<sup>99</sup> Refer Chapter 2 and 6. The Sri Lanka Institute of Director is the forum to serve for corporate directors in Sri Lanka; The Colombo Stock Exchange is the main stock market in Sri Lanka; The Securities and Exchange Commission is the main regulatory and supervisory body of the Colombo Stock Exchange. The senior members of these organisations mostly get involved with corporate governance developments in Sri Lanka.

<sup>100</sup> Refer Chapter 6. Lawyers who have more than 10 years' experience have experience and knowledge about the corporate governance changes that occurred in Sri Lanka.

<sup>101</sup> Government of Sri Lanka <<https://www.gov.lk/welcome.html>>.

<sup>102</sup> Colombo Stock Exchange <<https://www.cse.lk>>.

<sup>103</sup> Sri Lanka Institute of Directors <<https://www.slid.lk>>; Sri Lanka Bar Association <<https://basl.lk>>.

The data collected was analysed using Braun and Clarke's thematic analysis method.<sup>104</sup> Thematic analysis is an analytical method that focuses on identifying, analysing, and reporting patterns within qualitative data.<sup>105</sup> This method is also used as a tool to organise and interpret qualitative data.<sup>106</sup> In conducting this research, thematic analysis was used as the analytical tool to structure the qualitative data in the interview transcripts into themes and to draw interpretations relating to the research questions. Braun and Clarke's six-step guideline on conducting thematic analysis was followed for this purpose. These include familiarisation with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing a report.<sup>107</sup> Building on these steps, it was possible to compare the themes emerging through the surface reading of the data with the sociocultural and structural context in which the responses were made. The software package NVIVO 12 was used to organise and group the data extracts from the interview transcripts as this was the most appropriate method to organise, analyse and visualise data that was collected.<sup>108</sup>

### 1.3 Research Questions

This study addresses the following 3 research questions.

#### ***Research Question 1 – To what extent can board gender diversity contribute towards advancing good corporate governance in Sri Lanka?***

This research question was aimed at identifying the impact board gender diversity rules can make towards improving corporate governance rules in Sri Lanka. This analysis considered at first the Sri Lankan corporate governance rules relating to the board of directors and the underlying agency problems that these rules mitigate to create an effective board.<sup>109</sup> To this end, the Sri Lankan legislators have looked at UK corporate governance rules, because of historical colonial ties between the countries. One area of focus within the UK corporate governance rules is the rules regulating the board of directors due to the managerial agency problems that have occurred through ineffective monitoring by the board. This has become a prominent issue in public companies in the UK owing to the typical dispersed ownership structure.<sup>110</sup> As mentioned earlier, Sri Lankan public companies have a concentrated ownership

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<sup>104</sup> Braun and Clarke, above n 72 at 77.

<sup>105</sup> Braun and Clarke, above n 72 at 77.

<sup>106</sup> Braun and Clarke, above n 72 at 77.

<sup>107</sup> Braun and Clarke, above n 72 at 77.

<sup>108</sup> QSR International "About NVIVO 12" (2019) <nv12.qsrinternational.com/desktop/welcome/welcome/welcome.htm>. NVIVO 12 is a qualitative research software used to organise, analyse, visualise and share qualitative data.

<sup>109</sup> Discussed in section 1.1 above; Refer Chapter 3 for detailed explanation.

<sup>110</sup> Discussed in section 1.1 above; Refer Chapter 3 for detailed explanation.

structure, although notwithstanding the difference in the ownership structure to the UK, still face managerial agency problems.

Globally, formulating rules to regulate the board composition is one of the legal strategies that have been developed to increase the effectiveness of board monitoring.<sup>111</sup> Sri Lankan legislators have focused on improving the board composition of public companies by introducing rules similar to UK corporate governance rules. Although the ownership structures among public companies in these two countries differ, the Sri Lankan legislators find it suitable to adopt UK corporate governance rules as they find the applicability of such UK rules to be compatible within the structure of the Sri Lankan rules due to the historical influence that UK law had on Sri Lankan law.<sup>112</sup> One area is the current board composition rules in the Sri Lankan Corporate Governance Code which have mostly followed the UK. As mentioned earlier, the primary focus of the Sri Lankan legislators has been on board composition rules requiring an executive/non-executive blend of directors on the board and separating the roles of chairman of the board from the CEO.<sup>113</sup> Contrary to the developments in UK corporate governance rules, Sri Lankan legislators have failed to introduce rules on board gender diversity. As mentioned earlier, empirical evidence points out that managerial agency problems can be reduced by board gender diversity. Moreover, there have been literature that shows the contributions women directors can make to board monitoring and overall board functionality. Sri Lankan legislators have failed to engage with this literature, which is an inefficient gap in the Sri Lankan corporate governance rules.

Previous research has suggested that board gender diversity rules have not been introduced by Sri Lankan legislators because they are sceptical about the benefits that these rules could offer.<sup>114</sup> This research relied on the wider traditional business case arguments linking board gender diversity with corporate financial performance which has been discussed in Sri Lankan debates and articles published on this topic.<sup>115</sup> An analysis of this rationale suggests that a robust link cannot be established between board gender diversity and increased corporate financial performance which may explain why Sri Lankan legislators are sceptical about the topic. Therefore, another rationale for introducing board gender diversity rules was explored in this study to convince Sri Lankan legislators. For this purpose, the economic

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<sup>111</sup> Discussed in section 1.1 above; Refer Chapter 3 for detailed explanation.

<sup>112</sup> Perera, above n 17 at 34; Herath above 62 at 45 - the authors identify how the Sri Lankan legislators still consider the UK laws the most applicable in the Sri Lanka due to the original links

<sup>113</sup> Discussed in section 1.1 above; Refer Chapter 3 for detailed explanation.

<sup>114</sup> Sri Lanka Institute of Directors "Gender diversity on boards" (2016) <[www.slid.lk/gender-diversity-boards](http://www.slid.lk/gender-diversity-boards)> SLID; The Financial Times Sri Lanka "The case for gender diversity among Sri Lanka Business leadership" (2019) <[www.ftc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f](http://www.ftc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f)>.

<sup>115</sup> Sri Lanka Institute of Directors, above n 114.

justifications in strategic management literature were analysed. This literature validates the intrinsic value women directors provide in improving board effectiveness.<sup>116</sup> This analysis identifies that women directors can improve efficiency in overall board functionality and board decision-making. Such improvements have been identified in functions of conducting board tasks, board processes, and board cohesiveness. Importantly, the empirical findings of this study identify the support of the interviewees towards basing the rationale for introducing board gender diversity in relation to the contribution women directors make in improving board effectiveness. This is seen as a contribution that rules on board gender diversity could provide to improve corporate governance practices in Sri Lanka.

***Research Question 2 – How do the social and cultural norms in Sri Lanka impact on the effective implementation of rules on board gender diversity in Sri Lanka?***

This research question was used to assess the social structure in Sri Lanka by analysing the traditional customs, values, and beliefs that promote and entrench patriarchy. This assessment was essential to identify the issues of gender inequality existing in Sri Lanka that may be partially addressed through board gender diversity rules.

Historically, Sri Lanka had a strong patriarchal social structure.<sup>117</sup> Traditional customs, values, and beliefs center around men being the primary powerholders in society. Women were considered to be secondary to men. This weak social standing of Sri Lankan women has been often reflected in the traditional role of women in the family and in the barriers that prevent women from having access to education. Historically, Sri Lankan women have been solely responsible for household and domestic tasks and were not encouraged to engage in paid employment. In contrast, men were seen as the breadwinners of the family and were given the opportunity to enter the labour force. Prior to 1942 only men were given access to educational institutions which resulted in a significant rate of illiteracy among Sri Lankan women. Records show that female literacy prior to 1942 was less than 15 per cent.<sup>118</sup> This contributed towards the creation of a social setting where there was gender inequality in the opportunities provided to men and women.

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<sup>116</sup> DP Forbes and FJ Milliken “Cognition and Management: Understanding boards of directors as strategic decision-making groups” (1999) 24 *Acad Management Rev.* 489 at 490; S Nielsen and M Huse “The contribution of women on boards of directors: Going beyond the surface” (2010) 18 *Corp Governance* 136 at 137.

<sup>117</sup> DS Vithanage “Understanding the nature and scope of patriarchy in Sri Lanka” (2015) at 37.

<[http://repository.stcloudstat.edu/socresp\\_etds](http://repository.stcloudstat.edu/socresp_etds)>; HMA Herath “Place of Women in Sri Lankan society: Measures for their empowerment for development and good governance” (2015) 1(1) University of Sri Jayawardenapura Colombo publications <<http://mysjp.ac.lk>>.

<sup>118</sup> Department of Census and Statistics “Women in the labour force- problems and issues” (2016)

<[http://www.sldepartmentcensus/women\\_statistics](http://www.sldepartmentcensus/women_statistics)>.

In 1942, legislation was introduced to provide free primary, secondary and university education for Sri Lankan men and women irrespective of gender.<sup>119</sup> This allowed many women to step out of their domestic roles, educate themselves, and gain paid employment. The measure contributed towards improving female labour force participation from less than 1 per cent before 1942 to 35 per cent by 2019.<sup>120</sup> Subsequently, other gender equality measures were introduced, notably the 1978 Constitution including the United Nations (UN) Charter of Women's rights and providing the right to freedom from discrimination on the basis of sex, and from 1980 onwards, the establishment of women's bureaus and ministries to safeguard and promote women's interests.<sup>121</sup>

However, these measures have not fully eradicated gender inequality in Sri Lankan society. Statistics still demonstrate that there is no parity among men and women in managing domestic affairs, with women still being responsible for most domestic tasks.<sup>122</sup> Such responsibilities prevent many Sri Lankan women from either joining or remaining in the labour force.<sup>123</sup> Statistics demonstrate that the unemployment rate of Sri Lankan women is approximately 65 per cent. Many women are academically qualified but are required to stay at home attending to domestic roles.<sup>124</sup> Between 1998 to 2018, amongst working women, more than 30 per cent gave up their jobs after childbirth to attend to domestic responsibilities.<sup>125</sup> This is a reflection of the burden imposed on Sri Lankan women to give priority to domestic responsibilities over and above paid employment. In contrast, less than 1 per cent of men left their jobs to manage family affairs. The opportunities available for men and women in Sri Lanka to build a career continues to be unequal with the burden of responsibility for domestic and household affairs continuing to fall on Sri Lankan women. It has also become a barrier for women to build a career and attain leadership roles such as directorships in companies. This is despite Sri Lanka ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which recognises the need to change the traditional role of men and women in society to achieve full equality among men and women and to ensure maximum

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<sup>119</sup> Department of Census and Statistics, above n 118.

<sup>120</sup> Department of Census and Statistics, above n 118.

<sup>121</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12; Vithanage, above n 117 at 38.

<sup>122</sup> Department of Census and Statistics, above n 118. This refers to the scenario where the wife or mother of the family do the domestic chores and does not include domestic workers doing these tasks. Such domestic workers are considered part of the labour force.

<sup>123</sup> Discussed further in Chapter 2 and 7 where it is explained that this represent the situation of the "common Sri Lankan woman." It does not represent the situation of women from elite families referred to in this study as the "privileged group" who can afford maids to attend to their domestic chores or when they work for their family businesses have the power to negotiate their work schedule to accommodate their domestic duties.

<sup>124</sup> Department of Census and Statistics, above n 118.

<sup>125</sup> Department of Census and Statistics, above n 118.



participation of women on equal terms as men.<sup>126</sup> Although Sri Lanka has ratified CEDAW it seems that in reality the objectives underpinning it has not been brought into practice.

As discussed earlier, this is reflected in directorships in Sri Lankan public companies, where records indicate a rate of 8 per cent of directorships being held by women.<sup>127</sup> These statistics show that corporate boardrooms in Sri Lanka continue to be male-dominated.<sup>128</sup> Introducing rules on board gender diversity would be a step towards improving women's rate of directorship in Sri Lankan public companies. However, in the Sri Lankan context, if rules on board gender diversity are to be effective, it is vital that this is part of a wider movement to encourage women to build careers and seek leadership roles. This in turn will change the social and cultural norms that require women to give priority to domestic responsibilities. Any proposals for implementing rules on board gender diversity require greater scrutiny of this aspect and need further consideration.

This background is important considering the societal benefits that can be obtained by introducing board gender diversity. Board gender diversity rules have been identified as an initiative to promote gender equality in leadership among men and women.<sup>129</sup> The recommendations made by international organisations, and the policy objectives of countries that have adopted board gender diversity rules depict this aspect. As discussed earlier, among these organisations, the European Commission, OECD, UN Women, and the ILO have proposed board gender diversity rules as an initiative to promote gender equality in leadership among men and women.<sup>130</sup> Among the countries that have introduced regulatory measures on board gender diversity, including in Norway, Spain, and India, board gender diversity rules were implemented with the policy objectives of promoting gender equality in society.<sup>131</sup> This research is used in this study to argue that rules on board gender diversity should also be

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<sup>126</sup> Discussed further in Chapter 2.

<sup>127</sup> Daily FT "SLID Women's forum shines light on gender diversity" (2016) <<http://www.ft.lk/article/531663/SLID-women-s-forum>>; C Ratwatte "Out of 198 Directors in 25 Top Corporates in Sri Lanka Only 10 Are Women" (2012) <<http://dbsjeyaraj.com/dbsj/archives/11707>>. The percentage of women on boards on all companies in Sri Lanka (private and public companies) is at 5 per cent.

<sup>128</sup> Department of Census and Statistics, above n 118 at 34; Daily FT, above n 127 at 2; Ratwatte, above n 127 at 2.

<sup>129</sup> European Commission "Report on the proposal for a Directive of the European Parliament and the Council – COM(2012) 614" (2012) <CELEX\_52012PC0614\_EN\_TXT>; OECD "Report on the Gender Initiative: Gender equality in education, employment and entrepreneurship" (2011) <[www.oecd/social/481111145.pdf](http://www.oecd/social/481111145.pdf)>; United Nations "Women's empowerment principles: Equality means business" (2011) <[www.unwomen.org/2011/women-s-empowerment-principles.en.pdf](http://www.unwomen.org/2011/women-s-empowerment-principles.en.pdf)>; International Labour Organisation "Women in Business and Management: Gaining momentum Global Report" (2015) 4 at 5.

<sup>130</sup> European Commission "Report on the proposal for a Directive of the European Parliament and the Council – COM(2012) 614" (2012) <CELEX\_52012PC0614\_EN\_TXT>; OECD "Report on the Gender Initiative: Gender equality in education, employment and entrepreneurship" (2011) <[www.oecd/social/481111145.pdf](http://www.oecd/social/481111145.pdf)>; United Nations "Women's empowerment principles: Equality means business" (2011) <[www.unwomen.org/2011/women-s-empowerment-principles.en.pdf](http://www.unwomen.org/2011/women-s-empowerment-principles.en.pdf)>; International Labour Organisation "Women in Business and Management: Gaining momentum Global Report" (2015) 4 at 5.

<sup>131</sup> A Sweigart "Women on boards for change: The Norway model of boardroom quotas as a tool for progress in the United States and Canada" (2012) 32(4) *Nw J Int'L & Bus* 82A at 87A; European Parliament "Spanish policy on gender equality: Relevant current legislation and policies" (2009) EU Directorate-General for Internal Policy Department 5 <[www.europarl.europa.eu/studies](http://www.europarl.europa.eu/studies)>; KM Shaw "Is India Inc's new-found enthusiasm to have women board members a reflection of changing mind set or mere tokenism?" *The Economic Times* April 2015.

introduced in Sri Lanka with the goal of promoting gender equality as a step towards encouraging women to build careers and obtain directorship positions.

***Research Question 3 – What is the appropriate mechanism to implement board gender diversity in Sri Lanka?***

This research question explores through a comparative analysis the quota and disclosure approaches to board gender diversity and this analysis is used to determine which approach would be the most appropriate for Sri Lanka. Countries have implemented rules on board gender diversity either as quotas or disclosures. The quota rules on board gender diversity are structured in a manner that requires companies to include a certain percentage of women directors on boards.<sup>132</sup> Countries adopting disclosure rules on board gender diversity require companies to publicly report the gender breakdown on the board.<sup>133</sup> A debate has arisen over which of these regulatory measures is more effective. Quotas are preferred for achieving statistical change at a fast pace, although they have been criticised for being too rigid.<sup>134</sup> Disclosures are considered ideal for creating substantive change, although this approach has been criticised for the slow rate at which change is achieved.<sup>135</sup> The different choices countries have made in opting for either quotas or disclosures indicates that there is no consensus as to which mechanism is more effective. This analysis is relevant in order to determine which of the two mechanisms would be workable in Sri Lanka.

Countries that have adopted the quota approach on board gender diversity have incorporated mandatory rules requiring a minimum representation of women directors.<sup>136</sup> In contrast, the disclosure approach on board gender diversity is implemented by countries as either mandatory or voluntary rules. Mandatory disclosure rules on board gender diversity compel public companies to disclose the gender breakdown on the board.<sup>137</sup> Voluntary disclosure rules on board gender diversity are generally included in a country's corporate governance code and require a company to report periodically the gender breakdown of its board, or, if they fail to do so, to provide reasons for non-compliance.<sup>138</sup> For the purposes of this study, the various reasons underpinning the choice made by countries for opting either to adopt quotas or disclosures have been researched. This analysis indicates that the choice

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<sup>132</sup> H Raleigh "Evidence from Norway shows gender quotas don't work for women" (2017) 35(4) Nw J Int'L & Bus 86; Forbes "Disclosures to bring women into the boardroom are missing the point" (2015) <<https://forbes-theconversation.gender/>>.

<sup>133</sup> Raleigh, above n 132.

<sup>134</sup> Raleigh, above n 132.

<sup>135</sup> Forbes, above n 132.

<sup>136</sup> Raleigh, above n 132; Forbes, above n 132.

<sup>137</sup> Raleigh, above n 132; Forbes, above n 132.

<sup>138</sup> Raleigh, above n 132; Forbes, above n 132.

between these approaches is based on the cultural/social setting, the motivation of legislators in each country for introducing laws on board gender diversity and the number of qualified women in society.<sup>139</sup> It shows that a one-size-fits-all solution is not workable and that each country needs to adopt an approach that is compatible with its respective social and regulatory environment.<sup>140</sup> Considering the Sri Lankan social setting, the empirical findings identified that a voluntary disclosure approach would be most appropriate because it is evident that the adoption of a quota approach would lead to tokenism because of the low number of qualified women in Sri Lanka.<sup>141</sup> Moreover, the voluntary disclosure approach was considered preferable as it will promote substantive change that would be of benefit at a social level rather than mere statistical change.<sup>142</sup> Chapter 7 discusses how this was a key reason to dismiss the adoption of a mandatory disclosure approach, as it was not considered to provide public companies with the necessary flexibility to assess at their own pace the targets to achieve gender diversity on boards and analyse the outcomes without being subject to scrutiny by a regulatory authority. Due to the colonial influence on Sri Lankan laws, the voluntary disclosure approach was also considered suitable as it was similar to the approach followed in UK. However, it was clear that together with regulatory rules, suitable structural changes needed to be introduced in Sri Lanka in order to assist women to manage the double burden of a career and domestic responsibilities. These key structural arrangements need to include an increase in the provision of childcare facilities and the promotion of flexible working conditions.

#### **1.4 Roadmap to subsequent chapters**

This thesis consists of 8 chapters. Following the introductory chapter, *Chapter 2* provides a theoretical analysis of the case study, focusing on contextual details that become relevant in later chapters. This chapter is structured into 3 sections. The first section provides general background on Sri Lanka, such as the country's geographical location, population, and economic development. The second section explores the corporate governance environment in Sri Lanka. It discusses the corporate governance reforms, the corporate legal structure, and the regulatory regime of Sri Lanka. This is aimed at providing the basis for examining in the following chapters the developments in legislation relating to board composition in Sri Lanka and the inefficiency resulting from the lack of rules on board gender diversity. The third section considers the social setting in Sri Lanka with specific attention to the patriarchal social and

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<sup>139</sup> Discussed further in Chapter 5.

<sup>140</sup> Discussed in Chapter 7.

<sup>141</sup> Discussed in Chapter 7.

<sup>142</sup> Discussed in Chapter 7.

cultural norms affecting Sri Lankan women. It identifies the impact of these social and cultural norms on creating gender inequality in Sri Lanka. The analysis developed in this chapter is useful in subsequent chapters when exploring whether rules on board gender diversity could be used to address gender inequality issues in Sri Lanka.

*Chapter 3* focuses on the developments in Sri Lankan regulations relating to the board of directors. This discussion critically analyses rules concerning the board of directors showing that Sri Lankan legislators have adopted UK corporate governance rules. First, the chapter analyses the decision-making power of the board, noting that the Sri Lankan approach is mostly compatible with the UK approach. Next, the chapter explores the compatibility in the corporate governance legislation between these countries by examining the managerial agency problems arising in public companies concerning the board. This discussion shows that the agency problems arising in public companies in these two jurisdictions are similar despite having contrasting share ownership structures. As a result, Sri Lankan corporate governance rules have incorporated UK corporate governance rules to promote an effective board composition, particularly in relation to rules requiring an executive/non-executive blend of directors on the board, and the separation of the roles of chairman and CEO. The chapter ends by pointing out that despite following UK corporate governance rules, the board gender diversity rules in the UK have not been introduced to Sri Lanka. This discussion provides the basis for considering in the next chapters the relevance of introducing board gender diversity rules.

*Chapter 4* discusses the benefits of adopting board gender diversity as a board composition rule by examining the research that provides the economic and equality justifications for board gender diversity. First, the chapter critically analyses the economic rationale for board gender diversity by examining the traditional business case arguments which link board gender diversity with corporate financial performance. Next, it analyses the economic justifications highlighted in strategic management literature. This discussion is aimed at testing a more convincing economic rationale to support the value of women directors for the improvement of board effectiveness. Finally, the chapter turns to the societal benefits of board gender diversity and evaluates the manner in which rules on board gender diversity have promoted gender equality in society.

*Chapter 5* describes the approaches adopted globally to implement rules on board gender diversity. It shows that countries have followed board gender diversity rules by adopting quotas and disclosures. The chapter also examines the difficulties associated with adopting a common approach to implement rules on board gender diversity. The final section of the

chapter outlines the systemic changes in society which are necessary to support the effective implementation of rules on board gender diversity.

*Chapter 6* presents the methodological framework of the study. It is structured in 3 sections. The first section discusses the use of the socio-legal approach as the theoretical framing of the study, illustrating the historical evolution of the socio-legal approach and its application in similar studies. Also, it clarifies the application of this approach to this study. The second section examines the research methods followed in the study. It considers the use of interviews as the primary data collection source and the documentary analysis conducted of secondary data. The final section of the chapter considers the application of Braun and Clarke's thematic analysis method and the use of the software package NVIVO12 as the data analysis method for the study. It provides a detailed overview of Braun and Clarke's six-step guidelines for conducting a thematic analysis and then offers a comprehensive evaluation of the application of Braun and Clarke's guidelines to this study and the coding conducted using NVIVO 12.

*Chapter 7* critically examines the findings of the study. It identifies the interviewees' perceptions and attitudes in relation to introducing rules on board gender diversity by comparing the empirical outcomes of the study with the findings provided in the literature. The first section explores the influence placed by the IFIs on the development of corporate governance reforms in Sri Lanka. The next section considers the introduction of board gender diversity rules as a measure to improve board composition in Sri Lanka. It discusses the economic and social benefits which Sri Lanka could gain by introducing rules on board gender diversity. Finally, the study proceeds to explore the legal rules on board gender diversity and later discusses the suitable legal approach for implementing rules on board gender diversity in Sri Lanka.

*Chapter 8* concludes the thesis by presenting the main findings, highlighting the contributions and limitations of the study, and providing reflections on future research opportunities.

## CHAPTER 2 – CASE STUDY: SRI LANKA

### 2.1 Introduction

“The pearl of the Indian ocean”<sup>1</sup> was a phrase used by explorers and travellers to describe Sri Lanka. Formerly known as Ceylon,<sup>2</sup> Sri Lanka is an island situated at the crossroads of the maritime borders in the Indian Ocean, which has made it an important trading hub.<sup>3</sup> Economic stability in the country was mostly achieved during the British colonial rule from 1815 to 1948.<sup>4</sup> This also coincided with social developments which brought changes to labour force participation in the country.

The first section of this chapter explores the country’s geographical location and population and also traces the economic development of Sri Lanka during the British rule. Next, the chapter assesses the development of company law and the reform of corporate governance practices in the country. The introduction of company law in Sri Lanka coincided with the British rule during which time steps were taken to increase trade and business in the country.<sup>5</sup> During this period company law in Sri Lanka developed gradually largely accommodating the changes introduced in the United Kingdom (UK). This progress was interrupted with the end of the British rule, as slow economic development followed the introduction of a command economy.<sup>6</sup> The economic situation aggravated after 1983 during the period of the ethnic conflict when the Sri Lankan Government had to rely on funding from International Financial Institutions (IFIs) to maintain financial stability.<sup>7</sup> One of the conditions for funding imposed by the IFIs was for the need to improve the corporate governance practices in the country.<sup>8</sup> The actions of the Sri Lankan legislators in engaging in corporate governance reforms are discussed in the second section of this chapter.

The final section of this chapter focuses on the social setting in Sri Lanka particularly on the patriarchal social and cultural norms affecting Sri Lankan women. In particular, this section identifies the impact of the norms on gender inequality which explains the low level of

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<sup>1</sup> Insider Journeys “Discover Sri Lanka” (2019) <<https://www.insider-journeys.com/blog/srilankaexperiences>>; CTGN “The Pearl of the Indian Ocean – Sri Lanka” (2019)

<<https://news.cgtn.com/news/3d3d774d3041544e34457a6333566d54/index.html>> - The phrase is used due to the geographical shape of the country which is similar to the shape of a pearl.

<sup>2</sup> Sri Lanka Government “Official web portal of Sri Lanka” <<https://www.gov.lk/welcome.html>>.

<sup>3</sup> Sri Lanka Government “Official web portal of Sri Lanka” above n 2.

<sup>4</sup> Detailed in section 2.2.3 below.

<sup>5</sup> Explained in Section 2.3.1(a).

<sup>6</sup> Sri Lanka Government “Official web portal of Sri Lanka” above n 2. The term command economy is referred to a market structure where the Government controls investment, production and the allocation of capital goods based on economic and production plans of the Government rather than allow a free market to operate.

<sup>7</sup> Refer Section 2.3.1 (b) and (c) below.

<sup>8</sup> Section 2.3.1(c).

women entering and/or remaining in the workforce and the limited number of women obtaining directorships in Sri Lankan public companies.

## **2.2 Key aspects of the geography, the population, and the economy**

### **2.2.1 Geography**

Sri Lanka has maritime borders with India to the north and the Maldives to the south.<sup>9</sup> The country has attracted much attention since ancient times as a trading and transshipment hub in the Asian region.<sup>10</sup> This is due to the geographical positioning which has situated the country at crossroads of maritime routes traversing the Indian Ocean. As a result, Sri Lanka has been included by ancient geographers and mapmakers in publications as a trading hub. Ancient Greek maps referred to the country as Taprobane.<sup>11</sup> Arabian geographic publications identifying trading routes used the Old Persian name Serendib.<sup>12</sup> European mapmakers and geographers referred to Sri Lanka as Ceylon,<sup>13</sup> a name still used occasionally for trade purposes. The country officially became Sri Lanka in 1972.<sup>14</sup> Colombo is the country's main commercial hub which is where most companies are incorporated and based.<sup>15</sup>

### **2.2.2 Population**

Sri Lanka has a population of 21 million<sup>16</sup> with the density highest in and around Colombo.<sup>17</sup> The demographic statistics for Sri Lanka indicate that the percentage of women in the population is marginally higher than men, recorded at 51 per cent.<sup>18</sup> Among the population of women in Sri Lanka, 65 per cent are within the working-age of 18 years to 55 years.<sup>19</sup>

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<sup>9</sup> Sri Lanka Government "Official web portal of Sri Lanka" above n 2.

<sup>10</sup> Sri Lanka Government "Official web portal of Sri Lanka" above n 2.

<sup>11</sup> M Shokoohy "Journal of the Royal Asiatic Society" (1999) 9(1) JSTOR 170 <[www.jstor.org/stable/25183647](http://www.jstor.org/stable/25183647)>.

<sup>12</sup> DC Zook "A Place Call Serendib: On War, Peace, and Silence in Sri Lanka" *The Threepenny Review* (1999) 79 JSTOR 17 <[www.jstor.org/stable/4384871](http://www.jstor.org/stable/4384871)>.

<sup>13</sup> RL Brohier *The Changing Face of Colombo (1505-1972): covering the Portuguese, Dutch, and British periods* (V& AE Publication 1957) at 34.

<sup>14</sup> Sri Lankan Government "Official web portal of Sri Lanka" above n 2.

<sup>15</sup> Department of Registrar of Companies "Department of Registrar of Companies – home" <<http://www.drc.gov.lk/>>. Records indicate that 6975 companies are incorporated in Sri Lanka as at 2019, out of which 4185 (60%) have their head offices/ and or main place of business in Colombo.

<sup>16</sup> Department of Census and Statistics "Sri Lanka population statistics 2019" (2019) <<http://worldpopulationreview.com/countries/sri-lanka-population/>> - For the purposes of this study the population of Sri Lanka has not been analysed based on caste because since 1940s Sri Lanka has a casteless society. Since then, the notion of an equal casteless society has been followed adopting the principles called "samasamajaya." Refer K Tudor Silva PP Sivapragasam, P Thanges "Caste Discrimination and Social Justice in Sri Lanka" (2009) Indian Institute of Dalit Studies 3; B Anderson "Imagined Communities; Reflections on the Origins and Spread of Nationalism" (Tissara publications 1991) 56.

<sup>17</sup> Department of Census and Statistics, above n 16 – Density is highest in Colombo because of the availability of job opportunities.

<sup>18</sup> Department of Census and Statistics, above n 16.

<sup>19</sup> Department of Census and Statistics, above n 16. The working age is only up to 55 years in Sri Lanka i.e. retirement age is 55 years.

However, only 35 per cent within this age group are part of the labour force, with the rest engaging in unpaid domestic work.<sup>20</sup> On the other hand, men from the ages of 18 to 55 years aggregate to 64 per cent of the male population out of which 62 per cent is part of the labour force.<sup>21</sup> The low level of women in the workforce is not due to illiteracy or lack of education. Information on access to education and the statistics on the literacy levels of men and women in Sri Lanka suggest that equal access to education is provided to all children irrespective of gender.<sup>22</sup> Since 1942, the Sri Lankan Government has provided free primary, secondary, and university education.<sup>23</sup> As a result, the literacy levels of males and females today are almost equal, with male literacy levels at 93 per cent and female literacy levels at 91 per cent.<sup>24</sup> Also, the percentage of women gaining university education is steadily increasing.<sup>25</sup> Despite these statistics showing an increase in the number of educated women, there is a disproportionately low number of women in the labour force. The main reason for this can be related to the traditional social and cultural norms existing in Sri Lankan society, where there is a widespread belief that women's primary responsibilities are domestic in nature.<sup>26</sup> In this regard, studies often draw a parallel to the situation in Sri Lanka with the cultural setting in India where there is strong adherence to social and cultural norms and there is a similar belief that woman's role should be to attend to domestic activities.<sup>27</sup> As neighbouring countries, historical writings depict that this thinking was instigated initially through Indians who settled in Sri Lanka.<sup>28</sup> This relates back to the first historical records in Sri Lanka on studies about population which shows how the Indian prince, Vijaya, and his 700 followers immigrated to Sri Lanka and ruled the country. During this time, there was widespread use of Indian languages in Sri Lanka, the following of Buddhism as a religion as seen in India during this time and the adoption of Indian cultural practices.<sup>29</sup> Particularly, through inter-marriages between the locals and these Indian immigrants, historical studies indicate that Indian social and cultural norms greatly dominated the Sri Lankan culture. This included the introduction of a patriarchal culture similar to India, where a dominant social status was given to males and females were given a secondary status.

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<sup>20</sup> Department of Census and Statistics, above n 16.

<sup>21</sup> Department of Census and Statistics, above n 16.

<sup>22</sup> World Bank "Education statistics 2019- Sri Lanka" (2019) <<http://datatopics.worldbank.org/education/country/sri-lanka>>.

<sup>23</sup> World Bank, above n 22.

<sup>24</sup> World Bank, above n 22.

<sup>25</sup> World Bank, above n 22. Statistics indicate an increase of approximately 1.25% each year since 1942.

<sup>26</sup> World Bank, above n 22. Discussed further in sections 2.4.1 and 2.4.2.

<sup>27</sup> A Strathern *The Vijaya Origin Myth of Sri Lanka and the Strangeness of Kingship* (OUP 2009); LE Blaze *The History of Ceylon* (1938) Asian Education Services Publication 34.

<sup>28</sup> Blaze, above n 27 at 3; S Devendra "Our history: Myth upon myth, legend upon legend" (1912) Asian Education Publication 36.

<sup>29</sup> Blaze, above n 27 at 56; Devendra, above n 28 at 4. The authors point out how the Indian influence on Sri Lankan culture, language and religious practices continue even today.



This created a situation where women were only confined to conduct domestic chores. As identified later in this chapter, similar to India, the Sri Lankan social setting continues to adopt a patriarchal culture which has been a reason for the low number of women in the labour force.

### 2.2.3 Economic growth and stability

The economy of Sri Lanka is based on agriculture and services.<sup>30</sup> The growth of the agricultural industry can be traced back to the British rule from 1815 to 1948 and it is largely based on the establishment of tea and rubber plantations.<sup>31</sup> The Sri Lankan geographical setting and climate were favourable for tea and rubber cultivation. In 1853, the joint stock company was introduced to Sri Lanka as a measure to increase trade and business in the agriculture sector, offering the opportunity for private owners of tea and rubber plantations to join their assets and expand their businesses by forming companies.<sup>32</sup> In the early 20<sup>th</sup> century, trading of shares in tea and rubber plantation companies was intense and later became regulated by a share brokerage association called the Colombo Share Brokers Association.<sup>33</sup> However, with the end of the British rule in 1948, share trading took a downturn when Sri Lanka moved to a command economy and economic growth slowed. The command economic structure restricted foreign investment and share trading, and private sector ownership of companies.<sup>34</sup> Plantations were acquired and controlled by the Government via state-owned companies. The economic decline continued until 1977 when there was a change in government that brought economic liberalisation and promoted an open market economy.<sup>35</sup> Open market policies encouraged foreign investment, which led to a new start to companies' share trading and the establishment of an active stock market. However, the economic development did not last for long with the start of an ethnic war in 1983 which lasted for 26 years.<sup>36</sup> This conflict greatly damaged the Sri Lankan economy, leading to decreases in per capita Gross Domestic Products (GDP) and

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<sup>30</sup> Central Bank of Sri Lanka "Economic indicators 2019" (2019) <[www.cbsl.gov.lk/en/statistics/economic-indicators](http://www.cbsl.gov.lk/en/statistics/economic-indicators)>.

<sup>31</sup> CS Weeraratna and PA Weerasinghe *Agriculture of Sri Lanka* (Tissara publishing 2009) 34; The Commonwealth "Sri Lanka: History" (2009) <<https://thecommonwealth.org/our-member-countries/sri-lanka/history>>; BA Amarasinghe "Economic Policies of Pre-colonial Period in Sri Lanka: Agriculture" (1967) *Journal of social development* 143 <<http://sleconomynow.blogspot.com/2017/09/economic-policies-of-pre-colonial.html>>- During the pre-British colonial period the agriculture industry was mainly based on rice or paddy cultivation.

<sup>32</sup> AI Wickramasinghe *Ceylon Company Law* (Tisara Press 1973) at 2.

<sup>33</sup> Weeraratna, above n 31; The Commonwealth, above n 31.

<sup>34</sup> Weeraratna, above n 31; The Commonwealth, above n 31.

<sup>35</sup> Weeraratna above n 31; The Commonwealth, above n 31.

<sup>36</sup> The Times Sri Lanka "The end of Sri Lanka's Cataclysmic Civil War" (2009) A Balasingham *The Will to Freedom- An Inside View of Tamil Resistance* (2 edn Fairmax Publishing 2003) 23- The authors provide the context of the ethnic conflict in Sri Lanka. From 1983-2009 there was an insurgency against the government of Sri Lanka by the Liberation Tigers of Tamil Eelam (LTTE) fighting for an independent Tamil state called Tamil Eelam in the north-east of the island following a series of incidents of discrimination against Sri Lankan Tamils by some Sinhalese groups. This situation occurred after Sri Lanka gained independence from the British in 1948. During the ethnic conflict the LTTE gained notoriety for carrying out attacks against civilians of all ethnicities, using child soldiers, assassinations of politicians and the use of suicide bombings.

foreign investment.<sup>37</sup> As a result, the Sri Lankan Government had to seek financial assistance. By the end of the ethnic war in 2009, debt ratios of Sri Lanka had increased significantly due to borrowing from IFIs.<sup>38</sup> Currently, Sri Lanka's economy is gradually recovering and moving towards achieving financial stability.

## **2.3 The corporate governance environment in Sri Lanka**

### **2.3.1 Corporate governance reforms**

#### *(a) British colonial rule: pre-independence*

During the British rule in Sri Lanka from 1815 to 1948, company law was introduced as a tool to promote trade and business. Prior to this, business was conducted among tradesmen by forming partnerships. These were regulated according to Roman-Dutch law, which was introduced by the Dutch during their rule in Sri Lanka from 1658–1796. Under Roman-Dutch law, each partnership was called a “societas” and was a contractual arrangement that required the partners to collaborate for a specific purpose, including the pursuit of profits from the business.<sup>39</sup> Death and bankruptcy as well as a unilateral renunciation by one of the partners terminated the partnership. Moreover, partners were unable to transfer their share without dissolving the partnership. These difficulties needed to be addressed in order to expand agricultural businesses. The British found the introduction of a corporate form with limited liability and separate legal personality as a step to address this issue, and introduced the enactment of joint stock companies in Sri Lanka

In 1853, the Civil Law Ordinance of Sri Lanka introduced the joint stock company to the country. This Ordinance also stated that there was no legislation in Sri Lanka governing joint stock companies and the UK company law of that period applied to joint stock companies established in Sri Lanka.<sup>40</sup> The Civil Law Ordinance provided that:

In all questions or issues which may hereafter arise, or which may have to be decided in Ceylon with respect to the law of corporations.... the law to be administered shall be

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<sup>37</sup> Central Bank, above n 30. The GDP declined from 6.2% in (1983) to 1.4% (2008).

<sup>38</sup> Central Bank, above n 30. The debt ratio increased from 34% (1983) [of GDP] to 77% of GDP (2009).

<sup>39</sup> WJ Zwolve “The transformation of economic life under the Roman Law, ‘Callistus’ Case: Some legal aspects of Roman Business Activities” (2002)

<[https://www.researchgate.net/publication/336668623\\_CALLISTUS%27S\\_CASE\\_SOME\\_LEGAL\\_ASPECTS\\_OF\\_ROMAN\\_BUSINESS\\_ACTIVITIES](https://www.researchgate.net/publication/336668623_CALLISTUS%27S_CASE_SOME_LEGAL_ASPECTS_OF_ROMAN_BUSINESS_ACTIVITIES)>; Wickramasinghe, above n 32, at 2; H Cabraal *Company Law in Sri Lanka* (H Cabraal 2012) – the authors discuss the historical development of company law in Sri Lanka and identify that it was mainly during the British rule from 1815 to 1948 and prior to that the Dutch introduced elements creating partnerships. However, no specific contribution to the development of company law was identified before that during the Portuguese rule in Sri Lanka from 1505 to 1658 or prior to that period.

<sup>40</sup> Civil Law Ordinance No. 5 of 1852 (Sri Lanka) identified the application of Joint Stock Companies Act 1844 (United Kingdom) for Sri Lankan joint-stock companies.

the same as that administered in England in the like case, at the corresponding period, if such question or issue has arisen or has been decided in England.<sup>41</sup>

In 1861, Sri Lanka enacted its own legislation to govern companies, the Joint Stock Companies Ordinance,<sup>42</sup> which was identical to the UK Joint Stock Companies Act 1856.<sup>43</sup> It included concepts such as the limited liability of companies, replaced the deed of settlement with a memorandum and articles of association, and contained rules for winding up companies. From that point onwards company law in Sri Lanka developed through a series of amendments, closely following those introduced in the UK from time to time.<sup>44</sup> These included provisions to enable companies to alter the companies' name, subdivision, and consolidation of shares; required the filing of a balance sheet annually (and within 12 months of incorporation) to the Registrar of Companies; and prohibited the use of misleading company names. These amendments also included regulations relating to the method overseas companies could carry out business in Sri Lanka which included the reduction of capital, the maintenance of a register of members, and detailed rules on disclosure in the prospectus.<sup>45</sup> The final enactment of company law introduced in Sri Lanka before gaining independence from the British Empire was in 1938.<sup>46</sup> The 1938 Companies Ordinance incorporated all the regulations covered in the UK Companies Act 1907. This remained in force for 44 years and was not repealed until 1982. The long existence of the 1938 Companies Ordinance was due to the limited growth in company law after Sri Lanka gained independence in 1948 and the introduction of a command economy which prevented economic growth.<sup>47</sup>

*(b) Post-independence: 1977 to 1983*

In 1977, there was an upsurge in commercial activities in Sri Lanka when the Government elected brought economic and financial liberalisation, shifting from a command

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<sup>41</sup> Civil Law Ordinance No. 5 of 1852 (Sri Lanka), s 3.

<sup>42</sup> Joint Stock Companies Ordinance 1861 (Sri Lanka) incorporates all the sections of the UK Companies Act 1844 and is identical to the UK Companies Act 1844; Refer AI Wickramasinghe *Ceylon Company Law* (Tisara Pres 1973) at 2 where the author compares the Sri Lankan Joint Stock Companies Ordinance 1861 with the UK Companies Act 1844 and shows how it is identical.

<sup>43</sup> Wickramasinghe, above n 42; Note: This law was enacted in Sri Lanka by the legislative council which was the representative government of the British in Sri Lanka. It consisted of the British Governor, five appointed members of the Executive Council of Ceylon (the Colonial Secretary, the Attorney General, the Auditor-General, the Treasurer and the General Officer Commanding), four other government officials (including the Government Agents of the Western and Central provinces) and six appointed unofficial members.

<sup>44</sup> Joint Stock Companies Ordinance 1867, 1888, 1893, 1905, 1907, 1909, 1918 (Sri Lanka). These statutes incorporated developments in the UK which were included in the Limited Liability Act 1855 (United Kingdom) and Joint Stock Companies Act 1856 (United Kingdom); Companies Ordinance No. 51 of 1938 (Sri Lanka) incorporated the UK Companies Act 1907.

<sup>45</sup> *ibid.*

<sup>46</sup> Companies Ordinance No. 51 of 1938 (Sri Lanka).

<sup>47</sup> Explained in 2.2(c).

economy to a laissez-faire economy. The Government promoted foreign investment through deregulation of the capital and financial markets, limited state intervention in economic and financial matters, and privatised state-owned enterprises. To achieve such goals, an accommodating company law regime was necessary. This led to the enactment of the 1982 Companies Act, which was mostly similar to the UK Companies Act 1982.<sup>48</sup> Major changes introduced through this Act included the right of shareholders to remove directors through ordinary resolution, the mandatory retirement of directors on reaching the age of 70, and rules regulating insider trading, restraining oppression and mismanagement.<sup>49</sup>

### *(c) Corporate governance reforms from 1983*

Capital inflows through foreign direct investment (FDI) is an important element for economic growth.<sup>50</sup> However, developing countries have difficulty in attracting FDI.<sup>51</sup> Good corporate governance is recognised as one of the critical conditions to attract FDI into developing countries because it is considered a factor to foster economic growth.<sup>52</sup> A series of papers by La Porta et al<sup>53</sup> and the McKinsey Investor Report<sup>54</sup> illustrates this point, finding that to increase foreign investment, countries need to have companies that adhere to effective corporate governance practices. Studies conducted by IFIs also support this view.<sup>55</sup> More specifically IFIs have proceeded towards including reforms in the area of corporate governance as a condition for funding to developing countries with the aim of increasing FDI.<sup>56</sup>

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<sup>48</sup> Companies Act No. 17 of 1982 (Sri Lanka) – the enactment of the 1982 Companies Act was necessary as the economy had been stagnated and fundamental policy changes had to be made; Incorporated the provisions of the UK Companies Act 1948. AI Wickramasinghe *Ceylon Company Law* (Tisara Pres 1973) at 26 where the author compares the Sri Lankan Companies Act 1982 with the UK Companies Act 1982 and shows how it can be construed as identical or largely similar.

<sup>49</sup> Companies Act No. 17 of 1982 (Sri Lanka).

<sup>50</sup> R La Porta, L Lopez-de-Silanes, A Shleifer and R Vishny “Investor Protection and Corporate Governance” (2000) 58 *Journal of Financial Economics* 3; B Black “The Legal and Institutional Preconditions for Strong Securities Markets” (2001) 48 *University of California Los Angeles Law Review* 781. These publications illustrate a link between foreign direct investment and developments in capital markets and economic growth.

<sup>51</sup> International Monetary Fund (IMF) “Global Financial Stability Report: Market Developments and Issues” (Washington DC 2002) 20; World Bank “World Development Indicators 2006-2010” (Washington DC 2010). These IFIs recognise how developing countries struggle to attract FDI.

<sup>52</sup> S Claessens “Focus 1: Corporate Governance and Development” (Global Corporate Governance Forum – World Bank Washington DC 2003) 14; PK Cornelius and B Kogut, *Corporate Governance and Capital Flows in a Global Economy* (Oxford University Press New York 2003) 2. These articles indicate a positive correlation between corporate governance and economic development.

<sup>53</sup> R La Porta, L Lopez-de-Silanes, A Shleifer and R Vishny “Legal Determinants of External Finance” (1997) 52 *Journal of Finance* 1131; La Porta, above n 47 at 3; R La Porta, L Lopez-de-Silanes, A Shleifer and R Vishny *Law and Finance Journal of Political Economy* (1998) 106.

<sup>54</sup> McKinsey and Company “McKinsey Global Investor Opinion Survey on Corporate Governance” (2002) <<http://www.mckinsey.com/clientservice/organisationleadership/service/corp/governance/pdf/globalinvestoropinionsurvey2002.pdf>>.

<sup>55</sup> International Monetary Fund (IMF) “Global Financial Stability Report: Market Developments and Issues” (Washington DC 2002) 20; International Finance Corporation (IFC) “A corporate governance approach statement by development finance institutions” (Washington DC 2007); World Bank above n 51 at 43.

<sup>56</sup> International Monetary Fund above n 55 at 20.

The IFIs influence led to corporate governance reforms in Sri Lanka from 1983.<sup>57</sup> With the country suffering from a long ethnic conflict from 1983 to 2009,<sup>58</sup> the Sri Lankan Government relied on IFI funding to maintain economic and financial stability and became subject to funding conditions infused by IFIs. One of these conditions was to improve corporate governance practices in the country to attract global capital inflow.<sup>59</sup> IFIs suggested that improving corporate governance practices in Sri Lanka would foster investor confidence and create a secure environment for investors.<sup>60</sup> For example, the IMF report on Sri Lanka stated as follows:

Sri Lanka's financial growth performance has significantly trailed the fast-growing countries. High intermediation costs have held back the development of the financial sector and have also frustrated Sri Lanka's quest for higher growth. We find that financial deepening has stagnated, and interest spreads increased in recent years. Among the main causes for this is inefficiency in areas of corporate governance in public and private sector corporates which underscores efficiency. The development of corporate governance is stringently recommended for higher growth potential.<sup>61</sup>

Similarly, the Asian Development Bank's lending agreement included the reform of corporate governance practices as a condition to be fulfilled for Sri Lanka to secure funding.<sup>62</sup> The IFIs benchmarked the Sri Lankan corporate governance practices against international standards and insisted on reforming the corporate governance practices in the country as a measure to attract investors and stimulate economic development.<sup>63</sup> The financial pressures for compliance made the introduction of corporate governance reforms a high priority for Sri Lankan legislators during this period. Once again, most of these reforms were based on UK corporate governance principles.

Among these reforms, the most notable attempt was the introduction of Corporate Governance Codes (Codes of Best Practice) in relation to public companies. These Codes were voluntary as public companies had the option either to comply with the rules or, if not, provide reasons annually for non-compliance. The first Corporate Governance Code was introduced in

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<sup>57</sup> International Monetary Fund "IMF Country Report No. 05/337" (Washington DC 2003) at 13.

<sup>58</sup> The Times Sri Lanka "The end of Sri Lanka's Cataclysmic Civil War" (2009) <The End of Sri Lanka's Cataclysmic Civil War - The Top 10 Everything of 2009 - TIME (archive.org)>; A Balasingham *The Will to Freedom- An Inside View of Tamil Resistance* (2 edn Fairmax Publishing 2003) 23- The authors identify that the "Sinhala only" act passed in 1979 which took away English as the official language and recognised Sinhala as the only official language of the country may have had a bearing because it affected Sri Lankan Tamils who were not conversant with Sinhala from working in the public service. Many Tamil-speaking civil servants were forced to resign because they were not fluent in Sinhala. Some tamils recognised this step as linguistic and cultural discrimination against them.

<sup>59</sup> International Monetary Fund, above n 57; Asian Development Bank "Sri Lanka: Financial Sector Assessment" (Manila 2005) at 149.

<sup>60</sup> International Monetary Fund, above n 57; Asian Development Bank, above n 59 at 149.

<sup>61</sup> International Monetary Fund, above n 57.

<sup>62</sup> Asian Development Bank, above n 59 at 149.

<sup>63</sup> Asian Development Bank, above n 59 at 149.

Sri Lanka in 2003, replicating the principles in relation to the composition and role of the board included in the UK Cadbury Committee Report.<sup>64</sup> Subsequently, with the changes in UK corporate governance rules, the Sri Lankan legislators introduced a series of supplementary Codes to accommodate these changes. These were the voluntary Corporate Governance Codes of 2008, 2013, and 2017 which incorporated the changes introduced in UK corporate governance rules pertaining to board composition in order to address managerial agency problems.<sup>65</sup>

Separate corporate governance rules to regulate banks and other financial institutions and corporate governance rules to regulate public companies listed on the Colombo Stock Exchange were also established. These rules of the Colombo Stock Exchange and rules applicable to banks and financial institutions were mandatory for companies listed on the Colombo Stock Exchange,<sup>66</sup> banks, and finance companies.<sup>67</sup>

Another major reform effort of the Sri Lankan legislators was carried out in 2007 when the Companies Act 1982 was amended. This Act was inadequate to provide sufficient safeguards to investors.<sup>68</sup> The natural benchmark was UK company law because of the colonial background. However, due to the influence on the development of UK company law by the European Union directives, this transplantation did not seem the most appropriate option.<sup>69</sup> While not identical to the UK Companies Act, the Sri Lankan legislators still preserved the fundamental UK company law principles when revising the Companies Act in 2007. The Sri Lankan Companies Act No. 07 of 2007 (“the Sri Lankan Act/ Act”) most notably, included the type of companies that can be incorporated, and rules relating to directors, such as the rules on the minimum number of directors necessary to incorporate companies, the process of appointment and removal of directors and the checks and balances on directors by adopting the rights, obligations, and duties of directors included in the UK Companies Act of 2006.<sup>70</sup>

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<sup>64</sup> Code of Best Practice on Corporate Governance 2003 (Sri Lanka) incorporated The Cadbury Committee “Report of the Committee on the Financial Aspects of Corporate Governance” (1992).

<sup>65</sup> Code of Best Practice on Corporate Governance 2008, 2013, 2017 (Sri Lanka).

[https://www.casrilanka.com/casl/index.php?option=com\\_content&view=article&id=250&Itemid=215&lang=en](https://www.casrilanka.com/casl/index.php?option=com_content&view=article&id=250&Itemid=215&lang=en).

<sup>66</sup> Colombo Stock Exchange, Listing Rules 2020, s 7.10.

<sup>67</sup> Central Bank Rules 2008 (Sri Lanka); Monetary Board of the Central Bank of Sri Lanka Banking Act Directive No. 11 of 2007, s 3; Finance Companies Act (Corporate Governance) Directive No. 3 of 2008, s 4.

<sup>68</sup> Companies Act No. 17 of 1982 (Sri Lanka).

<sup>69</sup> Some of the European Directives followed in the Companies Act 2006 (United Kingdom) include EU Regulation 2157/2001/EC, 2001/86/EC relating to types of companies to be structured; EU Directive 2009/102/EC relating to single person companies.

<sup>70</sup> UK Companies Act 2006, s 3, 4, 5 identifies type of companies that can be incorporated as limited or unlimited companies and limited companies to be incorporated either as private, public or companies limited by guarantee. This is included in the Companies Act NO. 07 of 2007 (Sri Lanka), s 3; UK Companies Act 2006, s 154 on private companies to have at least one director and public companies to have at least two directors, which is included in the Companies Act No. 07 of 2007 (Sri Lanka), s 201; UK Companies Act 2006, s 157-161 on appointment process of directors which is included in the Companies Act No. 07 of 2007 (Sri Lanka), s 204, 205; UK Companies Act 2006, s 168 on the process of removing directors by

### 2.3.2 *The corporate legal structure in Sri Lanka*

According to the Sri Lankan Act, companies can be incorporated as unlimited liability companies, companies limited by guarantee, and limited liability companies. The Act also allows limited liability companies to be incorporated as private or public companies. Companies incorporated outside Sri Lanka can be registered as limited liability offshore or overseas companies. The section below outlines the distinguishing features of these types of companies. For the purposes of this study, the focus will be on public companies.

#### (a) *Unlimited liability companies*

The Act's provisions allow for the incorporation of unlimited liability companies. The liability of shareholders in such companies is unlimited.<sup>71</sup> Although there is no great demand, in Sri Lanka, some businesses are incorporated as unlimited liability companies where the shareholders are willing to take up unlimited liability arising from the company although wish to use the corporate form to protect their identities and make use of the flexibility in transferring ownership.<sup>72</sup> In terms of the Act, an unlimited company can be incorporated with one director.<sup>73</sup>

#### (b) *Companies limited by guarantee*

According to the Act, any two or more persons may apply for the formation of a company limited by guarantee.<sup>74</sup> In these companies, shares are not issued to shareholders, but shareholders guarantee to contribute to the assets of the company in moderation to an amount specified in the articles of association of the company if the company is put into liquidation.<sup>75</sup> Companies limited by guarantee are often formed to promote non-profit objectives and enjoy the privileges and obligations of a limited company and can have a single director.<sup>76</sup>

#### (c) *Limited liability company*

The limited liability company is the most common type of business entity in Sri Lanka. As defined by the Act, a limited liability company is “a company that issues shares, the holders of which have the liability to contribute to the assets of the company, if any, specified in the

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resolution in Companies Act No. 07 of 2007 (Sri Lanka), s 206; UK Companies Act 2006, ss 170 – 177 on director's duties included in Companies Act No.07 of 2007 (Sri Lanka), s 187 – 190.

<sup>71</sup> Companies Act No. 07 2007 (Sri Lanka), s 3(1)(b).

<sup>72</sup> AR Wickramanayake *Company Law in Sri Lanka and developments* (A Wickramanayake 2012) at 47.

<sup>73</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 201.

<sup>74</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 32.

<sup>75</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 33(1).

<sup>76</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 34.

company articles as attaching to those shares”.<sup>77</sup> Limited liability companies can be formed either as private or public companies.

*(c)(i) Private company*

A private company can be formed with a single shareholder<sup>78</sup> and a single director.<sup>79</sup> The nature of the private company in Sri Lanka can be characterised by considering section 27 of the Act, according to which the articles of a private company have to “prohibit the company from offering shares to the public”. A violation of the aforesaid provision results in the cessation of the company being recognised as a private company.<sup>80</sup> Further, for a company to be recognised as a private company, the name of the company has to end with the words “(Private) Limited” or the abbreviation “(Pvt) Ltd”.<sup>81</sup>

Private companies enjoy some flexibility in terms of complying with regulatory requirements under the Act.<sup>82</sup> For example, shareholders may unanimously resolve to dispense with the keeping of an interest register.<sup>83</sup> Moreover, under section 31(1) of the Act, shareholders can unanimously agree to take any action without having to hold meetings. This includes unanimous agreement to dispense with the formalities in issuing shares,<sup>84</sup> making distributions,<sup>85</sup> giving financial assistance to the company to purchase its own shares,<sup>86</sup> payment of remuneration to directors,<sup>87</sup> granting a loan or conferring any other benefit to directors, entering into a contract between an interested director and the company,<sup>88</sup> and any other transaction falling within the second schedule of the Act.<sup>89</sup>

*(c)(ii) Public companies*

A limited liability company can also be formed as a public company, incorporated in this case with a minimum of two shareholders<sup>90</sup> and two directors.<sup>91</sup> The articles of a public company should permit the company to offer shares to the public. A public company can be

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<sup>77</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 3(1)(a).

<sup>78</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 4(2). Also note a private company cannot have more than 50 shareholders.

<sup>79</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 201.

<sup>80</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 28.

<sup>81</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 6(b).

<sup>82</sup> Companies Act No. 07 of 2007 (Sri Lanka).

<sup>83</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 30.

<sup>84</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 31(2)(a).

<sup>85</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 31(2)(b).

<sup>86</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 31(2)(d).

<sup>87</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 31(2)(e).

<sup>88</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 31(2)(f).

<sup>89</sup> Companies Act No. 07 of 2007 (Sri Lanka), sch 2.

<sup>90</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 4(2); Also note that public companies need to have more than 50 shareholders.

<sup>91</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 201.



listed or unlisted on the Colombo Stock Exchange. The company name of a public company that is not a listed company ends with the term “Limited” or the abbreviation “Ltd”.<sup>92</sup> A public company that is listed on the Colombo Stock Exchange will have a company name that ends with the suffix “Public Limited Company” or “PLC”.<sup>93</sup>

In addition, public listed companies are required to comply with the rules of the Colombo Stock Exchange, which require maintaining a minimum public float of shares, providing corporate disclosures to shareholders and the public, complying with rules on corporate governance, prohibiting insider dealing, and requiring compliance with trading rules.<sup>94</sup> Also, public listed companies are required to comply with the Accounting and Auditing Standards Board Act in the preparation and presentation of their accounts.<sup>95</sup>

*(d) Offshore companies and overseas companies*

The Act provides for a company incorporated outside Sri Lanka to be registered in Sri Lanka as an offshore company.<sup>96</sup> Moreover, any company incorporated outside Sri Lanka that intends to have or does have an established place of business within Sri Lanka may be registered as an overseas company.<sup>97</sup> The key difference is that, unlike an overseas company, an offshore company does not need to have a place of business in Sri Lanka. However, overseas companies need to comply with the provisions of the Exchange Control Act of Sri Lanka in establishing a place of business.<sup>98</sup>

### ***2.3.3 The regulatory regime in Sri Lanka***

This section outlines the main regulatory authorities governing companies in Sri Lanka. These are the Department of the Registrar of Companies, the Colombo Stock Exchange, the Securities and Exchange Commission, and the Sri Lanka Institute of Directors. The Sri Lanka Institute of Chartered Accountants has become an important body influencing the development of corporate governance rules, while the Central Bank is the main authority governing banks and finance companies in Sri Lanka. As a result, banks and finance companies have to comply with the rules issued by the Central Bank in addition to the company laws of the country.

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<sup>92</sup> Companies Act No. 07 of 2007 (Sri Lanka) s 6(a).

<sup>93</sup> Companies Act No. 07 of 2007 (Sri Lanka) s 6(c).

<sup>94</sup> Colombo Stock Exchange, Listing Rules 2020, s 2-9.

<sup>95</sup> Sri Lanka Accounting and Auditing Standards Act No. 15 of 1995.

<sup>96</sup> Companies Act No. 07 of 2007 (Sri Lanka), ss 260 -263.

<sup>97</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 489.

<sup>98</sup> Companies Act No. 07 of 2007 (Sri Lanka), ss 489(7), 490.

(a) *The Department of the Registrar of Companies*

The Department of the Registrar of Companies (“the Department”) is responsible for the incorporation and registration of companies in Sri Lanka under the Act, and, to monitor the implementation, administration, and enforcement of the provisions of the Act.<sup>99</sup> During the British rule in Sri Lanka, the duties and powers devolved on the Department were carried out by the British Governors.<sup>100</sup> After independence in 1948, the powers of the British Governors were transferred to the position of Director of Commerce, who was the head of development of commercial affairs in Sri Lanka. The powers devolved on the position of the Director of Commerce were later transferred through the Companies Act 1982 to the Department.

The Department maintains a register with the details of all companies which are registered under the Act and records the documents that have been filed.<sup>101</sup> All fees payable under the Act are required to be paid to the Department.<sup>102</sup> Inspection of documents in relation to a company is possible through the Department.<sup>103</sup>

(b) *The Colombo Stock Exchange*

The Colombo Stock Exchange is the only stock market in Sri Lanka. All public companies incorporated under the Act can be listed on the Colombo Stock Exchange to raise equity through the public.<sup>104</sup> The Colombo Stock Exchange provides a transparent and regulated environment for institutional and retail investors to trade on the share market.

The evolution of the Colombo Stock Exchange can be traced back to the late 19<sup>th</sup> century.<sup>105</sup> The trading of shares in limited liability companies in Sri Lanka began with the creation of the Colombo Share Brokers Association in 1896. At that time, share trading in Sri Lanka was active, especially in the plantation sector, where tea and rubber plantations flourished. However, after independence, with the nationalisation of plantations, share trading decreased. In 1977, share trading improved after the introduction of an open economy. In 1990, the name of the stock market was changed to the Colombo Stock Exchange.

As of 2020, the Colombo Stock Exchange had 297 listed companies representing 20 business sectors.<sup>106</sup> The listing rules of the Colombo Stock Exchange govern the listing of

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<sup>99</sup> Department of the Registrar of Companies (Sri Lanka) <<http://www.drc.gov.lk/intro/>>.

<sup>100</sup> AI Wickramasinghe *Ceylon Company Law* (Tissera Press 1973) at 3.

<sup>101</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 473.

<sup>102</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 477.

<sup>103</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 480.

<sup>104</sup> Colombo Stock Exchange, Listing Rules 2020 <<https://www.cse.lk/home/listingRules>>.

<sup>105</sup> Colombo Stock Exchange “About Us” <<https://www.cse.lk/corporate>>.

<sup>106</sup> Colombo Stock Exchange, Listed Company Directory (2020) <<http://cse.lk/list>>.

public companies and provides the methods of listing, listing criteria, listing fees, maintenance of corporate governance rules, and corporate disclosures.<sup>107</sup>

(c) *Securities and Exchange Commission*

The Securities and Exchange Commission is the regulatory and supervisory body of the Colombo Stock Exchange and oversees all public companies listed on the Colombo Stock Exchange. It was established by the Securities Council Act No. 36 of 1987 (“the SEC Act”) which allows the Securities and Exchange Commission to regulate the securities market in Sri Lanka and grant licenses for stockbrokers to trade securities on the Colombo Stock Exchange.<sup>108</sup> In 1991, the SEC Act was amended by the Securities Council (Amendment) Act No. 26 of 1991 (“the SEC Amendment Act”) which granted additional powers to the Securities and Exchange Commission to license unit trusts and advice the Government of Sri Lanka on the development of the securities market and the implementation of policies and programmes concerning the share market.<sup>109</sup> The Securities and Exchange Commission also expressly deals with monitoring insider trading.

(d) *The Sri Lanka Institute of Directors*

The Sri Lanka Institute of Directors was officially formed on 8 April 2000 as a forum to serve the corporate needs of current and future directors both in private and public companies.<sup>110</sup> It operates as a focal point on boardroom governance in Sri Lanka. Today, it has 500 members, which include directors of private and public companies.<sup>111</sup> The Sri Lanka Institute of Directors aims to improve professionalism in the boardroom and strengthen corporate governance practices.

(e) *The Institute of Chartered Accountants of Sri Lanka*

The Institute of Chartered Accountants of Sri Lanka is a professional accountancy body in Sri Lanka established by an act of Parliament as the sole organisation with the right to award the Chartered Accountant designation and to set accounting and auditing standards in Sri Lanka.<sup>112</sup> Moreover, the Institute of Chartered Accountants of Sri Lanka together with the

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<sup>107</sup> Colombo Stock Exchange, Listing Rules (2018) <<https://www.cse.lk/home/listingRules>>.

<sup>108</sup> Securities and Exchange Commission Sri Lanka <<http://www.sec.gov.lk/>>.

<sup>109</sup> Securities and Exchange Commission Act 2009 (Sri Lanka).

<sup>110</sup> Sri Lanka Institute of Directors “About Us” (2019) <<https://www.slid.lk/>>.

<sup>111</sup> Sri Lanka Institute of Directors, above n 110.

<sup>112</sup> Institute of Chartered Accountants of Sri Lanka (ICASL) <<https://www.casrilanka.com/casl/>>.

Securities and Exchange Commission had played a major part in drafting the Corporate Governance Codes of 2003, 2008, 2013, and 2017.

(f) *The Central Bank of Sri Lanka (The Central Bank)*

The Central Bank was established after independence in 1948.<sup>113</sup> Prior to the establishment of the Central Bank, functions relating to central banking were conducted by an authority named the Currency Board, which conducted the administration of monetary functions in the country. After gaining independence in 1948, the Government of Sri Lanka sought the assistance of the United States of America (USA) for technical expertise to set up a central bank.<sup>114</sup> John Exter, an economist from the Federal Reserve Board of the USA, was appointed to carry out this task. His report commonly referred to as “The Exter Report”, provided the necessary legal framework for the formation of the Central Bank in Sri Lanka.<sup>115</sup> The Central Bank commenced operations on 28 August 1950. It was renamed in 1985 after Sri Lanka changed its name from Ceylon to Sri Lanka as the Central Bank of Sri Lanka. It was then given powers to regulate monetary affairs and banking activities, including the sole right and authority to issue currency, and given custody of the international reserves of the country. All banks and financial institutions in the country are governed by the rules and regulations issued by the Central Bank.

## **2.4 Women in Sri Lanka**

This section focuses on the social setting in Sri Lanka, with particular attention to the patriarchal social and cultural norms affecting women. It explores the changes which have taken place to the traditional social status accorded to Sri Lankan women and discusses the past and prevailing issues concerning gender inequality in society.<sup>116</sup> This analysis also examines the measures adopted by the Sri Lankan Government to circumvent gender inequality.

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<sup>113</sup> Central Bank of Sri Lanka “About – History” (2020) <<https://www.cbsl.gov.lk/#>>.

<sup>114</sup> Central Bank of Sri Lanka <<https://www.cbsl.gov.lk/>>.

<sup>115</sup> Central Bank of Sri Lanka “About us” <<https://www.cbsl.gov.lk/en/about/about-the-bank/bank-history/john-exter>>.

<sup>116</sup> Note – the changes in Sri Lankan society explored in this chapter is revisited in Chapter 7 analysing it in the context of JS Mill’s framework. JS Mill, “The Subjection of Women,” in J S Mill and H Taylor Mill, *Essays on Sex Equality* ed. AS Rossi (University of Chicago Press, 1970) 184. According to Mill where there are changes to patriarchal thinking it is depicted through the reorganising of the social structure. Mill considers the study of these changes in a patriarchal social structure as an important step to identify any departures from traditional beliefs.

### 2.4.1 The traditional social status of the Sri Lankan woman

Historically, Sri Lanka had a strong patriarchal social structure.<sup>117</sup> Traditional customs, values and beliefs regard men as the primary power-holders in society giving women a secondary status. The weak social status of Sri Lankan women is illustrated in folklore and seen in the role of the women in the family. Marriage practices adopted in Sri Lanka, the property rights relating to women, and women's access to education in Sri Lankan society reflect the weak social status accorded to Sri Lankan women.

In Sri Lankan folklore, there are many instances in the language used that reflect the weak social standing of women. In this regard, phrases such as, “women are born with weak intelligence”, “the brainpower of a woman is the length of a spoon's handle”, “women are the weaker sex” are common examples, which imply that women should be valued less than men and confined to an inferior position in the social hierarchy.<sup>118</sup>

Further, the weak social standing of women is evident when examining the traditional role of Sri Lankan women in the family. Throughout history, Sri Lankan women have been responsible for cooking, caring for children, and conducting all domestic chores. Moreover, women's household tasks included assisting with domestic agricultural activities such as harvesting. While Sri Lankan women were assigned a domestic role, men were traditionally recognised as the sole breadwinners of the family.<sup>119</sup> Men engaging in domestic agricultural activities were considered to be self-employed workers.

Traditional practices at mealtimes and decision-making rights within a Sri Lankan family further reflected the secondary status of women within the family.<sup>120</sup> At mealtimes, it was the practice that all males should be served before the females. Also, the inferior status of women in the Sri Lankan context was visible through the rights of decision-making within the family, which resided with men. Women did not participate in decision-making and couldn't voice any concerns.

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<sup>117</sup> DS Vithanage “Understanding the nature and scope of Patriarchy in Sri Lanka” (2015) at 37 <[http://repository.stcloudstat.edu/socresp\\_etds](http://repository.stcloudstat.edu/socresp_etds)>; HMA Herath “Place of Women in Sri Lankan society: Measures for their empowerment for development and good governance” (2015) 1(1) University of Sri Jayawardenapura Colombo publications <<http://mysjp.ac.lk>> - Incorporating the views of the authors, a holistic view is adopted in this study in analysing the Sri Lankan social structure and population, which depicts how patriarchy dominated and continues to dominate Sri Lankan society notwithstanding differences in race, religion or ethnicity within the population. For the purposes of analysing the segregation of roles among men and women in patriarchal society this study incorporated the views in R Tong *Feminist Thought: A Comprehensive Introduction* (3<sup>rd</sup> edn, Routledge 1995) 45 where the author identifies how a society segregating the roles of men and women is an indication of the existence of a patriarchal world or a man-made world where there is sexual inequality. Discussed further in Chapter 7.

<sup>118</sup> Herath above n 117 at 5.

<sup>119</sup> Herath above n 117 at 5.

<sup>120</sup> Herath, above n 117 at 5.

Moreover, the secondary status of Sri Lankan women was also visible in marriage practices.<sup>121</sup> A woman could not make decisions about her marriage. When she reached marriageable age, the father would choose a partner for her. The bride couldn't object to the choice. The father of the bride would provide a cash payment, called a dowry, to the bridegroom and prospective in-laws. Also, brides could not select the place of abode after marriage. Traditionally, they were taken to the bridegroom's home, which, in most circumstances was the house of the bride's in-laws.

Furthermore, Sri Lankan women were disadvantaged in the distribution of the family estate. Since the era of kings, estates have been inherited patrilineally.<sup>122</sup> Sons enjoyed the family estate. Among the Tamil community in Sri Lanka, women did not have property rights and after marriage could not enter into commercial transactions without the consent of their husbands. For married Sri Lankan women of other communities, it was against social and cultural norms to enter into commercial transactions without the consent of the husband.<sup>123</sup>

Before 1942, education was provided either in Buddhist temples or in missionary institutions that did not provide access to women. This was based on the belief that only men needed an education in order to gain employment. Only women from elite families were given education through private tutoring. As a result, up until 1942, over 85 per cent of women in Sri Lanka were illiterate.<sup>124</sup>

#### ***2.4.2 The changing role of the woman in Sri Lankan society***

Attempts to create gender equality in Sri Lanka began in 1942 with the British introducing free primary, secondary and university education for men and women.<sup>125</sup> As a result, women could gain an education equal to that of men. This led to a significant increase in women's literacy levels from 15 per cent in 1942 to 40 per cent by 1945.<sup>126</sup> Consequent to gaining an education, most women stepped out of their domestic roles and entered the labour force. The majority of jobs engaged in by women included employment as tea pluckers, rubber

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<sup>121</sup> Herath, above n 117 at 5.

<sup>122</sup> Herath, above n 117 at 5; BA Abeysinghe "Ancient Land Tenure to Modern Land Reform in Sri Lanka" (1978) The Centre for Society and Religion 3 <[https://shodhganga.inflibnet.ac.in/bitstream/10603/175107/16/12\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/175107/16/12_chapter%203.pdf)> – During the period from the 6<sup>th</sup> century BC to 1815 the country was ruled by kings, often referred to as the era of the kings. During this period family estates were inherited along the patriarchal kinship line as per the pre-colonial land laws of Sri Lanka.

<sup>123</sup> Herath, above n 117 at 5.

<sup>124</sup> World Bank "Education Statistics 2019 – Sri Lanka" <<http://datatopics.worldbank.org/country/sri-lanka>>.

<sup>125</sup> Department of Census and Statistics, "Sri Lanka Population statistics" (2019) <<http://srilankapopulation.com/country/srilanka>>

<sup>126</sup> Herath, above n 117 at 5; Department of Census and Statistics, above n 125.

tappers, domestic aides, and teachers. The participation of women in the labour force had increased from less than 1 per cent before 1942 to 35 per cent as of 2019.<sup>127</sup>

In 1960, Sri Lanka attracted much attention as a state promoting gender equality with the first woman in the world holding the position of prime minister.<sup>128</sup> Following the assassination of her husband, SWRD Bandaranaike, Sirimavo Bandaranaike took up leadership of her husband's political party before the elections in 1959. She received immense support from the public, which led to a landslide victory and she became the prime minister in 1960. This was a significant change in the political scene in Sri Lanka. It was seen as a step towards recognising a women's capability in a leadership role. She was a role model for Sri Lankan women, and this encouraged other women to advance to politics.

The attempts to promote gender equality continued with the Sri Lankan Constitution of 1978, which enshrined principles on freedom from discrimination on the basis of sex.<sup>129</sup> During this time, the Sri Lankan Government also incorporated the United Nations (UN) Charter of Women's rights to eliminate discrimination against women. Further, as measures to safeguard the interests of Sri Lankan women, on or around 1980, women's bureau were established, and ministries were created to address women's issues at a national level.<sup>130</sup> In 1995, another milestone on gender equality was achieved in Sri Lanka with the appointment of the first woman president, Chandrika Bandaranaike Kumaratunga, who was the daughter of Sirimavo Bandaranaike.<sup>131</sup>

Despite these illustrations of the changing role of the Sri Lankan woman, statistics indicate that the participation of women in the labour force is lower than for men. Male participation in the labour force is at a rate of 65 per cent compared with the female rate of 35 per cent.<sup>132</sup> This indicates that underlying issues still exist which prevent women's participation. Statistics indicate that more than 30 per cent of women with a secondary school education give up their jobs after childbirth.<sup>133</sup> In addition, more than 10 per cent of employed

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<sup>127</sup> *ibid*

<sup>128</sup> United Nations Sri Lanka "1960 World's First Female Prime Minister" (1960) <<https://lk.one.un.org/7060/en/worlds-first-female-prime-minister>>.

<sup>129</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 <<https://www.parliament.lk/files/pdf/constitution.pdf>>.

<sup>130</sup> Herath, above 117 at 4.

<sup>131</sup> Herath, above 117 at 6 - while often quoted as a milestone in gender equality in Sri Lanka, there is equal criticism to this point on the lines that these women were from elite families and from a privileged group. The political success of these two women is considered unique and is regarded to have coincided with wealth and privilege. It is not considered to be a reflection of the situation of the common Sri Lankan woman who wants to enter into politics. This argument is discussed further in Chapter 7.

<sup>132</sup> Herath, above 117 at 4.

<sup>133</sup> Department of Census and Statistics "Women in the labour force- problems and issues" (2016) <[http://www.sldepartmentcensus/women\\_statistics](http://www.sldepartmentcensus/women_statistics)>.

women give up their jobs to care for elderly parents or in-laws.<sup>134</sup> Also, among the unemployed women, a majority have had a secondary school education but have chosen to remain unemployed and attend to domestic responsibilities.<sup>135</sup> In comparison, the male unemployment threshold is mainly due to illiteracy or incompetence. Less than 1 per cent of men leave their jobs to manage family affairs.<sup>136</sup> These facts show that women still have to give priority to domestic responsibilities over and above employment.

The weak participation of women in the labour force is also reflected in the low number of women obtaining directorships in companies. According to the Sri Lanka Institute of Directors, only a total of 10 female directors have been appointed in the top 25 corporate entities in the country out of a total pool of 198 directors.<sup>137</sup> According to the Department of Census and Statistics, less than 8 per cent of females occupy board seats in public companies in the country.<sup>138</sup> The few women directors who do serve on corporate boards in Sri Lanka are usually relatives of the majority shareholders of the respective companies.<sup>139</sup> These statistics reveal an underrepresentation of female directors on the corporate boards of Sri Lanka. However, up to now, the Sri Lankan legislators have not taken any measures to address this issue or to introduce rules on board gender diversity. According to Ratwatte,<sup>140</sup> the primary reason for the lack of board gender diversity in Sri Lanka is the social and cultural norms that require women to give priority to domestic responsibilities. This prevents women from aspiring to reach the higher echelons in the corporate arena and has limited the female talent pool. This is despite Sri Lanka ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which recognises the need to change the traditional role of men and women in society to achieve full equality among men and women and to ensure maximum participation of women on equal terms as men.

There are currently insufficient facilities in Sri Lanka to support women to maintain a work-life balance. According to a recent survey conducted by the United Nations International Children's Emergency Fund (UNICEF), Sri Lanka has only 15 registered childcare facilities for the entire country.<sup>141</sup> A similar situation exists in relation to aged-care facilities, with the

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<sup>134</sup> Department of Census and Statistics, above n 133.

<sup>135</sup> Department of Census and Statistics, above n 133.

<sup>136</sup> Department of Census and Statistics, above n 133.

<sup>137</sup> Daily FT "SLID Women's forum shines light on gender diversity" (2016) <<http://www.ft.lk/article/531663/SLID-women-s-forum>>.

<sup>138</sup> Department of Census and Statistics "Changing roles of women in Sri Lanka" (2014) <[http://www.statistics.gov.lk/samplesurvey/LFS\\_Annual%20Report\\_2014.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Annual%20Report_2014.pdf)>.

<sup>139</sup> *ibid*.

<sup>140</sup> C Ratwatte "Out of 198 Directors in 25 Top Corporates in Sri Lanka Only 10 Are Women" (2012) <<http://dbsjeyaraj.com/dbsj/archives/11707>>.

<sup>141</sup> UNICEF "Statistics Sri Lanka – women and facilities" (2018) <[http://www.unicef/srilanka/statistics/find\\_facilities](http://www.unicef/srilanka/statistics/find_facilities)>.



country having only 30 registered aged care facilities available. Coupled with these facts are the social and cultural stigma endured by a woman who gives priority to her job or fails to care for aged parents or in-laws.

## **2.5 Summary**

This chapter outlined the regulatory and social background underpinning the present study. It began with a general overview of the geographical location and population distribution and thereafter focused on the economic development in Sri Lanka under the British rule from 1815 to 1948. During this period, UK company law principles were introduced to the Sri Lankan legal system to the extent that even after independence the Sri Lankan corporate governance framework was largely based on UK legal principles. After independence, there was a shift towards a command economy, and the Sri Lankan Government of the time introduced socialist economic principles, which led to an economic and financial growth decline in the country. In 1977, there was a change of government, and the new government brought in economic and financial liberalisation, shifting from a command economy to a laissez-faire economy. The Sri Lankan economy suffered from an ethnic war from 1983 to 2009. During this time, the Sri Lankan Government relied on the IFIs for funding to maintain financial stability. Among the conditions for funding, the IFIs forced the Sri Lankan legislators to improve the corporate governance practices in the country to attract investors and stimulate economic growth. This resulted in significant corporate governance reforms from 1983. For this purpose, once again, the Sri Lankan legislators relied on UK corporate governance principles as a guide to devise appropriate corporate governance practices in the country, reflecting the obvious influence of historical colonial ties.

Finally, the chapter focused on the social setting in Sri Lanka. This discussion showed that there remain issues of gender inequality existing in the country. The low participation of Sri Lankan women in the labour force demonstrates the degree to which they have been forced to give up their careers to give priority to domestic responsibilities. This low participation is also reflected in the weak gender diversity statistics in the boardrooms of public companies, where currently women account for 8 per cent of board positions. This is despite the attempts made by the Sri Lankan Government to reduce the effect of social and cultural norms on women and to promote gender equality in society.

## CHAPTER 3 – THE BOARD’S ROLE IN CORPORATE GOVERNANCE

### 3.1 Introduction

Corporate governance is defined in the 1992 United Kingdom (UK) Cadbury Committee Report as “the system by which companies are directed and controlled.”<sup>1</sup> This definition of corporate governance continues to underpin the UK corporate governance framework<sup>2</sup> and has been followed in many countries globally.<sup>3</sup> It captures among other things the fundamental principle that needs to be covered by any corporate governance regulation; that is, to establish a framework of internal controls to ensure that a company is properly governed.<sup>4</sup> Similar to the path followed for company law,<sup>5</sup> Sri Lanka adopted a new Corporate Governance Code in 2003 which was largely based on the UK corporate governance framework.<sup>6</sup> This chapter critically analyses these developments with particular emphasis on the board’s role as a corporate governance organ.

It first explores the similarities between Sri Lankan law and UK law by analysing the decision-making powers of the board and the distinctive features of the board structure. Thereafter the chapter considers the rules relating to board functions, with specific focus on the board’s monitoring role. The chapter then explores how conflicts of interest can occur between directors and shareholders if the board’s monitoring role is not conducted effectively, and how this has been characterised in law and economic literature as managerial agency problems.<sup>7</sup> This issue is analysed in the context of companies issuing shares to the public (public companies) in Sri Lanka and the UK. In the UK, public companies generally have a

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<sup>1</sup> The Cadbury Committee “Report of the Committee on the Financial Aspects of Corporate Governance” (1992) <<https://ecgi.global/sites/default/files/codes/documents/cadbury.pdf>>. This report was the first report issued in 1992 by the Cadbury Committee of the UK chaired by Adrian Cadbury which sets out recommendations on the arrangement of company boards and accounting systems to mitigate corporate governance risks and failures.

<sup>2</sup> AR Keay “Accountability and the Corporate Governance Framework: From Cadbury to the UK Corporate Governance Code” (2018) 13(2) *Journal of Corporate Law Studies* 3; SM Mintz “A comparison of corporate governance systems in the U.S. UK and Germany” (2006) 3(4) *Corporate Ownerships and Control* 1

<sup>3</sup> Global Corporate Governance Forum “Developing Corporate Governance Codes of Best Practice” (2005) <<http://www.gcgf.org>>. This article provides research that show countries that are part of the Commonwealth and member states of the OECD follow the Cadbury Committee definition on corporate governance.

<sup>4</sup> Global Corporate Governance Forum, above n 262 at 34; RV Aguilera and A Cuervo-Cazurra “Codes of Good Governance” (2009) *Corporate Governance: An International Review* 17 at 376.

<sup>5</sup> Discussed in Chapter 2, section 2.3.1. This section discusses how during the British rule from 1815-1948 UK company law was introduced and applied in Sri Lanka; Discussed also in section 3.4 to identify how Sri Lankan legislators mirrored the changes in the UK Corporate Governance Codes to reform the country’s corporate governance rules.

<sup>6</sup> Code of Best Practice on Corporate Governance 2003 (Sri Lanka) at 2; The Cadbury Committee definition on corporate governance continues to be adopted as seen in the Code of Best Practice on Corporate Governance 2013 (Sri Lanka) and Code of Best Practice on Corporate Governance 2017 (Sri Lanka).

<sup>7</sup> The term managerial agency problems is referred to in this context to agency problems that occur when directors either individually or together with senior managers expropriates corporate benefits for their own. See for example the discussion in R Kraakman, J Armour, P Davies, L Enriques, H Hansmann, G Hertig, K Hopt, H Kanda, M Pargendler, W Ringe and E Rock, *The Anatomy of Corporate Law* (3<sup>rd</sup> edn, OUP 2017) at 4; S Deakin, A Hughes and R Monks “Comparative Corporate Governance: An interdisciplinary Agenda” (1997) 24(1) *Journal of Law and Society* 34.

dispersed ownership structure<sup>8</sup> and it is typical for managerial agency problems to occur in companies with such ownership structure due to the significant separation of ownership from control.<sup>9</sup> In contrast, Sri Lankan public companies have a concentrated ownership structure, where majority of shares are held either by a single dominant shareholder or a limited number of shareholders.<sup>10</sup> In theory, in this type of ownership structure, managerial agency problems should not exist<sup>11</sup> although, a unique situation exists in Sri Lanka where despite shareholding being concentrated, public companies face managerial agency problems.<sup>12</sup> The chapter analyses these situations and identifies how managerial agency problems have occurred in Sri Lankan public companies.

The chapter thereafter analyses the corporate governance rules that have been introduced in Sri Lanka to address the managerial agency problems. Similar to the UK, the Sri Lankan legislators have focused on drafting board composition rules for public companies as a measure to address these issues.<sup>13</sup> In the Sri Lankan context, specific focus has been on rules requiring a blend of executive directors and non-executive directors (NEDs) on the board<sup>14</sup> and on separating the roles of chairman and the Chief Executive Officer (CEO).<sup>15</sup> Empirical evidence has also identified board gender diversity rules as a measure to reduce managerial agency problems.<sup>16</sup> The UK and many other jurisdictions have introduced board gender diversity rules. The Sri Lankan legislators despite following UK corporate governance principles have not engaged with this discussion and not considered introducing board gender diversity rules to Sri Lanka. The chapter ends by considering this discussion to determine whether board gender diversity could be a substantial measure to improve corporate governance rules in Sri Lanka.

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<sup>8</sup> See as defined in Kraakman, above n 7 at 23. Dispersed ownership is defined as a situation where the ownership of the company is held almost entirely by shareholders with small blocks of shares.

<sup>9</sup> BR Cheffins, *Corporate Ownership and Control: British Business Transformed* (OUP 2008) at 344 – identifies that this is seen in the ownership structure of public companies in the UK.

<sup>10</sup> See as defined in Kraakman, above n 7 at 34. Concentrated ownership structures present some form of dominant ownership with either a single shareholder or a concentrated group of block holders.

<sup>11</sup> Deakin above n 7 at 26; Kraakman, above n 7 at 36.

<sup>12</sup> Discussed in section 3.3.

<sup>13</sup> Issues of private benefits of control existing in Sri Lankan public companies and the rules developed to address same are beyond the state of this thesis.

<sup>14</sup> Kraakman, above n 7 at 36. The terms executive director and NEDs are used in line with the discussion provided therein. Executive directors are directors who are involved in management functions. NEDs refer to directors who are independent of management and do not have any personal or financial interest in the company. The rules relating to having a blend of executive directors and NEDs on the board are discussed in section 3.4.

<sup>15</sup> Refer section 3.4 below.

<sup>16</sup> Discussed in section 3.4.

### 3.2 The board as a core corporate governance organ

Key internal constituencies of a company include shareholders, directors, and senior managers.<sup>17</sup> Sri Lankan company law allocates decision-making power<sup>18</sup> to these internal constituencies. According to the Sri Lankan Act, shareholders of a company can appoint and remove directors, and subject to the articles of association of the company, can direct directors to take or refrain from taking corporate decisions.<sup>19</sup> Subject to the articles of association, the Sri Lankan Act gives directors powers to manage the company.<sup>20</sup> The senior managers operate as executive officers and exercise powers delegated to them by the directors to manage the company on a day-to-day basis.<sup>21</sup> The general allocation of decision-making power in terms of the Sri Lankan Act to these internal constituencies is consistent with the approach currently existing in UK company law, where, subject to the articles of association, shareholders have corporate power to direct directors' actions, directors are allocated with decision-making power to manage the company, and directors are allowed to delegate power to senior managers.<sup>22</sup>

Similarities between Sri Lankan law and UK law concerning the board can also be observed by considering the minimum number of directors appointed to companies. It is statutorily mandated in the Sri Lankan Act that public companies have at least two directors.<sup>23</sup> This gives directors of public companies the ability to act together as a board, and act as a separate internal organ with distinct corporate power.<sup>24</sup> This is because of the complexities

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<sup>17</sup> Kraakman, above n 7 at 34. The terms shareholders and senior managers are used to recognise shareholders as the owners of the company by virtue of their shareholding in the company, and senior managers as the executive officers who have delegated powers of the directors to conduct the management of the company. This aligns with the references in the Companies Act No. 07 of 2007 (Sri Lanka), ss 86, 186; For key internal constituencies are see SM Bainbridge, *The New Corporate Governance in Theory and Practice* (OUP 2008) at 34; M Moore and M Petrin, *Corporate Governance: Law, Regulation and Theory* (Palgrave 2017) at 71; Kraakman above n 7 at 45 where the authors recognise shareholders, directors and senior managers as some of the key internal constituencies of a company. This thinking has been incorporated into the Sri Lankan Companies Act No. 07 of 2007. An in-depth analysis of shareholders, directors and senior managers as internal constituencies will not be conducted for the purposes of this study.

<sup>18</sup> H Cabraal, *Company Law in Sri Lanka* (2012) Cabraal at 12; AR Wickramanayake *Company Law in Sri Lanka* (A Wickramanayake 2007) 170; JK Galbraith *The Anatomy of Power* (Houghton Mifflin 1983) at 1. The term "power" is used in line with the definition provided by Galbraith, where power is understood as enabling the imposition by some person or groups of their granted discretion (rights) on others, including on those who are reluctant or adverse. This aligns with the provisions of Sri Lankan company law.

<sup>19</sup> Companies Act No. 07 of 2007 (Sri Lanka) Part V, ss 86, 90. These sections recognise the shareholders' corporate power exercised through their voting rights which provides shareholders to direct actions of the directors by shareholder resolutions (ordinary and special resolutions).

<sup>20</sup> Companies Act No. 07 of 2007 (Sri Lanka) ss 184, 529.

<sup>21</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 186. This statutory provision recognises directors individually or collectively as a board can delegate its power to any officers of the company; Moore and Petrin, above n 17 at 16; Bainbridge, above n 17 at 34, recognises senior managers as the executive officers to whom directors' powers are delegated to manage the company. The Sri Lankan view aligns with this research, as noted in AR Wickramanayake *Company Law in Sri Lanka and developments* (A Wickramanayake 2012) 170.

<sup>22</sup> Companies Act 2006 (United Kingdom), Part 13, ss 282 – 335; The Companies (Model Articles) Regulations 2008 (United Kingdom), Schedule 3 Model Articles for Public Companies, ss 3, 5 and Schedule 1 Model Articles for Private Companies Limited by shares, ss 3, 5.

<sup>23</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 4.

<sup>24</sup> Companies Act No. 07 of 2007 (Sri Lanka), ss 4, 184; AR Wickramanayake *Company Law in Sri Lanka and developments* (A Wickramanayake 2012) 170.

involved in governing public companies, in contrast to private companies,<sup>25</sup> given their typical size, market share, and overall economic impact.<sup>26</sup> Legal rules permit private companies to have one director<sup>27</sup> because shares are not offered to the public.<sup>28</sup> The approach in the Sri Lankan Act is the same as adopted in the UK Companies Act 2006, which requires a public company to have at least two directors, while a private company can have a single director.<sup>29</sup> This requirement to have more than one director in public companies justifies the establishment of a collective board which is also supported by experimental research that shows that group decision-making leads to more efficient decision-making where there are complex issues at stake.<sup>30</sup>

There also exist similarities between Sri Lankan law and UK law in the structure of the board. In both Sri Lanka and the UK, companies are required to adopt a unitary board structure, that is a single-tiered board that has decision-making powers to manage and monitor the company.<sup>31</sup> This is in contrast to jurisdictions that permit a two-tier board structure, where there is a more clear-cut separation of the decision-making powers allocated to the first and second tiers of the board. Decision-making powers regarding the management of the company are exercised by the second tier (management board) while monitoring powers are retained by the first-tier (supervisory board).<sup>32</sup> A two-tier board structure is adopted in most public companies in Germany and the Netherlands.<sup>33</sup> In most jurisdictions that adopt a two-tier board structure,<sup>34</sup> directors of the supervisory board are appointed by shareholders,<sup>35</sup> and directors of the supervisory board appoint the members to the management board,<sup>36</sup> whereas in a single-tier

<sup>25</sup> See for example defined in Kraakman, above n 7 at 23. The term private companies are used in the context of companies whose shares are not offered to the public. These private companies operate under legal requirements less strict than public companies.

<sup>26</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 4 refers to companies offering shares to the public as public companies; SM Bainbridge *The New Corporate Governance in Theory and Practice* (OUP 2008) at 34; Moore and Petrin, above n 276 at 56. The authors recognise that the complex governance structure of public companies requires a collective board.

<sup>27</sup> Companies Act No. 07 of 2007 (Sri Lanka), s 4 identifies that private companies need to only have one director.

<sup>28</sup> Moore and Petrin, above n 17 at 71 and Bainbridge, above n 17 at 34 recognise the ease of management of private companies due to the lack of public shareholders, non-applicability of stringent regulatory requirements and private nature of companies classified under this category which does not require complex management or monitoring.

<sup>29</sup> For example, Companies Act 2006 (United Kingdom) s 154.

<sup>30</sup> SM Bainbridge "Why a Board? Group Decision Making in Corporate Governance" (2002) at 55 *Vanderbilt Law Review* 1; A Howard "Groupthink and Corporate Governance Reform: Changing the Formal and Informal Decision-Making Processes of Boards" (2010) 20 *California Interdisciplinary Law Journal* 425 at 426.

<sup>31</sup> Code of Best Practice 2017 (Sri Lanka); UK Corporate Governance Code (2018) – In both codes the introduction mentions that a unitary board structure is promoted within the public companies in both jurisdictions.

<sup>32</sup> Kraakman, above n 7 at 13 explains a two-tier board as a dual board, where the first tier has monitoring functions and the second tier has management functions.

<sup>33</sup> German Limited Liability Companies Act (Aktiengesetz (AktG) (2016); Dutch Civil Code 1992.

<sup>34</sup> Kraakman, above n 7 at 56. The corporate laws of countries such as Germany and Netherlands mandate that board structure must consist of two tiers: German Limited Liability Companies Act (Aktiengesetz (AktG) (2016); Dutch Civil Code 1992. In contrast, in Italy and France, domestic companies can choose between one or two-tier boards: France Art. L. 225-57 Code de commerce; Italy Art 2409-8 to 2409-15 Civil Code.

<sup>35</sup> Kraakman, above n 7 at 56 – except under German law which incorporates quasi-parity co-determination, in which employees appoint half the board members of the supervisory boards in companies with over 200 German employees §§ 111 IV and 119 II Aktiengesetz (AktG).

<sup>36</sup> Kraakman, above n 7 at 57.

board, all directors are appointed by shareholders. Given the single-tier board structure adopted in Sri Lanka and UK, all directors are appointed by shareholders.

### 3.3 Agency problems as a consequence of ineffective board monitoring

Managerial functions exercised by directors primarily involve the general conduct of the business and affairs of the company on a day-to-day basis.<sup>37</sup> Monitoring functions mainly consist of monitoring senior management.<sup>38</sup> Managerial functions are conducted by executive directors<sup>39</sup> whereas monitoring functions are performed collectively by executive directors and NEDs.<sup>40</sup> As the board is formed by executive directors and NEDs the management of the company and monitoring of senior management have become key functions collectively of the directors and the board.<sup>41</sup> Senior managers although not members of the board are appointed by the board and conduct managerial functions by virtue of the powers delegated to them by the directors.

The operation of these board functions differs between private and public companies.<sup>42</sup> In private companies, usually, all directors engage in monitoring and managerial functions and act as executive directors. As these directors of private companies are also in most instances shareholders, their involvement in the board has resulted in better monitoring.<sup>43</sup>

By contrast, in public companies, given the complexities involved in decision-making, the board sets out the long-term strategies of the company and monitors senior management to whom managerial functions are delegated.<sup>44</sup> The importance of performing the monitoring role in public companies is illustrated in the UK Corporate Governance Code, which explicitly includes among the board's functions the task of reviewing management performance.<sup>45</sup> A similar approach is followed in Sri Lanka, where the country's Corporate Governance Code, provides that the board's role involves among other matters the act of monitoring senior

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<sup>37</sup> Bainbridge, above n 26 at 11; M Roe, 'The institutions of corporate governance' (2004) 31 *Journal of Legal Studies* 3 at 3 – these functions mainly are conducted by executive directors.

<sup>38</sup> Bainbridge, above n 26 at 13.

<sup>39</sup> The term executive director is used in line with the discussion in Kraakman above 7 at 38 that refer to directors who are employees of the company and engage in managerial functions.

<sup>40</sup> The term NED is used in the context of directors who are independent of management and do not have any personal or economic interest in the company.

<sup>41</sup> S Bainbridge and MT Henderson "Boards-R-Us: Reconceptualizing Corporate Boards" (2013) University of Chicago Law School Coase-Sandor Institute for Law & Economics Working Paper No. 646, at 11 <[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1635&context=law\\_and\\_economics](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1635&context=law_and_economics)>; Roe, above n 296 at 3.

<sup>42</sup> The focus is on a single-tier board as it is the structure followed in the UK and Sri Lanka.

<sup>43</sup> Kraakman, above n 7 at 36; Bainbridge, above n 26 at 15.

<sup>44</sup> Roe, above n 37 at 3; Kraakman, above n 7 at 17. The authors discuss the agency problems to be more prominent in public companies and the need for stringent regulations for public companies because of the separation of ownership and control; Discussed in section 3.2 above.

<sup>45</sup> UK Corporate Governance Code (2018), Provision 2.

managers.<sup>46</sup> However, there have been instances where directors have not effectively executed their monitoring role and expropriated corporate benefits for their own. This situation has often occurred when there is a majority of executive directors on the board who act opportunistically either independently or together with senior managers and use corporate benefits for their own personal gain.<sup>47</sup> The appointment of NEDs to the board has been a strategy to address this issue and to ensure that the board's monitoring role is efficiently conducted.<sup>48</sup> However, when the executive directors are a majority on the board, the NEDs are incapable of effectively controlling board decisions. Some corporate scandals in public companies in the UK and Sri Lanka highlight this concern. For example, the Polly Peck International and the Bank of Credit and Commerce International (BCCI) scandals in the UK were a result of the expropriation of corporate benefits by some executive directors together with senior managers, when the board consisted of a majority of executive directors who did not effectively engage in their monitoring role.<sup>49</sup> In the Ceylinco Limited and Seylan Bank scandals in Sri Lanka, both companies had boards consisting of a majority of executive directors who together with senior managers used corporate funds for personal benefits.<sup>50</sup> Due to the dominance of the executive directors on the board, there was no control from the NEDs, nor indirectly from the shareholders.

Economists identify such issues as agency problems which arise when one party (principal) engages another party (agent) to act on his/her behalf and the agent acts opportunistically for his/her own interest or diverts some of the benefits belonging to the principal to himself/herself.<sup>51</sup> The problem arises because the agent generally has better access to information than the principal, and has an economic incentive to act for his/her own interest rather than to promote the welfare of the principal. As a result, the agent's performance will be suboptimal and the principal may only reduce the cost by monitoring the agent's actions

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<sup>46</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Principle A.1.2.

<sup>47</sup> Kraakman, above n 7 at 36; Bainbridge, above n 26 at 54; Roe, above n 37 at 17. The authors identify how the close working relationship between executive directors and senior managers as employees of the company causes executive directors to overlook or cover up management issues. In most instances such matters are overlooked or covered up by the executive directors for their benefit. This causes ineffective monitoring by boards with a majority of executive directors and result in costs to shareholders; This has raised the critical debate of finding a balance of executive directors and NEDs on public company boards which is discussed in section 3.4.

<sup>48</sup> This is discussed further in section 3.4.

<sup>49</sup> Roe above n 37 at 4; Moore and Petrin above n 17; The Guardian "BCCI scandal: long legal wrangling over collapsed Bank" (2012) <<https://www.theguardian.com/business/2012/may/17/bcci-scandal-long-legal-wranglings>>; The Guardian "The Polly Peck accounting scandal" (2002) <<https://www.theguardian.com/business/2002/aug/09/corporatefraud.pollypeck>>.

<sup>50</sup> S Senaratne "Corporate Governance Reforms in Sri Lanka" (2011) Sri Lanka Journal of Advanced Social Studies 23; Wickramanayake above n 267 at 36; SN Uddin "Scandals from an Island: Testing Anglo-American Corporate Governance Frameworks" (2017) <[https://www.researchgate.net/publication/317687305\\_Scandals\\_from\\_an\\_Island\\_Testing\\_Anglo-American\\_Corporate\\_Governance\\_Framework](https://www.researchgate.net/publication/317687305_Scandals_from_an_Island_Testing_Anglo-American_Corporate_Governance_Framework)>.

<sup>51</sup> M Jensen and W Meckling "Theory of the Firm: Managerial Behaviour, Agency costs and Ownership structure" (1976) 3 Journal of Financial Economics 305; Kraakman above n 7 at 23.

(agency costs).<sup>52</sup> In the context of companies, a contractual relationship is created between shareholders as principals and directors as agents because directors are appointed by the shareholders.<sup>53</sup> In the corporate scandals mentioned above, when the directors acted opportunistically it caused conflicts of interest between directors and shareholders giving rise to agency problems, often termed as managerial agency problems in law and economic literature.<sup>54</sup> These scenarios also identify how managerial agency problems can possibly occur when executive directors dominate the board.<sup>55</sup>

The occurrence of these agency problems often varies depending on the ownership structures of public companies, which can be either dispersed or concentrated.<sup>56</sup> Public companies with dispersed shareholding are formed by shareholders holding small blocks of shares, whereas public companies with a concentrated ownership structure consist of either a single shareholder or a limited number of shareholders.<sup>57</sup> In a dispersed shareholding structure, managerial agency problems are a common occurrence, which can arise when executive directors either independently or together with senior managers use company benefits for their own personal interest. This situation is a result of the prominent separation of ownership from control, which occurs when shareholders have minimum direct control over management decisions and are incapable of collectively making decisions, and the management of the company is left in the hands of the board.<sup>58</sup> In a concentrated ownership structure, separation of ownership from control is not significant as dominant shareholders are able to directly control appointments to the board using their voting power.<sup>59</sup> The principal corporate governance problem under such shareholding model is a different agency problem based on the relationship between majority shareholders and minority shareholders, and the risk that majority shareholders use their dominant position for private economic gain at the expense of minority shareholders' interests.<sup>60</sup> This clear-cut demarcation of agency problems depending on the type of ownership structure is not convincing when comparing the agency problems in UK and Sri Lankan public companies.

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<sup>52</sup> Jensen and Meckling, above n 51 at 5; Kraakman, above n 7 at 37.

<sup>53</sup> Jensen and Meckling, above n 51 – the authors propose an economic model.

<sup>54</sup> Jensen and Meckling, above n 51 – the law and economics view holds the viewpoint that a company has to be managed to protect shareholders' interests.

<sup>55</sup> Jensen and Meckling, above n 51 – the law and economics view holds the viewpoint that a company has to be managed to protect shareholders' interests.

<sup>56</sup> Roe, above n 37 at 3; Kraakman, above n 7 at 17.

<sup>57</sup> Roe, above n 37 at 59.

<sup>58</sup> Managerial agency problems refer to agency problems that occur when the board ineffectively monitors senior managers which allows senior managers leeway to pursue their own interest.

<sup>59</sup> Kraakman above n 7 at 45; Cheffins, above n 9 at 56.

<sup>60</sup> Kraakman, above n 7 at 36; Roe, above n 296 at 3.



The typical share ownership structure of UK public companies is dispersed. Cheffin's work shows that during the period from the 1950s to 1970s public companies in the UK experienced a similar shareholding ownership pattern as the USA. As a result, the corporate governance models of UK and USA public companies (often referred to as the Anglo-American model) shared similar agency problems. Berle and Means<sup>61</sup> in their 1932 book, "the Modern Corporation and Private Property," identified the significant separation of ownership and control in public companies with dispersed shareholding as a primary cause for the occurrence of agency problems.

The separation of ownership from control produces a condition where the interests of owner and of ultimate manager may, and often do, diverge, and where many of the checks which formerly operated to limit the use of power disappeared.<sup>62</sup>

In a dispersed ownership structure, shareholders act rationally apathetic<sup>63</sup> and do not have any economic incentive to engage in monitoring the decisions taken regarding the management of the company.<sup>64</sup> Moreover, the number of shareholders has made collective decision-making difficult (collective action problem). One of the legal strategies to reduce managerial agency costs has been to transfer the function of monitoring management from the shareholders to the board.<sup>65</sup> However, difficulties have been experienced in practice as shown by a number of corporate scandals in the United States of America (USA) and UK.<sup>66</sup> For example, the Enron<sup>67</sup> scandal exposed inefficient monitoring by the board following the CEO and the Chief Financial Officer (CFO) engaging in fraudulent diversion of company funds. Similarly, as mentioned earlier, the Polly Peck<sup>68</sup> scandal revealed ineffective monitoring by the board, resulting in senior management buying luxury cars for personal use and awarding themselves excessive perquisites.

The dispersed ownership structure of public companies remains the basic ownership structure of public companies in the UK and the USA. When Berle and Means<sup>69</sup> wrote their classic exposition of the separation of ownership and control of public companies of the USA,

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<sup>61</sup> AA Berle and GC Means, *The Modern Corporation and Private Property* (Harcourt, Brace and World Inc. 1932) 11.

<sup>62</sup> Berle and Means, above n 61 at 7.

<sup>63</sup> Roe, above n 37 at 17; Kraakman, above n 7 at 37- rationally apathetic is identified as the fact of shareholders with small blocks of shares being disinterested in voting on decisions concerning the company as their individual votes will not likely make a sufficient influence on any corporate decisions.

<sup>64</sup> Roe, above n 37 at 17; Kraakman, above n 7 at 37.

<sup>65</sup> Roe, above n 37 at 10; Kraakman, above n 7 at 68.

<sup>66</sup> The New York Times "Enron chiefs guilty of fraud and conspiracy" (2006) <[www.nytimes.com/2006/05/25/business/25cnd-enron.html](http://www.nytimes.com/2006/05/25/business/25cnd-enron.html)>; D Ackman "Polly Peck, BCCI, WorldCom, Tyco, Enron- R.I.P." (2002) Forbes <<http://www.forbes.com/2002/07/01/0701topnews.html5bcafa8c5397>>.

<sup>67</sup> The New York Times "Enron chiefs guilty of fraud and conspiracy" (2006) <[www.nytimes.com/2006/05/25/business/25cnd-enron.html](http://www.nytimes.com/2006/05/25/business/25cnd-enron.html)>.

<sup>68</sup> D Ackman "Polly Peck, Tyco, Enron- R.I.P" (2002) Forbes <[www.forbes.com/2002/07/01/0701topnews.html5bcafa8c5397](http://www.forbes.com/2002/07/01/0701topnews.html5bcafa8c5397)>.

<sup>69</sup> Berle and Means, above n 61 at 7.

share ownership was held by retail investors. This changed in the late 1980s and early 1990s, with a shift in share ownership from individual/retail investors to institutional investors.<sup>70</sup> In the UK, institutionalisation of public company share ownership took place considerably earlier. Cheffins recorded that, “by 1969, retail investors no longer owned a majority of shares of UK public companies”.<sup>71</sup> This shift was so profound that by the early 1990s, individual shareholding accounted for less than 20 per cent of the aggregate ownership base of UK public companies.<sup>72</sup> Institutional shareholding of USA and UK companies mainly consists of pension funds, insurers, mutual/unit trusts, charitable/endowment trusts, hedge funds, and sovereign wealth funds.<sup>73</sup> Despite this shift in the type of shareholders, the agency problems remain the same. Even with the shift towards institutional shareholders, there still existed widespread diversification of most institutional shareholding portfolios and in most instances, a single institutional shareholder’s investment represents a relatively small percentage of the overall share capital, still resulting in dispersed ownership.<sup>74</sup> As a result, the Anglo-American institutional shareholders do not have the incentives to engage in the management of the company.<sup>75</sup> Fund managers who manage the institutional investment funds also often do not have the incentive to monitor the management of the company, owing to time constraints and the structure of the compensation model.<sup>76</sup> As a result, managerial accountability is ineffective, and managerial agency problems resulting from ineffective board monitoring are still relevant. In the UK, the introduction of the Stewardship Code<sup>77</sup> was aimed at addressing the inactivity of institutional shareholders in the management of the company as a step towards promoting the engagement of institutional investors in monitoring the invested companies and enhancing levels of engagement by fund managers in the governance of investee companies.<sup>78</sup> However, the effectiveness of the Stewardship Code’s principles in practice is questionable. In particular, the voluntary enforcement nature of the Stewardship Code based on a comply-or-explain model, (as opposed to a mandatory rule) is regarded to be a loophole preventing active

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<sup>70</sup> BR Cheffins, *The History of Modern U.S. Corporate Governance: Volume I* (Edward Elgar 2011) at 112.

<sup>71</sup> BR Cheffins *Corporate Ownership and Control: British Business Transformed* (OUP 2008) at 344.

<sup>72</sup> BR Cheffins “The Stewardship Code’s Achilles’ Heel” (2010) 73 *Modern Law Review* 1004 at 1017.

<sup>73</sup> JE Bachelder “Institutional Shareholders and their Oversight of Executive Compensation” (2012) Harvard Law School Forum on Corporate Governance and Financial Regulation 6 at 34; M Faccio and M Lasfer “Institutional Shareholders and Corporate Governance: The case of UK Pension Funds” (2001) *CLR* 45. These articles recognise pension funds, insurers, mutual funds, charitable trusts, hedge funds and sovereign wealth funds as the main institutional shareholders in the USA and UK. A detailed discussion of the types of institutional shareholders will not be conducted as it lies outside the purview of this study.

<sup>74</sup> Cheffins, above n 72 at 1017; Moore and Petrin, above n at 17 at 98.

<sup>75</sup> Moore and Petrin, above n 17 at 98.

<sup>76</sup> Moore and Petrin, above n 17 at 132.

<sup>77</sup> Financial Reporting Council, UK Stewardship Code (2012).

<sup>78</sup> Stewardship Code, above n 334, Provision E.1.1.

monitoring of management by institutional shareholders.<sup>79</sup> Moreover, practical difficulties have arisen in policing the accuracy of the disclosures made by individual fund managers.<sup>80</sup> Finally, it is questionable as to what extent a fund manager's relatively weak commitment to the Stewardship Code's principles could be a cause of concern to institutional investors at the time of appointment if the fund manager's investment performance record is impressive.<sup>81</sup>

Contrary to the UK, in Sri Lanka, public companies have concentrated share ownership which is generally held by families.<sup>82</sup> A study conducted by Perera points out that 1 per cent of shareholders own approximately 80 per cent of shares in all public companies listed on the Colombo Stock Exchange and that more than 80 per cent of companies in Sri Lanka are family-owned.<sup>83</sup> This ownership pattern is common in other countries in the Asian region.<sup>84</sup> For example, in Vietnam, most public companies have an extensive network of indirect majority shareholding.<sup>85</sup> Likewise, in Thailand, some of the large-scale companies are dominated by investors within specific families.<sup>86</sup>

In public companies with concentrated ownership, agency problems would typically arise from majority shareholders obtaining private economic gain.<sup>87</sup> However, the Sri Lankan scenario seems rather unique with most public companies facing managerial agency problems. Research indicates that in situations where public companies with concentrated ownership are family-owned there can also be managerial agency problems.<sup>88</sup> This is often generated through either low-level of shareholder involvement in board decision-making when companies present a higher level of managerial complexities or as a result of the appointment of family members who are not shareholders as executive directors leading to minimum monitoring of these executive directors to preserve family bonds and avoid any disagreements among family members.<sup>89</sup> These situations can be observed in Sri Lankan public companies. A study

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<sup>79</sup> HY Chiu "Turning Institutional Investors into "Stewards": Exploring the Meaning and Objectives of "Stewardship" (2013) 66 *Current Legal Problems* at 443.

<sup>80</sup> Chiu, above n 79 at 75.

<sup>81</sup> Chiu, above n 79 at 75.

<sup>82</sup> S Perera *Corporate Ownership and Control: Corporate Governance and Economic Development in Sri Lanka* (World Scientific Publishing 2011) Ch 3 at 65.

<sup>83</sup> Perera, above n 82 at 65.

<sup>84</sup> G Yu *Comparative Corporate Governance in Vietnam: Political Economy and Legal Infrastructure* (Routledge 2007) at 25; T Hoshi "Thai Corporate Governance as a System" in KJ Hopt, H Kanda, MJ Roe, E Wymeersch and S Prigge (eds), *Comparative Corporate Governance: The State of the Art and Emerging Research* (OUP 1998), Ch 11(a).

<sup>85</sup> Yu, above n 84 at 25.

<sup>86</sup> Hoshi, above n 84; Yu, above n 84 at 26. Blockholder investors are defined as shareholders either individually or as a group holding 51% or more of shares in a company.

<sup>87</sup> Moore and Petrin, above n 17 at 71; Roe, above n 37 at 4.

<sup>88</sup> AR Anderson, SL Jack and SD Dodd "The Role of Family Members in Entrepreneurial Networks: Beyond the Boundaries of the Family Firm" (2005) 18 *International Business Review* 135; RC Anderson and DM Reeb "Founding-family ownership and firm performance: evidence from the S&P 500" (2003) 58 *Journal of Finance* 1301; Perera, above n 82 at 26; S Senaratne "Corporate Governance Reforms in Sri Lanka" (2011) *Sri Lanka Journal of Advanced Social Studies* 23.

<sup>89</sup> Perera above n 82 at 26; S Senaratne "Corporate Governance Reforms in Sri Lanka" (2011) *Sri Lanka Journal of Advanced Social Studies* 23.

conducted by Perera<sup>90</sup> identifies that most of the family-owned public companies in Sri Lanka have become complex conglomerates requiring expertise in carrying out its management. Senior managers with expertise, who are not shareholders, are usually appointed as executive directors to manage these companies. Over the years, this trend has caused shareholders to greatly rely on executive directors and inevitably reduced shareholders' interest in getting involved in board decision-making. As a result, the board's task of monitoring senior management has become greatly reliant on executive directors. This has provided sufficient leeway in some instances for executive directors to engage in opportunistic behaviour, such as stealing of corporate funds, without the shareholders knowing about it. The Ceylinco Limited scandal in Sri Lanka is an ideal example in this regard.<sup>91</sup> The board of Ceylinco Limited when incorporated in the 1940s as a public company consisted of directors directly appointed by the majority shareholders. Subsequently, with the expansion of the company after 1987 as a conglomerate, many senior managers with expertise in specific areas were appointed as executive directors. By the early 1990s, the board of Ceylinco Limited consisted mostly of executive directors and only a few directors directly appointed by family members. The economic performance of the company was significant during this time and substantial dividends were declared. Subsequently, due to the success of the company, board functions were mainly left to be conducted by the executive directors. However, this provided leeway for the CEO, CFO, and some of the other executive directors of the company to divert corporate funds for their personal benefit and to approve such benefits to some senior managers for over a period of 11 years. These actions were discovered by the majority shareholders only when the company faced financial troubles.

Another scenario has resulted from the appointment of family members who are not shareholders as executive directors.<sup>92</sup> In most of these instances, the actions of these executive directors are not questioned by other board members or the shareholders either due to the trust placed by family bonds or to avoid any disagreements among family members. This has been used as a leeway where some of these family members who are executive directors have used this opportunity to expropriate corporate funds for their personal benefits knowing that their actions would not be challenged. The Pramuka Bank scandal is a prominent example from Sri

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<sup>90</sup> Perera, above n 82 at 24.

<sup>91</sup> The Economist "A guide to corporate scandals – Ceylinco" (2012) <[www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals](http://www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals)>.

<sup>92</sup> AR Anderson, SL Jack and SD Dodd "The Role of Family Members in Entrepreneurial Networks: Beyond the Boundaries of the Family Firm" (2005) 18 *International Business Review* 135; RC Anderson and DM Reeb "Founding-family ownership and firm performance: evidence from the S&P 500" (2003) 58 *Journal of Finance* 1301.

Lanka in this regard.<sup>93</sup> Most of the executive directors on the board of Pramuka Bank were family members appointed by the major shareholder who were not shareholders themselves. The scandal resulted from the opportunistic behaviour of these executive directors, particularly the CEO who also operated as the Chair. Research into the board functions of Pramuka Bank has revealed that generally, the board did not monitor the decisions of the CEO or the other executive directors who were family members even when there were indications of opportunistic behaviour. This was in order to avoid any disagreements among the family.

The Sri Lankan scenario is a typical instance where underlying corporate legal theories have differed in practice. As a result, despite having contrasting share ownership structures in Sri Lanka and UK public companies, the occurrence of managerial agency problems has become a common characteristic. This has possibly been one of the reasons for Sri Lankan legislators to consider UK corporate governance rules to promote better board monitoring, which is explored in the next section.

### **3.4 Rules on board composition as a strategy to mitigate agency problems**

In a typical dispersed shareholding structure, an effective legal strategy to address managerial agency problems has been to introduce board composition rules.<sup>94</sup> The UK corporate governance rules incorporate this strategy and have rules on board composition. This approach is relevant as UK public companies mostly have a dispersed ownership structure. Similar to the UK, Sri Lanka followed this strategy although Sri Lankan public companies have a concentrated ownership structure. It became apparent when the International Financial Institutions (IFIs) imposed corporate governance reforms as a lending condition and the Sri Lankan legislators concentrated on developing board composition rules similar to the UK.

The Sri Lankan legislators introduced board composition rules requiring a blend of executive directors and NEDs on the board and separating the roles of chairman and CEO. These corporate governance reforms were largely due to some corporate scandals in Sri Lanka,<sup>95</sup> like the Ceylinco Limited and Seylan Bank scandals that resulted from a lack of proper monitoring by the board, which did not have a sufficient balance of executive and NEDs on the board and consisted of a majority of executive directors; and the Pramuka Bank scandal which was caused by the actions of a dominant CEO who operated as the Chair of the board

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<sup>93</sup> Daily FT “Lessons learned from corporate collapses – Pramuka Bank” (2014) <[www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792](http://www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792)>.

<sup>94</sup> Kraakman, above n 7 at 67; Moore and Petrin, above n 17 at 98 – the authors identify how board composition rules have promoted effective board monitoring in UK and USA and highlights how it works effectively when there is dispersed share ownership.

<sup>95</sup> Daily FT “Lessons learned from corporate collapses” (2014) <[www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792](http://www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792)>.

who together with some of the other executive directors manipulated board decisions in favour of senior management, not allowing other board members to conduct their monitoring functions effectively.<sup>96</sup>

Board composition rules requiring a balance of executive directors and NEDs adopted in UK corporate governance principles are followed in Sri Lankan corporate governance rules. As discussed earlier, NEDs are independent of management and do not have any personal or financial interest in the company, in contrast to executive directors who have a close relationship with the company because of either being an employee or shareholder of the company.<sup>97</sup> Further, as explained earlier, the executive directors' close association with senior management provides opportunities for agency problems to occur through ineffective board monitoring when the board consists mainly or exclusively of executive directors.<sup>98</sup> The corporate governance scandals of Polly Peck and BCCI in the UK mentioned previously evidence that when boards consist of a majority of executive directors, such boards often do not properly monitor senior management.<sup>99</sup> The appointment of NEDs is regarded as a measure to prevent this issue because their lack of close association with the company is regarded to bring independence to board monitoring. The Cadbury Committee Report of 1992 was the first authoritative attempt in the UK recommending the appointment of NEDs to the board.<sup>100</sup> The Cadbury Committee Report recommended the inclusion of a sufficient number of NEDs on the board. However, the threshold to constitute a "sufficient number" was not defined. This raised the question of what should be the right balance of executive directors and NEDs to be appointed to the board. Research indicates that at a minimum an equal number of executive directors and NEDs would be an ideal balance of directors on the board.<sup>101</sup> The USA NYSE rules which have the most stringent rules in this regard require companies to have a majority of NEDs on the board.<sup>102</sup> The UK Corporate Governance Code has less stringent rules promoting an ideal balance of directors by requiring at least half of the board of public

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<sup>96</sup> Perera above n 82 at 26; Senaratne above n 88 at 34; SN Uddin "Scandals from an Island: Testing Anglo-American Corporate Governance Frameworks" (2017) <[https://www.researchgate.net/publication/317687305\\_Scandals\\_from\\_an\\_Island\\_Testing\\_AngloAmerican\\_Corporate\\_Governance\\_Framework](https://www.researchgate.net/publication/317687305_Scandals_from_an_Island_Testing_AngloAmerican_Corporate_Governance_Framework)>.

<sup>97</sup> Kraakman, above n 7; Detailed in section 3.3.

<sup>98</sup> Keay above n 2 at 4; Mintz, above n 2 at 4; Roe above n 37 at 4; The Economist "A guide to corporate scandals" (2012) <[www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals](http://www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals)>.

<sup>99</sup> Roe above n 37 at 6; Keay above n 2 at 4; Mintz above n 2 at 4; The Economist "A guide to corporate scandals" (2012) <[www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals](http://www.economist.com/unknown/2002/07/15/a-guide-to-corporate-scandals)>; D Ackman "Polly Peck, Tyco, Enron-R.I.P" (2002) Forbes <[www.forbes.com/2002/07/01/0701topnews.html5bcfa8c5397](http://www.forbes.com/2002/07/01/0701topnews.html5bcfa8c5397)>. The BCCI and Polly Peck scandals exposed managerial agency problems through internal employee directors who occupied a majority on the board.

<sup>100</sup> The Cadbury Committee "Report of the Committee on the Financial Aspects of Corporate Governance (1992) Principle 4.1.

<sup>101</sup> Kraakman, above n 7 at 56; Moore and Petrin, above n 17 at 106.

<sup>102</sup> NYSE Listed Company Manual (2013) ss303A.01-303A.07.

companies to comprise of NEDs.<sup>103</sup> Sri Lankan corporate governance rules do not adopt a proper balance of executive directors and NEDs. Following the wording of the Cadbury Committee Report, the Sri Lankan Corporate Governance Code of 2003 did not initially specify the number of NEDs to be appointed and required boards to have an adequate number of NEDs. However, today the number of NEDs to be appointed to boards of public companies has been specified, which is to appoint NEDs in a number equivalent to one-third of the total number of directors.<sup>104</sup> This threshold does not promote an equal balance of executive directors and NEDs on public company boards as in the UK. It leaves opportunities for executive directors to still dominate the board. As such, the underlying aim of appointing NEDs cannot be fully achieved. Allegedly this is because there is a shortage of NEDs. Most professional directors in Sri Lanka hold multiple directorships which diminish their independence and do not allow them to meet the criteria needed for a NED.<sup>105</sup> Moreover, the Sri Lanka Institute of Directors points out that most of these directors do not want to be NEDs because of disparities in remuneration between NEDs and executive directors.<sup>106</sup> NEDs as non-working, part-timers are regarded to be paid 60 per cent less than executive directors in Sri Lanka.<sup>107</sup> This research identifies that even though NEDs sit on multiple boards, they still receive a much lesser annual remuneration than executive directors.<sup>108</sup> However, this has not prevented the Sri Lankan legislators from having stringent rules on the number of NEDs appointed to banks and finance companies. The Sri Lankan Central Bank rules which apply to banks and finance companies require a majority of directors on the board to be NEDs.<sup>109</sup> This is because of the public impact that results if banks and financial institutions are subject to ineffective board monitoring.<sup>110</sup> Moreover, the shortage of NEDs has not created much impact on board appointments to banks and finance companies because of the relatively small percentage of banks and finance companies in Sri Lanka as opposed to public companies.

The requirement of independence for NEDs in Sri Lankan corporate governance rules follows UK law and it is considered a necessity in order to ensure that NEDs do not have any connections with the company that could affect their decision-making. The development of the

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<sup>103</sup> UK Corporate Governance Code (2018), Provision 11 < <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>>.

<sup>104</sup> Code of Best Practice on Corporate Governance 2013 (Sri Lanka), Principle A.5.1; Colombo Stock Exchange, Listing Rules 2020, s 7.10.

<sup>105</sup> Perera, above n 82 at 47; Senaratne above 88 at 56.

<sup>106</sup> Sri Lanka Institute of Directors "Review of non-executive directors in Sri Lanka" (2015) SLID Journal 23.

<sup>107</sup> Perera, above n 82 at 47; Senaratne above n 88 at 56.

<sup>108</sup> Perera, above n 82 at 47; Senaratne above n 88 at 56. The authors identify how there is a significant disparity in remuneration between executive directors and NEDs even though NEDs sit on multiple boards. However, this does not imply that NEDs need to be paid as much as the executive directors.

<sup>109</sup> Central Bank Rules (2008), s 28 – The Central Bank rules apply to all bank and financial institutions.

<sup>110</sup> Perera, above n 82 at 47; Senaratne above n 88 at 56.

criteria for independence originated in the UK and can be traced back to the Cadbury Committee Report which stated that NEDs need to demonstrate that they are independent both in character and judgement.<sup>111</sup> The UK Higgs Review expanded this definition of independence by detailing the relationships and circumstances which could affect the independence of NEDs.<sup>112</sup> These included previous or current employment in the company, any business relationships with the company, family ties to the company, significant links to other directors on the board, or holding cross directorships.<sup>113</sup> The same requirements were included in the UK Corporate Governance Code (Combined Code) of 2003. The current UK Corporate Governance Code has expanded these criteria further by including significant shareholding in the company, board membership of the company for a continuous period exceeding nine years from the date of the first appointment, or any relevant circumstance which affects the independent judgement of NEDs.<sup>114</sup> In Sri Lanka, the Cadbury Committee criteria was followed in the Corporate Governance Code of 2003. Thereafter, with changes in the UK with the Higgs Review recommendations, the Sri Lankan Corporate Governance Code of 2008 expanded these criteria by including the relationships that could interfere with the independence of NEDs provided in the UK Corporate Governance Code of 2003. Today, these criteria have been expanded further and the current Sri Lankan Corporate Governance Code and the Colombo Stock Exchange listing rules adopt the same criteria provided in the UK Corporate Governance Code.<sup>115</sup>

Rules requiring the appointment of NEDs to board committees are another area where Sri Lanka has followed the UK. The appointment of NEDs to board committees is aimed at having a better independent review of specific board matters. In Sri Lanka, the UK, and many other jurisdictions, corporate matters of the board can be delegated to specific committees of directors such as the nomination committee, remuneration committee, and audit committee.<sup>116</sup> The nomination committee is primarily involved in recommending and advising the board in planning the board composition, evaluating the competencies required of prospective directors, and establishing plans for succession to the board and senior management.<sup>117</sup> The role of the

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<sup>111</sup> Kraakman, above n 7 at 67.

<sup>112</sup> D Higgs “Review of the role and effectiveness of non-executive directors” (2003) Department for Business, Enterprise and Regulatory Reform.

<sup>113</sup> Higgs, above n 112 at 3.

<sup>114</sup> UK Corporate Governance Code (2018), Provision 10.

<sup>115</sup> Cadbury Committee recommendations in the Sri Lankan Corporate Governance Code 2003. Subsequent developments in the UK Corporate Governance Code were adopted periodically in the Codes of Best Practice in Sri Lanka in 2008, 2013 and 2017 and the Colombo Stock Exchange Listing Rules 2009–2017.

<sup>116</sup> Kraakman, above n 7 at 23; Wickramanayake, above n 18 at 45.

<sup>117</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Annexure A; Colombo Stock Exchange, Listing Rules (2020), s 7.10.



remuneration committee includes setting and evaluating senior management remuneration.<sup>118</sup> The audit committee is responsible for reviewing the financial statements, managing audit functions, and risk management processes.<sup>119</sup> Where executive directors dominate these board committees it has often resulted in the ineffective review of matters, such as by executive directors establishing successions plans for their choice of candidates to be appointed and re-elected as directors,<sup>120</sup> deciding on excessive senior management remuneration,<sup>121</sup> and insufficient review of financial matters.<sup>122</sup> To ensure better monitoring and evaluation within nomination, remuneration, and audit committees it has been recommended that these committees should consist either exclusively of NEDs or have a majority of NEDs.<sup>123</sup> This tripartite board committee structure consisting of NEDs was introduced in the UK following the recommendations of the Cadbury Committee.<sup>124</sup> To promote better monitoring and independent review within such board committees, today, the UK Corporate Governance Code requires the presence of a majority of NEDs on the nomination committee<sup>125</sup> and for audit committees and remuneration committees to consist exclusively of NEDs.<sup>126</sup> The 2003 Sri Lankan Corporate Governance Code implemented the recommendations in the Cadbury Committee Report regarding the structure of establishing audit, remuneration, and nomination committees consisting of NEDs.<sup>127</sup> However, less stringent rules were adopted in Sri Lanka with regard to the number of NEDs to be appointed to these committees. The Cadbury Committee Report recommended audit and remuneration committees to exclusively consist of NEDs and for the nomination committee to consist of a majority of NEDs.<sup>128</sup> However, according to the 2003 Sri Lankan Corporate Governance Code, companies were only required to appoint a majority of NEDs to audit committees and remuneration committees, and for nomination committees to consist of one-third of NEDs. As discussed earlier, this may have been due to the lack of sufficient NEDs in Sri Lanka. The current 2017 Sri Lankan Corporate Governance Code and 2018 Listing Rules of the Colombo Stock Exchange continue to follow

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<sup>118</sup> UK Corporate Governance Code (2018), Provision 33; ASX Corporate Governance Principles and Recommendations 2019, Recommendation 8.1; NYSE Listed Company Manual (2013), Rule 303A.05; Colombo Stock Exchange, Listing Rules (2018) LR 7.10.5.; Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Schedule C.

<sup>119</sup> ASX Corporate Governance Principles and Recommendations 2019, Recommendation 4.1; UK Corporate Governance Code (2018), Provision 25; NYSE Listed Company Manual (2013), Rule 303A.07; Colombo Stock Exchange Listing Rules (2018) LR 7.10.6; Code of Best Practice (Sri Lanka) 2017, Provision D.3.

<sup>120</sup> Kraakman, above n 7 at 58; Roe above n 37 at 6.

<sup>121</sup> Kraakman, above n 7 at 58; Roe above n 37 at 6.

<sup>122</sup> Kraakman, above n 7 at 67; Moore and Petrin, above n 17 at 106.

<sup>123</sup> Kraakman, above n 7 at 67; Roe above n 37 at 4.

<sup>124</sup> The Cadbury Committee, above n 130, ss 4.30, 4.35, 4.42.

<sup>125</sup> UK Corporate Governance Code (2018), Provision 17.

<sup>126</sup> UK Corporate Governance Code (2018), Provision 24 and 32.

<sup>127</sup> Code of Best Practice 2003 (Sri Lanka), Principle D.

<sup>128</sup> The Cadbury Committee, above n 357, ss 4.30, 4.35, 4.42.

this threshold for audit committees<sup>129</sup> and nomination committees.<sup>130</sup> However, the Sri Lankan Corporate Governance Code has strengthened the rules on the presence of NEDs on remuneration committees, by requiring the chairman of the committee and a majority of directors to be NEDs.<sup>131</sup> This requirement resulted from many corporate scandals being caused due to executive directors approving excessive director remuneration.<sup>132</sup>

Another rule to promote effective board monitoring has been the board composition rules that require a separation of the roles of chairman and CEO. There seem to be similarities between the approach followed in the UK and Sri Lanka. The UK and Sri Lankan Corporate Governance Codes identify the role of the chairman of the board to include, among others, leading and directing the board and constructively conducting board proceedings by promoting openness and debate.<sup>133</sup> After the occurrence of some corporate scandals, it is regarded that where the CEO is appointed as chairman of the board, board discussions would not become constructive because the chairman can lead board discussions to be in favour of senior management, which has caused ineffective monitoring by the board. This also creates a concentration of corporate powers of the board to a single board member who can dominate board decision-making which can lead to ineffective board functioning.<sup>134</sup> It is therefore recommended to separate the roles of CEO and chairman. The separation of the roles of chairman and CEO was implemented on the recommendations of the Cadbury Committee and was established following many corporate scandals in the UK arising from the positions of chairman and CEO being held by one person.<sup>135</sup> Sri Lanka has adopted this rule in relation to public companies, banks, and finance companies due to similar reasons.<sup>136</sup>

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<sup>129</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Principle D.3.1; Colombo Stock Exchange, Listing Rules (2018), LR 7.10.6.

<sup>130</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Schedule A.

<sup>131</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Schedule C.

<sup>132</sup> Daily FT “Lessons learned from corporate collapses” (2014) <[www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792](http://www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792)>.

<sup>133</sup> UK Corporate Governance Code (2018), Principle F; Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Principle A.3.

<sup>134</sup> Forbes “Combined Chairman/CEO Roles: Easier than you think” (2014)

<[www.forbes.com/sites/robinferracone/2014/03/05/combined-chairmanceo-roles-easier-than-you-think/#5aa3c6516e89](http://www.forbes.com/sites/robinferracone/2014/03/05/combined-chairmanceo-roles-easier-than-you-think/#5aa3c6516e89)>; OECD “The Board of Directors: Composition, Structure, Duties and Power: Company Law Reform in OECD Countries” (2000) <[www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf](http://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf)>. These articles recognise the concentration of power of the board as a result of making a single individual the Chairman and CEO where board discussions can be dominated by such individual. The Parmalat scandal is considered a result of such coupling of the roles of Chairman and CEO; C Erdmann “The Parmalat Scandal: Italy’s Enron” (2004) 580.

<sup>135</sup> D Ackman “UK corporate scandals” (2002) Forbes <[www.forbes.com/2002/07/01/0701topnews.html5bcafa8c5397](http://www.forbes.com/2002/07/01/0701topnews.html5bcafa8c5397)>. The concentration of power among the Chairman and CEO had been one of the reasons for the BCCI and Polly Peck International scandals.

<sup>136</sup> Code of Best Practice on Corporate Governance 2017 (Sri Lanka), Principle A.2; Daily FT “Lessons learned from corporate collapses – Pramuka Bank” (2014) <[www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792](http://www.ft.lk/management/lessons-learned-from-corporate-collapses/53-346792)> - the Pramuka Bank scandal can be mentioned as an example.

Board gender diversity is another board composition rule introduced in the UK and many other jurisdictions.<sup>137</sup> Despite following UK corporate governance principles, the Sri Lankan legislators did not engage with this discussion and have not considered introducing board gender diversity rules. This is a substantial gap in Sri Lankan corporate governance rules which should have been addressed by the legislators considering the research depicting the benefits that board gender diversity rules could offer. As Sri Lankan legislators have been keen to follow developments in the UK, this delay in introducing board gender diversity rules could have only been justified if there was no definitive evidence explaining that board gender diversity rules cannot address managerial agency problems. This is difficult to accept as there is empirical evidence that points out that managerial agency problems could be reduced by having gender-balanced boards.<sup>138</sup> In particular, this research claims that managerial agency problems are less significant in gender-balanced boards than in boards that consist of a majority of male directors because male directors generally choose to adopt a more lenient approach in monitoring senior management than female directors.<sup>139</sup> This situation is regarded to be more significant in companies with a majority of male executive directors on the board. It is because male executive directors are considered to have a tendency to have close working relationships with senior managers that can interfere with their monitoring role.<sup>140</sup> Managerial agency problems are considered to be considerably less where women are executive directors because they are considered not to allow their working relationship with senior management to interfere with their monitoring role.<sup>141</sup> As a result, where women are executive directors, it is regarded to lead to lesser issues of executive directors getting together with senior managers to expropriate corporate benefits. Moreover, in boards that consist of a majority of male NEDs, ineffective monitoring of senior managers is considered more evident than in a gender-balanced board because in most instances male NEDs are regarded to be acquainted with the

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<sup>137</sup> UK Corporate Governance Code (2018), Principle J; A Storvik and M Teigen “Women on Boards: The Norwegian Experience” (2010) Friedrich-Ebert-Stiftung at 8; P Spender “Gender quotas on Boards – Is it time for Australia to lean in?” (2015) 20 Deakin Law Review 1 <<https://doi.org/10.21153/dlr2015vol20no1art496>> These articles identify the approach in UK and other jurisdiction such as Norway and Australia that adopt board gender diversity rules.

<sup>138</sup> S Nielsen and M Huse “The Contribution of Women on Board of Directors: Goes Beyond the Surface” (2010) 18 (2) Corporate Governance: An International Review 136; AF Jurkus, JC Park and LS Woodard “Women in Top Management and Agency Costs” (2015) 64(2) Journal of Business Research 180; N Jadyappa, P Jyothi, B Sireesha, L E Hickman “CEO gender, firm performance and agency costs: evidence from India” (2019) 46 Journal of Economic Studies 2 at 482 <<https://doi.org/10.1108/JES-08-2017-0238>>; AF Jurkus, JC Park and LS Woodard “Gender diversity, firm performance, and environment” (2008) 6(2) Journal of Business Research 47; V Singh, S Terjesen and S Vinnicombe “Newly appointed directors in the boardroom: How do women and men differ?” (2008) 26(1) European Management Journal 48.

<sup>139</sup> Jurkus, Park and Woodard, above n 138 at 183; Nielsen and Huse above n 138 at 137; S Locke “Women on Board, Firm Financial Performance and Agency Costs” (2011)

<[https://www.academia.edu/1187061/Women\\_on\\_Board\\_Firm\\_Financial\\_Performance\\_and\\_Agency\\_Costs](https://www.academia.edu/1187061/Women_on_Board_Firm_Financial_Performance_and_Agency_Costs)>

<sup>140</sup> Jurkus, Park and Woodard, above n 138 at 183; Locke above n 139 at 168.

<sup>141</sup> Jurkus, Park and Woodard, above n 138 at 183; Locke, above n 139 at 168.

male executive directors by being part of the same social network.<sup>142</sup> Having gender diversity on the board by appointing women directors is regarded to address these issues. Women directors who are NEDs are considered to be careful in their social connections and considered to be more independent than male NEDs.<sup>143</sup> This has resulted in research recommending the appointment of women directors as NEDs as opposed to men.

The research pointing to the reduction of managerial agency problems through the appointment of women directors is still developing. However, there is clear evidence that illustrates the benefits of including women directors on boards when considering the contributions women directors can make to board monitoring and overall board functionality. This is a more efficient method of promoting better board functionality without limiting the scope to addressing managerial agency problems. It will offer a different angle to consider the benefits of board composition rules and understand methods of promoting better corporate governance. This will be the scope of the following chapters.

### **3.5 Summary**

This chapter critically analysed rules concerning the board of directors in Sri Lanka. It showed that these rules have generally followed UK corporate governance principles with similarities observable in the rules formulating the board structure and allocating powers to the board. The chapter also considered the functions performed by the board with a focus on the boards' monitoring role. This analysis extended to the agency problems that result from ineffective board monitoring. In particular, it explored how the agency problems differ based on the ownership structures of public companies with a focus on Sri Lanka and the UK. This discussion observed how the UK public companies mostly having a dispersed ownership structure and Sri Lankan public companies having a concentrated ownership structure. Despite these differences in the ownership structure, the analysis suggested the occurrence of similar managerial agency problems in public companies of both countries. This reflects the manner in which underlying corporate theories do not always operate in practice. Sri Lankan corporate governance rules have followed the UK corporate governance model in relation to board composition as legal strategies to control managerial agency problems. Emphasis was on the rules requiring a blend of executive directors and NEDs on the board and the separation of the roles of chairman and CEO, owing to its relevance in the Sri Lankan context. Despite following UK corporate governance rules, Sri Lanka did not introduce rules on board gender diversity.

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<sup>142</sup> Jurkus, Park and Woodard, above n 138 at 183; Locke above n 139 at 168; Nielsen and Huse above n 138 at 138.

<sup>143</sup> Jurkus, Park and Woodard, above n 138 at 183; Locke, above n 139 at 168.

This is despite empirical evidence pointing out that managerial agency problems could be reduced by having board gender diversity. This was found to be a substantial gap that needs to be addressed. While the empirical evidence pointing to the reduction of managerial agency problems through board gender diversity rules is notable, a more convincing analysis could be identified by considering the benefits that women directors can offer to improve board monitoring and overall board functionality. From this perspective, women directors could improve the governance of a company.

## CHAPTER 4 – THE DEBATE ON BOARD GENDER DIVERSITY

### 4.1 Introduction

The concept of board gender diversity is increasingly gaining attention as a legal strategy to promote a more effective board composition in public companies.<sup>1</sup> As mentioned in earlier chapters, the United Kingdom (UK) and various countries globally have implemented rules on board gender diversity, although Sri Lankan legislators have largely neglected the topic. This chapter explores the economic and social benefits that rules on board gender diversity could bring to Sri Lankan corporate governance and inevitably to the country.

First, the chapter explores how the concept of board gender diversity has become a topical theme on board composition. It analyses global statistics which suggest a significant gender imbalance in boards of public companies, and critically considers the position in Sri Lanka, where there is a significant underrepresentation of women directors on boards of public companies.<sup>2</sup>

Most justifications for board gender diversity are based on economic benefits linked to increased corporate financial performance.<sup>3</sup> However, as will be discussed below, empirical results are questionable and do not demonstrate a robust link between board gender diversity and increased corporate financial performance.<sup>4</sup> There are also other economic benefits which need to be taken into account when analysing the economic rationale for implementing board gender diversity rules. One of them is the intrinsic value which women directors add to improving board effectiveness.<sup>5</sup> This is not limited to effective monitoring of senior management by the board to address managerial agency problems but encompasses efficacy in overall board functionality. It includes board tasks such as formulating policies and conducting strategic development, board processes and board cohesiveness.

In analysing the implementation of rules on board gender diversity in Sri Lanka, equal attention should also be given to the equality benefits provided through the implementation of board gender diversity rules. This discussion is particularly useful for Sri Lanka because

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<sup>1</sup> Section 4.2 below.

<sup>2</sup> Deloitte Touche Limited “Women in the boardroom: a global perspective” (4th edn, Deloitte Touche Tohmatsu Limited 2019) <[www.deloitte.com/global-perspective](http://www.deloitte.com/global-perspective)>; Section 4.2 below.

<sup>3</sup> Credit Suisse “Gender Diversity and Corporate Performance” (2012) Credit Suisse 4; Catalyst “The bottom line: Corporate performance and women’s representation on boards” (2007) Catalyst 5; see section 4.4.1(a).

<sup>4</sup> C Rose “Does female board representation influence firm performance? The Danish evidence” (2007) 15(2) Corporate Governance: An International Review 15; DA Carter, FP D’Souza, BJ Simkins and WG Simpson “The Gender and ethics diversity of US Boards and board committees and firm financial performance” (2010) 18(5) Corporate Governance: An International Review 396, 411; refer Section 4.2 below.

<sup>5</sup> Section 4.4.1(b). The research indicated in this section is criticised by some opponents of board gender diversity as leading to gender stereotyping. Despite these comments, this literature has been the basis to denote the value of having women directors and in promoting board gender diversity rules.

literature highlights issues of gender inequality in society that result from the impacts of the country's traditional patriarchal culture which has not recognised parity among men and women and has created barriers preventing women from having equal access to employment as men.<sup>6</sup> As discussed in Chapter 2, this is despite Sri Lanka ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which recognises the need to change the traditional role of men and women in society and achieve full equality among men and women. This issue in Sri Lanka in fact could be addressed by introducing rules on board gender diversity. This perspective was examined by analysing the policy objectives underpinning the introduction of rules on board gender diversity in Norway, Spain, and India,<sup>7</sup> together with the recommendations of international organisations that examined board gender diversity as a way of promoting gender equality in society.<sup>8</sup> The chapter finally highlights the need to explore the concept of board gender diversity through both the economic and equality lenses.<sup>9</sup>

## 4.2 Board gender diversity as a recurring theme on board composition

Board gender diversity is often defined as the “inclusion of a balance of male and female directors on corporate boards”,<sup>10</sup> and it has attracted much attention as a strategy in the formulation of board composition rules for public companies. As suggested earlier, for example, Christine Lagarde the president of the European Central Bank highlighted the importance of maintaining board gender diversity in corporate boardrooms in public companies by commenting that the board of Lehman Brothers Holdings Inc would not have been so ineffective if there had been gender diversity on the board.<sup>11</sup> While the statement by Lagarde was viewed favourably by some, it generated scathing critiques by others, who characterised the statement as “a kind of lazy, sugar-and-spice gender essentialism” and “a tedious slice of benevolent sexism”.<sup>12</sup> Similar sentiments to Lagarde's have been expressed by others. The then

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<sup>6</sup> DS Vithanage “Understanding the nature and scope of patriarchy in Sri Lanka” (2015) 37 <repository.stcloudstat.edu/socresp\_etds>; HMA Herath “Place of women in Sri Lankan society: Measures for empowerment for development and good governance” (2015) 1 (1) University of Sri Jayawardenapura Colombo publications <mysip.ac.lk>.

<sup>7</sup> A Storvik and M Teigan “Women on boards: The Norwegian experience” (2010) Friedrich-Ebert-Stiftung 8; M Luckerath-Rovers “A comparison of gender diversity in the corporate governance codes of France, Germany, Spain, the Netherlands and the United Kingdom” (2010) <<http://ssrn.com/1585280>>; section 4.4.2 below.

<sup>8</sup> European Commission “Gender balance in decision-making positions” (2018) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>; OECD “Report on the Gender Initiative: Gender equality in education, employment and entrepreneurship” (2011) <[www.oecd.org/social/481111145.pdf](http://www.oecd.org/social/481111145.pdf)>

<sup>9</sup> Refer summary at section 4.5 below.

<sup>10</sup> European Commission “Report on the proposal for a Directive of the European Parliament and the Council – COM (2012) 614” (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)>.

<sup>11</sup> C Lagarde “Women, Power and the Challenge of the Financial Crisis” (2010) The New York Times <[www.nytimes.com/2010/05/11/opinion/11iht-edlagarde.html?dbk](http://www.nytimes.com/2010/05/11/opinion/11iht-edlagarde.html?dbk)>.

<sup>12</sup> A Fogg “Don't Give Me This 'If Lehman Sisters Had Been In Charge.....Nonsense'” (2013) The Guardian <[www.theguardian.com/commentisfree/2013/sep/17](http://www.theguardian.com/commentisfree/2013/sep/17)>.

European Union (EU) Commissioner for Justice, Věra Jourová, expressed the benefits of board gender diversity as a rule for board composition, stating that “female directors have a very good talent for long-term, sensible spending [and] for crisis-solving because they can come up with proposals for negotiation and compromise. It is a necessary balance to the approach of male directors.”<sup>13</sup> Elin Hurvenes, the chair of the Professional Boards Forum in Norway, also acknowledged the importance of board gender diversity in gaining diverse perspectives on the board, commenting that, “female directors have a different perspective to male directors, which can lead to better decision-making”.<sup>14</sup> Even in Sri Lanka, the topic of board gender diversity is gaining momentum through public discussions, debates and prominent publications. For example, a recent article published in the Sri Lankan Financial Times identified that “Sri Lankan public companies lacking board gender diversity tend to suffer from governance-related issues and generated less equity”.<sup>15</sup> In 2018, the Colombo Stock Exchange in Sri Lanka, launched an event titled “Ring the Bell for gender equality” to raise awareness on board gender diversity as a strategy to improve board performance.<sup>16</sup> The Sri Lanka Institute of Directors also hosted many events and workshops to educate the corporate community on the benefits of gender diversity in the boardroom. At a recent event the Sri Lanka Institute of Directors highlighted that board gender diversity promoted “better decisions, better performance, better representation of diversified thought and was not a concept merely to add colour to the board”.<sup>17</sup> Owing to the increased scrutiny on the topic, in 2018 board gender diversity was dubbed “the strategy of the year on board composition” in many publications in Sri Lanka and overseas.<sup>18</sup>

### 4.3 A global snapshot of board gender diversity

As a litmus test, board gender diversity is first of all analysed through a comparison between the percentage of female directors on boards with the number of male directors.

<sup>13</sup> The Guardian “EU to push for 40% quota for women on company boards” (2018)

<[www.theguardian.com/world/2017/nov/20/eu-to-push-for-40-quota-for-women-on-company-boards](http://www.theguardian.com/world/2017/nov/20/eu-to-push-for-40-quota-for-women-on-company-boards)>.

<sup>14</sup> K Mugnaini “Interview: Reflections on Diversity in the boardroom with Elin Hurvenes” (2019)

<<https://familybusinessnorway.no/wp-content/uploads/2019/03/Interview-Reflections-on-Diversity-in-the-Boardroom-with-Elin-Hurvenes-by-Karin-Mugnaini.pdf>>.

<sup>15</sup> The Financial Times Sri Lanka “The case for gender diversity among Sri Lanka Business leadership” (2019)

<[www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The\\_Case\\_Gender\\_Diversity\\_Among\\_Sri\\_Lanka\\_Business\\_Leadership.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The_Case_Gender_Diversity_Among_Sri_Lanka_Business_Leadership.pdf?MOD=AJPERES)>.

<sup>16</sup> Sustainable Stock Exchange Initiative “Colombo Stock Exchange – Ring the Bell for gender equality” (2018)

<[www.sseinitiative.org/2018-ring-the-bell-for-gender-equality/](http://www.sseinitiative.org/2018-ring-the-bell-for-gender-equality/)>.

<sup>17</sup> Sri Lanka Institute of Directors “Gender diversity on boards” (2016) <[www.slid.lk/gender-diversity-boards](http://www.slid.lk/gender-diversity-boards)>.

<sup>18</sup> Sri Lanka Institute of Directors, above n 17; C Banahan and G Hassan “Across the board improvements: Gender diversity and ESG Performance” (2018) Harvard Law school on corporate governance and financial regulation

<<https://corpgov.law.harvard.edu/2018/09/06/across-the-board-improvements-gender-diversity-and-esg-performance>> ; P

Gorman “More women directors in 2018 shows diversity on the rise” (2018) Corporate board member magazine

<<https://boardmember.com/women-directors-2018-shows-diversity-rise>>.



Global statistics indicate that female directors are noticeably underrepresented on the boards of most public companies in comparison with male directors. For instance, in the United States of America (USA), as of 2019, only 19.2 per cent of board seats of the Fortune 500 companies were held by women directors.<sup>19</sup> In the UK, only 26.1 per cent of board seats on the FTSE 100 companies were held by women.<sup>20</sup> In Australia, women's representation on the boards of companies listed on the ASX was less at 23.6 per cent.<sup>21</sup> Regionally, Europe displayed the most noteworthy increase in women's board representation, which in 2018 was at 23.3 per cent.<sup>22</sup> Asia and Africa remain virtually stagnant in their growth on women's board representation, with records indicating in 2018 merely 12.4 per cent and 14.4 per cent respectively.<sup>23</sup> In Sri Lanka, a dire situation exists, where the Department of Census and Statistics records women's representation on corporate boards of public companies at 8 per cent.<sup>24</sup>

Against this background of statistical data, board gender diversity rules are used as a strategy to increase women directors' representation on boards. Before exploring the methods to promote board gender diversity, the justifications in support of including women directors on boards are discussed below.

#### **4.4 Rationales for women on boards**

The impetus for adding women on boards is often justified through an economic rationale based on a positive causal relationship with corporate financial performance.<sup>25</sup> However, it has been questioned whether business case justifications always produce unequivocal results.<sup>26</sup> As a result of that, it has been argued that the economic rationale for women on boards should be based on women directors' contributions to improving overall board effectiveness.

As suggested earlier, the economic rationale alone does not provide a conclusive justification for women directors' participation on boards because it is necessary to give equal attention to the social case (equality rationale) underpinning the inclusion of women directors

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<sup>19</sup> The New York Times "Women on Boards: Where the US ranks" (2019) <[www.nytimes.com/2019/11/upshot/women-on-boards](http://www.nytimes.com/2019/11/upshot/women-on-boards)>; McKinsey & Company "Women on boards" (2019) <[www.gov.uk/government/usa](http://www.gov.uk/government/usa)>.

<sup>20</sup> Lord Davies of Abersoch "Women on boards: 5-year summary (Davies Review)" (2015) Department of Business, Innovation and Skills UK 3 at 5.

<sup>21</sup> Australian Institute of Company Directors "30% by 2018: Gender diversity progress report" (2017) at 11.

<sup>22</sup> European Commission "Gender balance in decision-making positions" (2018) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>.

<sup>23</sup> Deloitte Touche Limited "Women in the boardroom: a global perspective" (2019) <[www.deloitte.com/asia-africa-gender](http://www.deloitte.com/asia-africa-gender)>.

<sup>24</sup> Sri Lanka Institute of Directors "Gender diversity on boards – statistics" (2017) <[www.slid.lk/gender-diversity-boards](http://www.slid.lk/gender-diversity-boards)>.

<sup>25</sup> Catalyst "The bottom line: Corporate performance and women's representation on boards" (2007) Catalyst at 5; Credit Suisse "Gender Diversity and Corporate Performance" (2012) Credit Suisse at 4.

<sup>26</sup> RB Adams and D Ferreira "Women in the boardroom and their impact on governance and performance" (2009) 94 J Fin Econ 291 at 292; F Dobbin and J Jung "Corporate Board Gender Diversity and Stock Performance: The competence gap or institutional investor bias?" (2011) 89 North Carolina Law Review 809 at 819.

on corporate boards.<sup>27</sup> Using an equality lens, women's representation on the board would be a sign of an equal and balanced society, where there is an equal distribution of power, resources, and participation. It is suggested in this study that to establish a convincing justification for women on boards, the benefits of women directors should be examined from both an economic and equality standpoint.

#### **4.4.1 The economic rationale**

##### *(a) The "business case" for board gender diversity*

The business case for board gender diversity is dominated by economic justifications. These are often based on utilitarian arguments.<sup>28</sup> Numerous studies establish a positive correlation between women's presence on boards and corporate financial performance. A study conducted by Catalyst for example showed that public companies with more women directors recorded a higher return on financial indicators such as return on equity, return on sales, and return on invested capital.<sup>29</sup> Similarly, a global survey conducted by Credit Suisse suggested that public companies with at least one female board member yielded a higher return on equity and net income than boards with no women directors.<sup>30</sup> Likewise, the McKinsey & Company report, *Diversity Matters*, concluded that public companies with women on boards were more likely to perform above the median in their national industry and record better financial performance than companies with no women directors.<sup>31</sup> Further, the empirical studies conducted by Carter et al<sup>32</sup> and Farrell and Hersch<sup>33</sup> reached similar conclusions and revealed that public companies with strong financial results had more women directors on the board. Recent articles published in Sri Lanka have also taken into account these findings and suggested that board gender diversity could improve corporate financial performance.<sup>34</sup>

Despite these findings, a considerable body of literature argues that there is a negative or at most neutral relationship between women on boards and corporate financial performance. Adams and Ferreira claim that there is no robust link between women on boards and corporate

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<sup>27</sup> B Choudhury "New Rationales for women on boards" (2014) Oxford Journal of Legal Studies 511 at 512; K Watson, "Gender diversity on corporate boards" (2014) 3 Journal of Australian Law Teachers Association 1 at 4.

<sup>28</sup> DA Carter, BJ Simkins and WG Simpson "Corporate Governance, Board Diversity and Firm Value" (2003) 38(1) Fin Rev 33; NL Erhardt, JD Werbel and CB Shrader "Board of Director diversity and firm financial performance" (2003) 11(2) Corp Governance: An International Review at 102.

<sup>29</sup> Catalyst "The bottom line: Corporate performance and women's representation on boards" (2007) Catalyst at 5.

<sup>30</sup> Credit Suisse "Gender Diversity and Corporate Performance" (2012) Credit Suisse at 4.

<sup>31</sup> V Hunt, D Layton and S Price "Diversity Matters" (2015) McKinsey & Company at 3.

<sup>32</sup> Carter, Simkins and Simpson, above n 28 at 27.

<sup>33</sup> KA Farrell and PL Hersch "Additions to Corporate Boards: The effect of gender" (2005) 11 J Corp F 85 at 90.

<sup>34</sup> Sri Lanka Institute of Directors "Gender diversity on boards" (2016) <[www.slid.lk/gender-diversity-boards](http://www.slid.lk/gender-diversity-boards)>; The Financial Times Sri Lanka "The case for gender diversity among Sri Lanka Business leadership" (2019) <[www.ifc.org/wps/wcm/connect/c6cbb7b154e544f1893f6deae41440dd/The\\_Case\\_Gender\\_Diversity\\_Among\\_Sri\\_Lanka\\_Business\\_Leadership.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/c6cbb7b154e544f1893f6deae41440dd/The_Case_Gender_Diversity_Among_Sri_Lanka_Business_Leadership.pdf?MOD=AJPERES)>.

financial performance, and usually a negative effect exists between women on boards and corporate financial performance.<sup>35</sup> Dobbin and Jung came to a similar conclusion, arguing that the presence of women on boards leads to share price reductions.<sup>36</sup> Moreover, their study found that investors react negatively to companies with women directors. Several other academics suggested that either the connection between women on boards and corporate financial performance is neutral or is methodologically complex.<sup>37</sup> The mixed results gathered globally demonstrate that a definitive justification for including women on boards cannot be established by the traditional business case argument on board gender diversity, and the economic rationale for women on boards should possibly be explored on the basis of a more persuasive approach.

*(b) Beyond the traditional “business case” for board gender diversity*

Utilitarian arguments underpinning the economic rationale for gender diversity on boards can also be based on the benefits women directors bring towards board functioning; that is, by considering the intrinsic value of including women directors on boards. Strategic management theorists suggest that the utilitarian arguments for board gender diversity should be based on the notion that women directors can improve board effectiveness.<sup>38</sup> In Sri Lanka the evidence to date has not considered this view. As a result, legislators remain sceptical towards implementing legal rules for the inclusion of women directors on boards.

As mentioned earlier, board effectiveness is often referred to as the efficacy in conducting board functions.<sup>39</sup> This includes effectiveness in fulfilling board tasks and board processes and acting as a cohesive unit.<sup>40</sup> It encompasses more than the role of monitoring senior management. Women directors’ contributions to the implementation of board tasks and processes, and to board cohesiveness will be evaluated from this point onwards by drawing on strategic management literature.

Board tasks include monitoring senior management, enacting corporate policies, hiring senior management, and providing counsel and advice to senior management.<sup>41</sup> In particular, board tasks are evaluated on the basis of the board’s effectiveness in conducting monitoring and management functions.<sup>42</sup> The board acts as the monitoring mechanism to ensure that senior

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<sup>35</sup> Adams and Ferreira, above 26 at 292.

<sup>36</sup> Dobbin and Jung, above n 26 at 819.

<sup>37</sup> Rose, above n 4, at 15; Carter, Simkins and Simpson, above n 28 at 33.

<sup>38</sup> DP Forbes and FJ Milliken “Cognition and Management: Understanding boards of directors as strategic decision-making groups” (1999) 24 *Acad Management Rev.* 489 at 490; S Nielsen and M Huse “The contribution of women on boards of directors: Going beyond the surface” (2010) 18 *Corp Governance* 136 at 137.

<sup>39</sup> SM Bainbridge *Corporate Governance after the Financial Crisis* (OUP 2012) 44.

<sup>40</sup> Bainbridge above n 39 at 39.

<sup>41</sup> Forbes and Milliken, above n 38 at 490.

<sup>42</sup> Bainbridge, above n 39 at 44- Bainbridge identifies these functions as the main role of the board.

managers engage in the effective management of the company. Research identifies that female directors are tougher monitors of Chief Executive Officers (CEOs) and senior management than male directors.<sup>43</sup> Adams and Ferreira's research suggests that boards with more female directors are more likely to hold CEOs and senior management accountable for poor stock performance than male directors.<sup>44</sup> This in turn correlates with better CEO and senior management performance in companies with more women directors.<sup>45</sup> Moreover, studies find that female directors are able to monitor and scrutinise CEO compensation and senior management remuneration better than male directors.<sup>46</sup> Also, as female directors are regarded to be better at monitoring and evaluating risks associated with the management of the company than male directors,<sup>47</sup> it is suggested that women directors should be appointed to the board and audit and risk committees to promote better risk management.<sup>48</sup>

Research also indicates that women directors make a significant contribution to formulating effective policies and promoting better strategic development.<sup>49</sup> In particular, women directors' inclusive style of engagement when discussing and formulating policies and strategies is regarded as a way of promoting better board discussions and decisions, and implicitly better strategic development.<sup>50</sup> Moreover, female directors are considered to be more sensitive to corporate social responsibility issues than male directors,<sup>51</sup> and companies with women directors on the board are regarded as more attuned to corporate social responsibility-related issues when formulating policies and developing corporate strategies.<sup>52</sup>

Further, women directors' inclusion on boards is justified by the contribution they make towards improving board cohesiveness: which is the degree to which boards act as well-integrated units.<sup>53</sup> Women directors improve cohesiveness because of their participative leadership behaviour and greater sensitivity to the views of others, therefore improving board discussion and minimising board conflicts.<sup>54</sup> Nielsen and Huse found that the ratio of women

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<sup>43</sup> Forbes and Milliken, above n 38 at 490; Nielsen and Huse, above n 38 at 137.

<sup>44</sup> Adams and Ferreira, above n 26 at 292.

<sup>45</sup> Adams and Ferreira above n 26 at 292.

<sup>46</sup> JD Westphal and EJ Zajac "Who shall govern? CEO/Board power, demographic similarity and new director selection" (1995) 40 Admin Sci Q 60 at 61.

<sup>47</sup> JF Graham "Gender differences in investment strategies: An information processing perspective" (2002) 20 (1) International Journal of Bank Marketing 17 at 17.

<sup>48</sup> Graham, above n 47 at 17; Watson, above n 27 at 3.

<sup>49</sup> S Nielsen and M Huse "The contribution of women on boards of directors: Going beyond the surface" (2010) 18 Corp Governance 136 at 137; M Huse, S T Nielsen and I M Hagen "Women and Employee-elected board members and their contributions to board control tasks" (2009) 89 J Bus Ethics 581 at 582.

<sup>50</sup> Nielsen and Huse, above n 49 at 137; Huse, Nielsen and Hagen, above n 49 at 582.

<sup>51</sup> RA Bernardi, S Bosco and K Vassill "Does female representation on boards of directors associate with Fortune 100 best companies to work for list?" (2006) 45 Bus Soc 235 at 236; S Bear, N Rahman and C Post "The impact of Board Diversity and Gender composition on corporate social responsibility and firm reputation" (2010) 97 J Business Ethics 207, 208.

<sup>52</sup> Bernardi, Bosco and Vassill, above n 51 at 236; Bear, Rahman and Post, above n 51 at 208.

<sup>53</sup> I Summers, T Coffelt and RE Horton "Work-group cohesion" (1988) 63 (2) SAGE Journal 627 at 629.

<sup>54</sup> Summers, Coffelt and Horton, above n 53 at 629.

directors to be negatively associated with board conflict<sup>55</sup> and that women directors' influence boards to value multiple viewpoints and opinions, enhancing board discussion and cohesiveness.<sup>56</sup>

Finally, women directors' contribution is also significant in the implementation of board processes, which are the procedures and methods used by board members in making decisions.<sup>57</sup> The contribution of women directors includes the efforts made in fulfilling board tasks, improvements in cognitive conflict, and adding diversity in knowledge and skills to the board. Effective boards have members who put in greater efforts at preparation for and participation at meetings,<sup>58</sup> such as in reviewing information essential for board decisions in advance, engaging in in-depth discussion of issues, regular attendance, and efficient reviewing of the performance of the board.<sup>59</sup> Female directors have been shown to exert a higher level of commitment than male directors in these areas.<sup>60</sup> Huse and Solberg suggest that female directors spend more time preparing for board meetings, devoting more time to board evaluation, and have better attendance records than male directors.<sup>61</sup> In addition, Fondas and Sassalos state that because of extensive preparation before board meetings, female directors are better at highlighting conflict-inducing and tough issues at board meetings than male directors.<sup>62</sup> Further, Nielsen and Huse's study revealed that female directors exert a more significant effort than male directors in the area of board development activities, which has contributed towards improving overall board effectiveness.<sup>63</sup>

Moreover, women directors are considered to improve cognitive conflict among board members. Cognitive conflict is defined as the critical and investigative interaction among board members in making decisions.<sup>64</sup> This includes the exchange of multiple viewpoints prior to making decisions. Cognitive conflict in the boardroom is known to promote better decision-making and is considered a method of avoiding group-thinking. Women directors are considered to bring diverse viewpoints to board discussions<sup>65</sup> and most are regarded as

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<sup>55</sup> Nielsen and Huse, above n 49 at 137.

<sup>56</sup> Nielsen and Huse, above n 49 at 137.

<sup>57</sup> Forbes and Milliken, above 38 at 490.

<sup>58</sup> R Wageman "Interdependence and Group effectiveness" (1995) 40 Admin Sci Q 145 at 150.

<sup>59</sup> Forbes and Milliken, above n 38 at 490; Wageman, above n 58 at 150.

<sup>60</sup> Wageman, above n 58 at 150.

<sup>61</sup> M Huse and AG Solberg "Gender-related boardroom dynamics: How Scandinavian women make and can make contributions on corporate boards" (2006) 21 J Management Studies 113 at 115.

<sup>62</sup> N Fondas and S Sassalos "A different voice in the boardroom: How the presence of women directors affects board influence over management" (2000) Global Focus 12 at 13.

<sup>63</sup> Nielsen and Huse, above n 49 at 138.

<sup>64</sup> Forbes and Milliken, above n 38 at 490; KA Jehn "A multimethod examination of the benefits and detriments of intragroup conflict" (1995) 40 Admin Sci Q 256 at 258.

<sup>65</sup> VW Kramer, AM Konrad and S Erkhut "Critical mass on corporate boards: Why three or more women enhance governance" (2006) Wellesly Center for Women – Report No. 74 at 3; D Bilimoria "Building the business case for women corporate directors" in Ronald J Burke and others (eds) *Women on Corporate Boards of Directors: International Challenges and Opportunities* (Kluwer Academic Publishers 2000) at 31.

fostering better boardroom discussions because of their transformational leadership style. This characteristic encourages collaboration by listening to other points of view and considering interests other than one's own, thereby improving communication and interaction among board members.<sup>66</sup> Women directors also improve cognitive conflict on the board through their critical and investigative character.<sup>67</sup> This quality enables them to champion difficult or controversial issues and broadens discussions to better represent concerns of a variety of stakeholders.<sup>68</sup>

Furthermore, women directors increase intellectual diversity on the board.<sup>69</sup> This is because they have unique knowledge and skills which male directors do not possess.<sup>70</sup> For example, female directors were identified as having a better understanding of the consumer market structure than male directors. The London Annual Business Survey found that companies with gender-diverse boards develop new products needed by consumers at a faster pace than homogeneous boards, owing to the greater range of perspective, experience, and expertise.<sup>71</sup> Diversification of experience in the board also contributes towards the long-term survival of the company and provides a stabilised corporate environment.<sup>72</sup> Research conducted by the UK Parker Review also suggested that companies need to promote gender diversity in order to manage risks and cope with the diversification of markets and stakeholders.<sup>73</sup>

The above inquiry clarified the intrinsic contribution that women directors can make towards improving overall board effectiveness. While not every woman director will contribute in each area discussed above, economic research suggests that women directors generally make valuable contributions to improving board effectiveness. This argument has not been discussed in the Sri Lankan context but provides a valuable economic rationale for including women on boards.

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<sup>66</sup> Kramer, Konrad and Erkhut, above n 65 at 3; Bilimoria, above n 65 at 31.

<sup>67</sup> Kramer, Konrad and Erkhut, above n 65 at 3; Bilimoria, above n 65 at 31.

<sup>68</sup> Kramer, Konrad and Erkhut, above n 65 at 3; Bilimoria, above n 65 at 31.

<sup>69</sup> Kramer, Konrad and Erkhut, above n 65 at 3; Bilimoria, above n 65 at 31.

<sup>70</sup> Forbes and Milliken, above n 38 at 490; Nielsen and Huse, above n 49 at 137.

<sup>71</sup> M Nathan and N Lee "Cultural diversity, Innovation and Entrepreneurship: Firm-level evidence from London" (2013) 89 *Economic Geography* 367 at 389.

<sup>72</sup> Kramer, Konrad and Erkhut, above n 65 at 3; P Bradshaw and D Wicks "The experience of white women on corporate boards in Canada: Compliance and Non-compliance to hegemonic masculinity" in Ronald J Burke and Mary C Mattis (eds) *Women on corporate boards of directors: International challenges and opportunities* (Kluwer Academic 2000) 197 at 207.

<sup>73</sup> Sir John Parker, The Parker Review Committee "Beyond One by 21: A report into the Ethnic Diversity of UK Boards" (2017) at 24. The analysis on ethnic diversity included in this report has not been incorporated as it lies outside the purview of this research. Reference is only made to the discussion on gender diversity included in this article for the purposes of this study.

#### 4.4.2 *The social case for board gender diversity*

Justifications for board gender diversity are often based on an economic rationale. However, as mentioned earlier, sole reliance on economic justifications does not address the actual reasons for there being an insignificant number of women directors on boards. Accordingly, a greater understanding of why women are underrepresented on boards is needed, and this will be explored in the following sections. As Choudhury explains,

“the equality issues underpinning the broader topic of women on boards need to be addressed if initiatives on board gender diversity are to be workable.”<sup>74</sup>

Justifications for board gender diversity from an equality standpoint are based on the premise of creating an equal or balanced society, where there is an equal distribution of power, resources, and participation between men and women. Directorships in companies are considered important sources of power and influence. A former member of the Norwegian government during a parliamentary debate on board gender diversity recognised directorships as positions of power in society:

“[I]n a society where market forces might be said to be more important than ever before, it is even more important that women are well represented especially in positions where power is situated, mainly within company boards.”<sup>75</sup>

Parity in the representation of women and men in corporate boards would reflect an equal or balanced society where there is equality in positions of power.<sup>76</sup> As Spender states, “women’s participation on boards is a measure of democratic leadership because companies are critical actors in the public sphere and company directors can influence public debate and access to resources.”<sup>77</sup> The concept of board gender diversity from an equality standpoint is identified to encompass promoting equal opportunities.<sup>78</sup> According to Rawls,<sup>79</sup> offices and positions should be available to all under conditions of fair equality of opportunity and be “open in a formal sense.”

“[T]hose who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success... [F]ree market arrangements must be set within a framework of political and legal institutions which . . . preserves the social conditions necessary for fair equality of opportunity.”<sup>80</sup>

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<sup>74</sup> Choudhury above 27 at 512.

<sup>75</sup> T Giske, Member of Parliament as quoted in H Bjørkhaug and S O Sørensen “Feminism without Gender? Arguments for Gender Quotas on Corporate Boards in Norway” in A Storvik and M Teigan (2010); Choudhury n 27 at 513.

<sup>76</sup> Choudhury, above n 27 at 512; Watson above 27 at 4.

<sup>77</sup> P Spender “Gender quotas on Boards – Is it time for Australia to lean in?” (2015) 20 Deakin Law Review 1 <<https://doi.org/10.21153/dlr2015vol20no1art496>>.

<sup>78</sup> Choudhury, above n 27 at 515; Watson, above n 27 at 5; Spender, above 77 at 1.

<sup>79</sup> J Rawls *A Theory of Justice* (Harvard University Press 1999) 66.

<sup>80</sup> Rawls above n 79 at 67.

Rawls's ideas on inequality in opportunities have been extended to problems of gender-related inequalities of opportunity in corporate boards. The underrepresentation of women directors has been identified as an outcome of unfairness in opportunities in leadership roles.<sup>81</sup> Rules on board gender diversity are aimed at recognising that women with equal knowledge and competence as men deserve equal access to board seats.

In Sri Lanka, as discussed in Chapter 2, there exist significant issues of gender inequality in society. This is primarily due to the patriarchal social structure that recognises males as the primary powerholders in society. Women are given a secondary status to men.<sup>82</sup> This is a barrier for women to pursue leadership roles and one of the causes that has impacted the appointment of women directors to Sri Lankan public company boards. From 1978, successive Sri Lankan governments have taken many measures to address the issues of gender inequality in society.<sup>83</sup> One of them has been the adoption of the United Nations (UN) Charter of Women's rights in the Constitution and the provision of the right to freedom from discrimination on the basis of sex. Other measures include the establishment of women's bureaus and ministries for women to safeguard women's interests, and the promotion of free education for men and women within the formal education system.<sup>84</sup> However, the Sri Lankan legislators have not considered board gender diversity as a measure to promote gender equality in society, despite globally several jurisdictions introducing rules on board gender diversity to this end. In particular, the policy objectives underpinning the introduction of rules on board gender diversity in Norway, Spain, and India have been motivated by the aim of achieving gender equality by including women on boards. In addition, many international organisations have recommended rules on board gender diversity in order to address issues of gender inequality existing in society. Among these, the European Commission, Organisation for Economic Co-operation and Development (OECD), United Nations Women (UN Women), and the International Labour Organisation (ILO) have been proactive in proposing board gender diversity as an initiative to promote gender equality.

As suggested above, the equality standpoint underpinning the concept of board gender diversity can be most successfully justified by reviewing the underlying policy objectives of

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<sup>81</sup> Choudhury, above n 27 at 515; Watson, above n 27 at 5; AA Dhir, *Challenging Boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) at 23 at 23.

<sup>82</sup> HMA Herath "Place of women in Sri Lankan society: Measures for their empowerment for development and good governance" (2015) 1(1) University of Sri Jayawardenapura Colombo publications <<http://mysjp.ac.lk>>; DS Vithanage "Understanding the nature and scope of patriarchy in Sri Lanka" (2015) at 37 <[http://repository.stcloudstat.edu/socresp\\_etds](http://repository.stcloudstat.edu/socresp_etds)>.

<sup>83</sup> Herath above n 82 at 3; Vithanage above n 82 at 37.

<sup>84</sup> Herath, above n 82 at 3; Vithanage, above n 82 at 37.



countries that have adopted regulatory measures on board gender diversity with the intention of achieving gender equality in society. Norway, Spain, and India have most often been cited in this regard.

Norway was the first country to legislate on the matter. In 1999, there was societal concern about gender equality in Norway.<sup>85</sup> As a result, the Norwegian government at the time focused on promoting this aspect.<sup>86</sup> The initial attempt to achieve gender equality in society was through an amendment to the Equal Status Act 1978. This required non-governmental organisations to report on gender metrics and provide equal remuneration to men and women. However, as public consultations and referrals by a government committee on legal considerations revealed that the amendments to the Equal Status Act did not address the gender gap in corporate boardrooms,<sup>87</sup> the Norwegian government decided to amend the Companies Act in 2007 to include provisions to give effect to board gender diversity. According to the Norwegian Companies Act, all public companies had to include 40 per cent female board membership. Sanctions in the form of dissolution of the company were imposed for non-compliance.<sup>88</sup> The motivation underlying the implementation of laws on board gender diversity in Norway was discussed by a former State Secretary of Norway at an address at the Economic Commission for Europe. This evidences that laws on board gender diversity were introduced in Norway to address gender inequality.

“[W]omen of today are highly educated, and we need their competence equally in all spheres and sectors in the labour market. Many people think of the reasoning behind these rules on board gender diversity and it’s safe to say it is broadly within gender equality.”<sup>89</sup>

Similar to Norway, Spain also implemented rules on board gender diversity with the sole motivation of advancing gender equality in society. In 2004, Spain faced political change with the appointment of a new socialist government that aimed at strengthening the institutional framework of the country by advancing gender equality in society.<sup>90</sup> New gender equality laws were implemented aimed at curtailing gender violence, legalising same-sex marriages, and

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<sup>85</sup> M Teigen “Gender quotas for corporate boards in Norway: Innovative gender equality policy” in C Fagan, MC Gonzalez Menendez and S Gomez Anson (eds) *Women on Corporate Boards in Top Management: European Trends and Policy* (Palgrave Macmillan 2012) 70 at 78.

<sup>86</sup> A Storvik and M Teigen “Women on Boards: The Norwegian Experience” (2010) Friedrich-Ebert-Stiftung at 8.

<sup>87</sup> A Sweigart “Women on boards for change: The Norway model of boardroom quotas as a tool for progress in the United States and Canada” (2012) 32(4) *Nw J Int’L & Bus* 82A at 87A.

<sup>88</sup> Public Limited Liability Companies Act No. 13 of 1997 (amended in 2007) (Norway), § 6-11a.

<sup>89</sup> K Erik ØIE, State Secretary, Ministry for Children and Equality, Norway “Gender equality: a key component of a modern growth strategy” (Speech delivered at Economic Commission For Europe 60th Anniversary Session, Geneva, 25–27 April 2007).

<sup>90</sup> European Parliament “Spanish policy on gender equality: Relevant current legislation and policies” (2009) EU Directorate-General for Internal Policy Department at 5 <[www.europarl.europa.eu/studies](http://www.europarl.europa.eu/studies)>.

promoting gender equality between men and women.<sup>91</sup> In particular, the Spanish Organic Act 3/2007 included provisions recognising equal representation of women on corporate boards within the broader goal of achieving gender equality.<sup>92</sup> Subsequently, the Spanish Companies Act was amended to specifically promote gender equality in the corporate boardroom. It required all public companies with more than 250 employees and all IBEX-35 companies to have at least 40 per cent representation of each gender included in the composition of the board with the ultimate aim of accomplishing gender equality.<sup>93</sup>

The roadmap to the implementation of board gender diversity rules in India also points to the objective of achieving gender equality. In 2013, India was ranked poorly in the World Economic Forum gender gap index<sup>94</sup> and the OECD social institution's gender index.<sup>95</sup> This was due to the country reporting severe issues of gender inequality including women's participation on corporate boards. Concerns arose also about the corporate governance practices in the country.<sup>96</sup> The Indian Government amended the Companies Act and included a rule on board gender diversity that required all public companies having a paid-up share capital of INR 100 crore or more to have at least one female director.<sup>97</sup> In addition, the Securities and Exchange Board listing rules were amended to incorporate rules requiring the appointment of at least one female director to the position of executive director or non-executive director (NED) in public companies.<sup>98</sup> The Institute of Company Secretaries of India suggested that the Indian Government initiated rules on board gender diversity through the changes to company law with the aim of addressing the pressing issues of gender inequality prevalent at the time.<sup>99</sup>

The above examples show that in each of these jurisdictions, the motivation for the implementation of rules on board gender diversity was within the overarching aim of achieving gender equality in society.

The equality rationale which is achieved by board gender diversity can also be analysed by looking at the decisions of international organisations that recommend rules on board gender diversity. Among these organisations, the European Commission is the only regulatory body

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<sup>91</sup> M Luckerath-Rovers "A comparison of gender diversity in the corporate governance codes of France, Germany, Spain, the Netherlands and the United Kingdom" (2010) <<http://ssrn.com/abstract=1585280>>.

<sup>92</sup> Organic Act 3/2007 (Spain) Title VII, art 75.

<sup>93</sup> European Parliament, above n 90 at 6; Luckerath-Rovers, above n 91 at 18.

<sup>94</sup> World Economic Forum "Global gender gap report" (2013) – places India in 105<sup>th</sup> position among 136 countries.

<sup>95</sup> OECD "Social Institutions and gender index report" (2013) – places India in 56<sup>th</sup> position among 86 countries.

<sup>96</sup> KM Shaw "Is India Inc's new-found enthusiasm to have women board members a reflection of changing mind set or mere tokenism?" The Economic Times, April 2015; N Bhalla "Indian Firms Mock Gender Diversity as Boardroom Deadline passes: Analyst" Reuters, April 2015.

<sup>97</sup> Companies Act 2013 (India) s 149(1).

<sup>98</sup> Securities and Exchange Board (India) Listing obligations and disclosure requirements regulations (2015), s 17(1)

<sup>99</sup> The Institute of Company Secretaries India "Gender Diversity in the Boardroom" (2015) <[www.icsi.edu/webModules/CompaniesAct2013/GenderDiversity](http://www.icsi.edu/webModules/CompaniesAct2013/GenderDiversity)>.

that has made attempts to advance board gender diversity. In 2012, it proposed a directive requiring public companies of the EU member states to have a 40 per cent presence of women appointed in non-executive directorship positions.<sup>100</sup> According to this proposal, public companies that had less than 40 per cent women appointed as NEDs were required to make new appointments by applying gender-neutral criteria. The 40 per cent threshold was required to be met by 2021. The proposed directive did not apply to small and medium-sized enterprises or non-listed companies. The proposal was approved by the European Parliament in 2013.<sup>101</sup> However, the European Council is yet to approve the directive. According to the European Commission proposal report, it was designed with the objective of promoting equal treatment and equal opportunities in employment and leadership among men and women in the EU in order to address the severe gender gap in boardrooms in European companies.<sup>102</sup>

Other international organisations such as the OECD, United Nations Women (UN Women), and the ILO have supported the implementation of rules on board gender diversity. These recommendations have the goal of promoting gender equality. In 2011, the OECD announced its gender initiative, which addressed gender equality in education, employment, and entrepreneurship.<sup>103</sup> In addition, the OECD Principles on Corporate Governance<sup>104</sup> supported the adoption of board gender diversity with the objective of promoting gender equality in the corporate boardroom. Further, UN Women promoted the implementation of board gender diversity through its women's empowerment principles, which proposed the participation of 30 per cent or more women in corporate boardrooms in companies.<sup>105</sup> Also, the ILO in its global report recognised gender stereotyping as the main barrier towards women's advancement to the boardroom and proposed the incorporation of legal rules on board gender diversity as a strategy to curtail gender inequality in society.<sup>106</sup>

The above examples emphasise the need to have an equal society built on the notions of social justice, where board gender diversity is used to prompt normative change both within the corporate context and in society through equal distribution of power and resources.

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<sup>100</sup> European Commission "Report on the proposal for a Directive of the European Parliament and the Council – COM (2012) 614" (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)>.

<sup>101</sup> European Parliament "Commentaries on Report on the proposal for a Directive of the European Parliament and the Council –COM (2012) 614" (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)>.

<sup>102</sup> European Commission "Gender balance in decision-making positions" (2016) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>.

<sup>103</sup> OECD "Report on the Gender Initiative: Gender equality in education, employment and entrepreneurship" (2011) <[www.oecd-social/481111145.pdf](http://www.oecd-social/481111145.pdf)>.

<sup>104</sup> OECD "G20/OECD Principles on Corporate Governance" (2015) Principle VI <[www.oecd-library.org](http://www.oecd-library.org)>.

<sup>105</sup> United Nations "Women's empowerment principles: Equality means business" (2011) <[www.unwomen.org/2011/women-s-empowerment-principles.en.pdf](http://www.unwomen.org/2011/women-s-empowerment-principles.en.pdf)>.

<sup>106</sup> International Labour Organisation "Women in Business and Management: Gaining momentum Global Report" (2015) at 4.

## 4.5 Summary

The body of literature on board gender diversity provides promising signs that the issue of underrepresentation of women directors in boards of public companies can be addressed through the introduction of rules on board gender diversity. There are strong economic and equality justifications to validate the arguments in favour of board gender diversity. However, allowing the economic rationale to be based exclusively on traditional business case arguments linking board gender diversity with corporate financial performance is questionable.<sup>107</sup> It is perhaps more convincing to base the economic rationale for board gender diversity on research indicating the value of women directors in improving board effectiveness.<sup>108</sup> However, economic benefits alone are insufficient to make the concept of board gender diversity workable and it is necessary to consider the manner in which board gender diversity could be used to address the underlying issues responsible for an underrepresentation of women directors on boards of public companies. This chapter highlighted how board gender diversity could be used to address gender inequality in society.<sup>109</sup> Examples were provided by considering the policy objectives of Norway, Spain, and India, which have introduced rules on board gender diversity to promote gender equality. The analysis was also supported by the recommendations of international organisations in relation to board gender diversity. The argument that will be developed in the following chapters will establish that the concept of board gender diversity could also be used as a measure to promote gender equality in Sri Lanka, combining the economic rationale on board effectiveness and the equality rationale on addressing issues of gender inequality in society.

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<sup>107</sup> Section 4.4.1(a) above.

<sup>108</sup> Section 4.4.1(b) above.

<sup>109</sup> Section 4.4.2 above.

## CHAPTER 5 – REGULATORY APPROACHES ON BOARD GENDER DIVERSITY

### 5.1 Introduction

“How to get more women in the boardroom – quotas or disclosures? The debate continues to be unravelled”<sup>1</sup> – this statement and many others expressing similar sentiments have become common, identifying board gender diversity quotas and disclosures as distinctive legal strategies to promote more women directors to boards.<sup>2</sup> While countries adopting board gender quota rules require companies to include a particular percentage of women directors on boards,<sup>3</sup> jurisdictions implementing disclosure rules on board gender diversity require companies to publicly report the gender breakdown in the board.<sup>4</sup> Key characteristics are common to both approaches, although there are some variations in different jurisdictions.<sup>5</sup> This chapter analyses the regulatory approaches adopted on board gender diversity with the overarching aim of identifying which approach would be better suited for Sri Lanka.<sup>6</sup> The first section explores how countries adopt quotas and disclosure rules on board gender diversity before engaging in a comparative analysis of these two strategies. The following section analyses the European Commission recommendations on converging towards a one-size-fits-all solution based on a quota model similar to Norway.<sup>7</sup> The suitability of this approach is tested in later chapters to assess the possibility of transplanting these legal rules on board gender diversity in Sri Lanka.<sup>8</sup> The final section highlights the need to introduce systemic changes in society to assist in the effective implementation of rules on board gender diversity. These measures should aim on reducing gender stereotyping, promote gender equality and help to address the obstacles preventing women from reaching directorships in public companies.<sup>9</sup>

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<sup>1</sup> EY Reporting “How to get more women in the boardroom” (2019) <[www.ey.com/en\\_gl/assurance/how-to-get-more-women-in-the-boardroom](http://www.ey.com/en_gl/assurance/how-to-get-more-women-in-the-boardroom)>.

<sup>2</sup> For example, H Raleigh “Evidence from Norway shows gender quotas don’t work for women” (2017) 35(4) *Nw J Int’L & Bus* 86; Gender and Economy “The debate about quotas” (2019) <[www.gendereconomy.org/the-debate/](http://www.gendereconomy.org/the-debate/)>; Forbes “Disclosures to bring women into the boardroom are missing the point” (2015) <<https://forbes-theconversation.gender/>>.

<sup>3</sup> AA Dhir *Challenging Boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) at 34.

<sup>4</sup> Detailed in section 5.2.

<sup>5</sup> Detailed in section 5.2.

<sup>6</sup> Discussed in section 5.3.

<sup>7</sup> European Commission “Gender balance in decision-making positions” (2016) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>; Discussed in section 5.4.

<sup>8</sup> Discussed in section 5.4.

<sup>9</sup> Discussed in section 5.5.

## 5.2 The legal regulatory landscape on board gender diversity

As global statistics show a significant underrepresentation of women directors in public companies,<sup>10</sup> discussions on possible legal strategies to promote the presence of more women directors to corporate boards have become common. For example, a publication issued by the European Commission Directorate-General for Justice and Consumers in 2016 emphasised that “the spotlight within the topic of board gender diversity should be placed on the legal rules to crack the glass ceiling in Europe”.<sup>11</sup> While the European Commission’s publication specifically focused on the introduction of board gender diversity rules in Europe, the issue is relevant in other parts of the globe.<sup>12</sup> A similar view was expressed, for example, at a forum held by the National Conference of State Legislation in the United States of America (USA), where it was stated that “any discussions on board gender diversity should be centered around the legal rules to effectively foster gender diversity in corporate boards”.<sup>13</sup> Likewise, a publication by PwC in 2017 asserted that “globally, attention on the topic of women on boards should be placed on the legal regulations to make it happen”.<sup>14</sup>

Legislators in many countries have proceeded to address the underrepresentation of women directors on boards by introducing legal rules on board gender diversity. According to Choudhury in designing these legal rules countries determine whether to adopt an *ex ante* or *ex post* approach.<sup>15</sup> An *ex ante* approach focuses on preventing the underrepresentation of women directors on boards, whereas an *ex post* approach deters such occurrence by imposing penalties on companies who fail to comply with these board gender diversity rules. The adoption of an *ex ante* or *ex post* approach relies on whether legislators adopt soft laws or hard

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<sup>10</sup> Deloitte Touche Limited “Women in the boardroom: a global perspective” (4th edn, Deloitte Touche Tohmatsu Limited 2019) <[www.deloitte.com/asia-gender/](http://www.deloitte.com/asia-gender/)> The authors recognise that in Asia, women board representation is at 12.4% and in Africa at 14.4%; European Commission “Gender balance in decision-making positions” (2016) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)> recognise women’s board representation among European countries to be at 23.3%; The New York Times “Women on Boards: Where the US Ranks” (2015) <[www.nytimes.com/2015/11/upshot/women-on-boards](http://www.nytimes.com/2015/11/upshot/women-on-boards)> reported that in the USA only 19.2% of the Fortune 500 companies were held by women directors; Lord Davies of Abersoch “Women on Boards: 5 year summary” (Davies Review) (2015) Department of Business, Innovation and Skills UK 3 The authors recognise that in the United Kingdom only 26.1% of board seats on the FTSE 100 companies are held by women.

<sup>11</sup> European Commission “Gender Balance on Corporate Boards: Europe is cracking the glass ceiling” (2016) <[https://ec.europa.eu/newsroom/document.cfm?doc\\_id=46280](https://ec.europa.eu/newsroom/document.cfm?doc_id=46280)>.

<sup>12</sup> P Spender “Gender quotas on Boards – Is it time for Australia to lean in?” (2015) 20 Deakin Law Review 1 – in this article the use of legal rules by adopting a quota mechanism is considered in the Australian context; AA Dhir *Challenging Boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) 34 – in this publication the author analyses the legal rules adopted in Norway and USA to promote board gender diversity; J Iles “New Zealand ranked among the worst in the world for women on boards” (2018) <[www.stuff.co.nz/business/102046471/new-zealand-ranked/](http://www.stuff.co.nz/business/102046471/new-zealand-ranked/)> –the article analyses legal rules in place in New Zealand to promote board gender diversity.

<sup>13</sup> National Conference of State Legislation in the United States of America “Gender diversity on corporate boards: What will 2019 bring?” NCSL <[www.ncsl.org/2019/01/04/gender-diversity-on-corporate-boards-what-will-2019-bring.aspx](http://www.ncsl.org/2019/01/04/gender-diversity-on-corporate-boards-what-will-2019-bring.aspx)>

<sup>14</sup> PwC Global “Diversity and Inclusion: a global perspective” (2017) <[www.pwc.com/gx/en/about/diversity.html](http://www.pwc.com/gx/en/about/diversity.html)>.

<sup>15</sup> B Choudhury “Balancing soft and hard law for business and human rights” (2018) 67 (4) International & Comparative Law Quarterly 961; B Choudhury “New Rationales for women on boards” (2014) Oxford Journal of Legal Studies 511 at 512.

laws.<sup>16</sup> Hard laws are generally regarded to be legal rules that create enforceable rights and duties with penalties for non-compliance and soft laws impose standards of expected behaviour. Two types of legal rules on board gender diversity have been adopted to date: legislative board diversity quotas and disclosures. The quota rules follow a hard law approach where legislation mandates particular levels of gender balance in the boardroom and non-compliance results in penalties.<sup>17</sup> Disclosures are a soft law approach where regulators require companies to report publicly on the gender breakdown in the board with variable levels of detail.<sup>18</sup> Before considering a suitable approach to implement legal rules on board gender diversity in Sri Lanka, it is appropriate to assess how the quota and disclosure approaches operate in jurisdictions that have adopted these methods.

#### *(a) The quota approach*

Generally, countries following the quota approach on board gender diversity have incorporated mandatory rules requiring a minimum representation of the underrepresented gender in corporate boards.<sup>19</sup> As global statistics show that corporate boards are mostly male-dominated, one of the key characteristics of the quota approach has been the inclusion of a proportion of women directors to create a gender balance.<sup>20</sup> This ensures that one gender does not significantly overshadow another in the boardroom. As Dhir explains:

quota-related approaches have as a common denominator – the goal of achieving a particular gender balance by imposing a threshold of the underrepresented gender... The design of these rules attempts to ensure that the pendulum of gender does not swing too far in the boardroom.<sup>21</sup>

Despite the above-mentioned common goal, jurisdictions have enacted the quota approach in variable proportions and imposed different penalties for noncompliance. At present, there is no consensus on what constitutes an optimum proportion of women directors needed to achieve a gender balance on the board. Theoretically, a quota of 50 per cent should be the appropriate percentage to achieve board gender balance.<sup>22</sup> However, the adoption of a

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<sup>16</sup> Choudhury, above n 15.

<sup>17</sup> Discussed in detail in section 5.2(a).

<sup>18</sup> Discussed further in section 5.2(b).

<sup>19</sup> JN Gordon “The Mandatory Structure of Corporate Law” 89 Columbia Law Review 1549 (1989). The definition of mandatory rules adopted in these articles is incorporated for the purpose of this study. In a broad and generic sense mandatory rules are referred to as legal rules which are not optional or discretionary and have to be complied with by the parties to which the rules apply. A detailed discussion on mandatory rules will not be conducted as it is outside the scope of this study.

<sup>20</sup> AA Dhir, *Challenging Boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) 34.

<sup>21</sup> Dhir, above n 20 at 72

<sup>22</sup> J Armstrong and S Walby, European Parliament, Directorate-General for Internal Policies “Gender Quotas in Management Boards” (2012) 4 European Parliament 6; J Du Plessis, J Sullivan and R Rentschler “Multiple layers of gender diversity on corporate boards: To force or not to force?” (2014) 19(1) Deakin Law Review at 2.

50 per cent threshold of women directors on the board “has not been adopted by any country up to date and is only confined to theory”.<sup>23</sup> Even if the European Commission is pushing for a 40 per cent presence of women directors on the boards in public companies in European Union (EU) member states,<sup>24</sup> both within the EU member states and internationally, there is no consensus regarding a precise desirable percentage. Significant jurisdictional differences exist in the threshold adopted under the quota approach. For example, in Norway, which was the first country to adopt a board gender quota rule, public companies are required to have a 40 per cent quota for women’s representation on boards.<sup>25</sup> In Spain<sup>26</sup> and France,<sup>27</sup> the same threshold is imposed on public companies. However, in Belgium, company law requires public companies to have a minimum of only one-third female representation on corporate boards.<sup>28</sup> Among Southeast Asian countries, India was the first country to implement a board gender quota.<sup>29</sup> Since 2013, the Indian Companies Act<sup>30</sup> has required public companies to have at least one woman director. Germany as one of the most recent jurisdictions to have adopted the quota approach requires public companies to have a 30 per cent quota of women directors in the supervisory board.<sup>31</sup>

Moreover, variations in the quota approach on board gender diversity can be seen with respect to the effects of noncompliance. Quota rules are effectively categorised as hard quotas and soft quotas. Hard quota rules include strict penalties for noncompliance,<sup>32</sup> including delisting, deregistration of companies, and fines. For example, in Norway, noncompliance with the board gender quota rules may result in deregistration of companies.<sup>33</sup> In Belgium, penalties for noncompliance may include temporary loss of financial and nonfinancial benefits by board members until there is compliance with the quota rules.<sup>34</sup> In India, noncompliance with the board gender quota rules may result in suspension from trading, freezing of shareholding, and

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<sup>23</sup> Du Plessis, Sullivan and Rentschler, above n 22 at 2 - identifies that achieving 50% women board members is impracticable, owing to an insufficient number of qualified females.

<sup>24</sup> European Commission “Women on Boards: Commission proposes 40% objective” (2012) at 3 <<http://ec.europa.eu/justice/newsroom>>.

<sup>25</sup> Norwegian Public Limited Liability Companies Act No. 45 of 1997, § 6-11a.

<sup>26</sup> Companies Act 2007 (Spain), Article 529.2 bis Ley de Sociedades de Capital 2014.

<sup>27</sup> Law No. 2011-103 of 27 January 2011 on the Balanced Representation of Women and Men on Boards of Directors and Supervisory Boards and on Professional Equality, JO (2011) (France).

<sup>28</sup> Belgian Company Code (2012), Art. 518 bis.

<sup>29</sup> Companies Act 2013 India, s 149(1); Securities and Exchange Board (India), Listing obligations and disclosure requirements regulations (2015), s 17(1).

<sup>30</sup> Companies Act 2013 India, s 149(1).

<sup>31</sup> German Law for the Equal Participation of Men and Women in Management Positions in Private Industry and Public Services (2015). In Germany, given the dual board structure, the law mandates the appointment of women directors to the supervisory board.

<sup>32</sup> R Mates de Cabo, S Terjesen, L Escot R Gimeno “Do soft law board gender quotas work? Evidence from a natural experiment” (2019) *European management journal* at 3.

<sup>33</sup> Norwegian Public Limited Liability Companies Act No. 45 of 1997, § 6-11a - Deregistration refers to removal of company from the Company register by the Registrar of companies.

<sup>34</sup> Belgian Company Code (2012) Art. 518 bis- These include non-payment of board fees, no corporate insurance, not provided with stock options and director perquisites.



finances of up to INR 250 million.<sup>35</sup> In contrast, some countries have adopted a soft quota approach. Under this approach, companies failing to comply with the quota rules do not face stringent punishments but are issued with recommendations and warnings by the relevant corporate regulatory authorities or will cease to receive tax rebates and public subsidies. In Spain, for example, public companies failing to comply with the board gender quota is not subject to any sanctions or penalties, but are not awarded any incentives based on an awards system for compliance.<sup>36</sup> In particular, Spanish companies complying with the quota rules are eligible to receive a corporate equality mark which can be used in promotional material and commercial activities.<sup>37</sup> Also, the Spanish Government gives priority to companies complying with the board gender quota rules when awarding public contracts.<sup>38</sup> In the Netherlands, public companies are required to maintain a gender quota of 30 per cent.<sup>39</sup> Companies failing to achieve the 30 per cent gender quota have to disclose the reasons for this in their annual reports and the measures intended to be taken in the future to attain the required gender quota.<sup>40</sup>

*(b) The disclosure-based approach*

Apart from the quota approach discussed above, legislators in many jurisdictions have used disclosure rules as an effective method of implementing rules on board gender diversity. Unlike in the quota approach, where companies have to include a specific percentage of women directors in the board, under the disclosure approach companies can decide on the manner in which gender diversity is achieved on the board.

Generally, disclosure rules are used as a method of ensuring that sufficient information is available to shareholders of public companies about the corporate governance environment.<sup>41</sup> Disclosure rules on board gender diversity share similar objectives by providing shareholders with information about the gender balance in the boardroom when analysing the effectiveness of the board composition.<sup>42</sup>

Generally, disclosure rules on board gender diversity are usually structured either in the form of mandatory rules or voluntary rules. Mandatory disclosure rules on board gender

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<sup>35</sup> Companies Act (2013) India, s 149(1); Securities and Exchange Board (India), Listing obligations and disclosure requirements regulations (2015), s 17(1).

<sup>36</sup> Constitutional Act 3/2007 Effective equality between women and men (Spain) arts 75, 78.

<sup>37</sup> Constitutional Act 3/2007 Effective equality between women and men (Spain) art 50.

<sup>38</sup> S Vinnicombe *Women on Corporate Boards of Directors: International Research Practice* (Edward Elgar Publishing, 2008) at 101.

<sup>39</sup> Dutch Civil Code in connection with the adjustment of regulations on management and supervision of Public and Private companies (2011), art I, ss Ia, Oc.

<sup>40</sup> Dutch Civil Code, above n 39.

<sup>41</sup> R Kraakman, J Armour, P Davies, L Enriques, H Hansmann, G Hertig, K Hopt, H Kanda, M Pargendler, W Ringe and E Rock *The Anatomy of Corporate Law* (3<sup>rd</sup> edn, OUP 2017) at 23.

<sup>42</sup> P Spender "Gender quotas on Boards – Is it time for Australia to lean in?" (2015) 20 Deakin Law Review at 1; Du Plessis, Sullivan and Rentschler, above n 22 at 2.

diversity compel public companies to disclose the gender breakdown on the board.<sup>43</sup> For example, in New Zealand, the NZX Listing rules mandate public companies listed on the NZX main board to include quantitative data in their annual reports on the gender breakdown of the board.<sup>44</sup> These mandatory disclosure rules aim to inform the investors of public companies and the market about the adoption of gender diversity in board appointments.<sup>45</sup> Studies have often identified mandatory disclosure rules to fall in between of the soft-hard law continuum because it is a mandatory duty imposed on companies to make disclosures of their gender breakdown.<sup>46</sup> However, these rules still have not been implemented with sanctions and penalties and only results in an announcement by the listing authority in their website highlighting that the company has not made the disclosure within the stipulated timeframe. This is regarded to operate as a name and shame approach to encourage companies to make the disclosure.<sup>47</sup>

On the other hand, other countries have resorted to voluntary disclosure rules on board gender diversity. Most of these countries have included provisions on board gender diversity in the country's Corporate Governance Codes. These are drafted by regulatory authorities and provide guidelines for public companies to achieve good corporate governance.<sup>48</sup> Corporate Governance Codes of most jurisdictions adopt a comply-or-explain approach that requires public companies to report annually on the progress on compliance with provisions of the code and, if not, explain reasons for noncompliance.<sup>49</sup> Voluntary disclosure rules on board gender diversity require public companies to report periodically on the gender breakdown in the company.<sup>50</sup> However, if there is a failure to comply, such public companies need to provide reasons for noncompliance. Voluntary disclosure rules on board gender diversity have been included in the Corporate Governance Codes of the United Kingdom (UK) and Australia. In the UK, the Corporate Governance Code requires public companies to give due regard to gender diversity when selecting candidates for board seats.<sup>51</sup> Public companies are not compelled to follow the recommendations on board gender diversity<sup>52</sup> but are required to give

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<sup>43</sup> Spender, above n 42 at 2; Du Plessis, Sullivan and Rentschler, above n 22 at 2.

<sup>44</sup> NZX Listing Rules 2020, Listing Rule 3.8.1(c).

<sup>45</sup> New Zealand Stock Exchange "Announcement – Updated gender diversity guidance note published" (2015) <<https://nzx.com/companies/NZX/announcements/261110>>.

<sup>46</sup> Choudhury, above n 15; Du Plessis Sullivan and Rentschler above n 22.

<sup>47</sup> Choudhury, above n 15. The author identifies how naming and shaming could have drastic effects on the reputation of public companies which can impact their trading; Global Women "Global Women calls out NZ's embarrassing boardroom gender results" (2019) <[http://www.globalwomen.org.nz/diverse-boards/NZ's embarrassing boardroom gender results](http://www.globalwomen.org.nz/diverse-boards/NZ's%20embarrassing%20boardroom%20gender%20results)>;

<sup>48</sup> Kraakman, above n 41 at 24.

<sup>49</sup> Kraakman, above n 41 at 24.

<sup>50</sup> Kraakman, above n 41 at 24; Choudhury, above n 15 – the authors identify how the aim of having voluntary disclosure rules requiring reporting on board gender diversity statistics is to get companies to reflect upon these statistics when making board appointments. Further by making these rules voluntary the intention is to give companies the necessary flexibility to apply the concept of board gender diversity appropriately as they see fit. Further explained in section 5.3.

<sup>51</sup> UK Corporate Governance Code 2018, Provision B.2.

<sup>52</sup> UK Corporate Governance Code 2018, Provision B.2.

reasons if the principles are not complied with. Similar to the UK, Australia adopted voluntary disclosure rules on board gender diversity. However, the Australian rules require a more detailed disclosure by public companies on maintaining gender diversity. According to the ASX Code,<sup>53</sup> public companies need to establish a diversity policy and disclose annually the proportion of women on boards and senior management. Further, the ASX Code<sup>54</sup> requires public companies to provide progress reports annually on gender objectives, create committees for devising strategies to address gender diversity, consider gender diversity in succession planning and regularly review the ratio of women to men at all levels of the company. Public companies failing to comply with the recommendations of the ASX Code<sup>55</sup> are required to provide reasons for noncompliance in the company's annual report.

### **5.3 The way forward to increase women on boards: a comparative analysis of the quota and disclosure approaches**

There is an ongoing debate about which approach between quotas and disclosures is more effective to promote positive change. Views and opinions remain inconclusive, with some favouring quotas and others preferring disclosures. For example, a recent article published in the Financial Times identified quotas to be more effective than disclosures, declaring that “quotas are the move forward because disclosures will not solve the lack of gender diversity on boards”.<sup>56</sup> Contrarily, an article in Forbes magazine in 2018 illustrating evidence from Norway claimed that disclosures were a better approach than quotas, pointing out that, “disclosures should be adopted because gender quotas don't work for women on boards”.<sup>57</sup> Contrasting viewpoints have also been expressed by academics, with some arguing in favour of board gender quotas “as the most suited statistical option for change in implementing board gender diversity”<sup>58</sup> and others favouring disclosures as “a therapeutic, less interventionist approach which allows companies to appreciate the true benefits of board gender diversity”.<sup>59</sup> This debate will be analysed below by considering the positives and pitfalls of each approach,

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<sup>53</sup> ASX Corporate Governance Principles and Recommendations 2019, Recommendation 1.5.

<sup>54</sup> ASX Corporate Governance Principles and Recommendations 2019, above n 53, Recommendation 1.5.

<sup>55</sup> ASX Corporate Governance Principles and Recommendations 2019, above n 53, Recommendation 1.5.

<sup>56</sup> T Johnson “Disclosure will not solve the lack of diversity on boards” (2019) Financial Times <[www.ft.com/content/a7b76cd4-8850-11e9-b861-54ee436f9768](http://www.ft.com/content/a7b76cd4-8850-11e9-b861-54ee436f9768)>.

<sup>57</sup> M Peregrine “Board Nominating Committees face strong diversity headwinds” (2019) Forbes Magazine <[www.forbes.com/sites/michaelperegrine/2019/05/10/the-nominating-committee-faces-strong-headwinds/#2eb942e05667](http://www.forbes.com/sites/michaelperegrine/2019/05/10/the-nominating-committee-faces-strong-headwinds/#2eb942e05667)>.

<sup>58</sup> A Sweigart “Women on boards for change: The Norway model of boardroom quotas as a tool for progress in the United States and Canada” (2012) 32(4) Nw J' Int'l & Bus 82A at 13; A Alstott “Gender quotas for Corporate Boards: options for legal design in the United States” (2014) Yale Law School Legal Repository at 5.

<sup>59</sup> B Choudhury “New Rationales for women on boards” (2014) 34 Oxford Journal of Legal Studies at 511; Du Plessis, Sullivan and Rentschler, above n 22 at 3.

with the aim of creating a critical background for later chapters when considering which method would better suit Sri Lanka should rules on board gender diversity be implemented.

Research in support of the merits of quotas shows that they offer the quickest fix to increasing board gender diversity. Norway, as the first country to impose a 40 per cent quota for women on boards, is often cited as the best example to justify this point of view. In Norway, the number of women directors increased to above 40 per cent within two years of implementing the quota rules. Using Norway as an example, most arguments in favour of quotas recognise “quotas as a method to jump-start and achieve board gender diversity through a rapid process”.<sup>60</sup> No other country implementing quota rules can offer comparable evidence of such a rapid pace at which quota rules increased women directors’ representation on boards. This is because of the novelty of the Norwegian approach.<sup>61</sup> However, according to the European Commission, in most European countries adopting quotas, the representation of women directors on boards has increased at least 4 to 5 per cent within two years. This is considered to be a quicker rate than in countries adopting disclosures on board gender diversity.<sup>62</sup> The slow pace at which disclosures on board gender diversity increases the percentage of women on boards has been subject to extreme criticism. For example, the Davies Report in 2015 condemned the slow increase in the percentage of women on boards in the UK by opting for voluntary disclosure rules and recommended the adoption of quota rules on board gender diversity.<sup>63</sup> Similarly, in New Zealand, the Human Rights Commission reported that at the rate of progress over the past ten years in adopting disclosures to increase women on boards, it would have taken 35 years for New Zealand to achieve gender parity in the boardroom.<sup>64</sup> In contrast, in Australia, although disclosures on women on boards have been adopted, there has been a steady increase in the percentage of women directors. Statistics reveal an increase from 9 per cent in 2009 to 18.2 per cent by 2014 after the introduction of disclosure rules on board gender diversity.<sup>65</sup> This is because of the extensive level of explanation which companies must provide if noncompliant. That said, Australia remains an exception, as global statistics reveal a quicker increase in the percentage of women on boards through the adoption of quotas rather than disclosures.

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<sup>60</sup> Sweigart, above n 58 at 13; Alstott, above n 58 at 5.

<sup>61</sup> Choudhury, above n 59 at 512.

<sup>62</sup> European Commission “Gender balance in decision-making positions” (2016) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>.

<sup>63</sup> Lord Davies of Abersoch “Women on Boards: 5-year summary (Davies Review)” (2015) Department of Business, Innovation and Skills UK at 3.

<sup>64</sup> Human Rights Commission “New Zealand Census for Women’s Participation 2012” (2012) at 46.

<sup>65</sup> Spender, above n 42 at 2.

Quotas on board gender diversity are also recommended as they can reduce gender biases in countries with strict social and cultural norms. In this regard Dhir considers that it is vital that the cultural setting in a country is analysed.<sup>66</sup> A study conducted by Gelfand et al<sup>67</sup> identified that quotas can effectively change the gender biases in countries with tight cultures as opposed to countries with loose cultures on the basis of societal adherence to social and cultural norms. Countries with tight cultures are identified as having strict social and cultural norms, whereas countries with loose cultures are regarded as not strictly adhering to social and cultural norms. Quota rules on board gender diversity are identified by Gelfand et al as creating a “useful shock on the system” in countries with tight cultures.<sup>68</sup> This is because quotas have the necessary force to challenge the existing gender biases in society towards women and make societal perceptions change towards acceptance of gender equality. As a result, quotas are considered to have the potential to increase female productivity and participation in leadership positions. On the contrary, disclosures are not considered to have the required forceful effect which is necessary to change biases against women in countries with tight cultures.<sup>69</sup> In this case, female productivity and participation in countries adopting disclosures on board gender diversity are regarded to be considerably lower.

Moreover, success in applying quotas and disclosures as rules on board gender diversity has differed because of the variation in the application of sanctions and penalties as enforcement mechanisms for noncompliance. In the quota approach, when the sanctions and penalties imposed for noncompliance are strict, there is a greater level of compliance by companies. For example, in Norway, punishments for noncompliance with the quota on women on boards include fines and deregistration of the company by court order.<sup>70</sup> In India, a failure to comply with the quota rule on women’s board representation results in suspension from trading, freezing of shareholding, and fines of up to INR 250 million.<sup>71</sup> However, in Spain, although a quota approach on board gender diversity is followed, there are no penalties or sanctions for noncompliance. Noncompliance only results in companies not receiving the corporate equality mark or becoming disadvantaged when attempting to obtain government

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<sup>66</sup> Dhir, above n 3 at 72 – the author in this study draws on the research by MJ Gelfand, JL Raver, L Nishii and others “Differences between tight and loose cultures: A 33 nation study” (2011) 332 (6033) *Science* 1100 at 67

<sup>67</sup> Gelfand, above n 66 at 67 – the authors in their study identify tight cultures as countries with formal and disciplined societies with strict social and cultural norms, which rebukes individuals who stray from the norms. According to the authors, only mandatory regulation can curtail existing social and cultural norms in societies with tight cultures. Loose cultures are countries which do not adhere to social and cultural norms.

<sup>68</sup> Gelfand, above n 66 at 68.

<sup>69</sup> Gelfand, above n 66 at 68.

<sup>70</sup> Norwegian Public Limited Liability Companies Act No. 45 of 1997, § 6-11a.

<sup>71</sup> Companies Act 2013 (India), s 149(1); Securities and Exchange Board India, Listing obligations and disclosure requirements regulations 2015, s 17(1).

contracts.<sup>72</sup> As a result, compliance with board gender quota rules by Spanish companies has been low. Countries adopting the disclosure approach on board gender diversity also face significant compliance issues. As disclosure rules mostly involve a comply-or-explain approach, companies tend to use the lack of stringent penalties and sanctions as a loophole to evade or lower compliance with the gender diversity disclosure rules. For example, a study conducted in 2012 in Australia revealed that only 19 per cent of public companies fully complied with the basic disclosure requirements on board gender diversity, and 81 per cent only disclosed a commitment to diversity.<sup>73</sup> In another instance, UK companies were reported to lower their targets for hiring women directors compared with the targets set in the previous years to disclose compliance with board gender diversity targets.<sup>74</sup> Studies identify that the level of compliance can be increased if the disclosure approach is tied to a name-and-shame mechanism, which is a method of public condemnation. For example, in the UK, the Davies Report in 2015 identified FTSE 350 companies that failed to comply with board gender diversity disclosure rules.<sup>75</sup> As a result, many companies with all-male boards opted to incorporate board gender diversity. Also, supplementing disclosure rules with recommendations by prominent associations in the country is regarded as a way of providing greater adherence to disclosure rules on board gender diversity. In Australia, the Council of Superannuation Investors (ACSI) in 2016 recommended its members to vote against directors in companies that are poorly performing on gender diversity targets.<sup>76</sup> Most companies that are members of the ACSI set a target of achieving gender parity in their companies. This contributed to an increase in compliance with disclosure rules on board gender diversity in Australia.

Inevitably, the debate over quotas versus disclosure rules to include women on boards has also extended to determining which option promotes substantive change. The quota approach has been subject to criticism as “a method alluring a number game where women are placed on boards as tokens to get the statistics right”.<sup>77</sup> Quotas do not always promote positive substantive change. Such concerns for example arose in France after the introduction of the quota rules on board gender diversity. Some of the largest public companies in France appointed the wives of prominent politicians and controlling shareholders to showcase

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<sup>72</sup> European Commission, above n 62 at 3.

<sup>73</sup> Australian Institute of Company Directors “Appointments to S&P/ASX 200 Boards – Gladman and Lamb GMI Ratings” (2013) Women on Boards Survey 8.

<sup>74</sup> Choudhury, above n 59 at 513.

<sup>75</sup> Lord Davies of Abersoch “Women on Boards: 5-year summary (Davies Review)” (2015) Department of Business, Innovation and Skills UK at 3.

<sup>76</sup> Australian Council of Superannuation Investors “Time running out for all-male boards” (2016).

<sup>77</sup> Gender and Economy “The debate about quotas” (2019) <[www.gendereconomy.org/the-debate/](http://www.gendereconomy.org/the-debate/)>.

compliance with the quota.<sup>78</sup> Moreover, quotas often exacerbate tokenism when countries have an insufficient number of qualified women. For instance, in India, when quota rules on board gender diversity were introduced, there was an insufficient number of women with business experience and knowledge. Companies faced difficulties in finding suitable female candidates to nominate to board seats. Fearing the imposition of sanctions and penalties for noncompliance, Indian companies mostly appointed wives and female relatives with insufficient qualifications to fulfil the quota. Under these circumstances, the Indian quota rules have been subject to severe criticism for not having promoted a positive change in attitude within companies and society towards the concept of board gender diversity. Moreover, when there are insufficiently qualified women in society, the implementation of quotas has resulted in a few women directors holding multiple directorships.<sup>79</sup> The most prominent example in this regard is from Norway where the quota rule resulted in a small group of women holding multiple board seats due to the shortage of suitably qualified candidates.<sup>80</sup> As a result, disclosures are favoured as the best option to promote substantive positive change. Disclosure rules on board gender diversity allow companies to include women directors on the board at their own pace, considering the best candidate for the position. The flexibility offered through the adoption of a disclosure approach on board gender diversity is regarded as encouraging companies to include women directors on boards by adopting a reasoned approach and setting achievable targets, instead of attempting to fulfil a quota.<sup>81</sup> As acknowledged by the former Executive Director of the Confederation of Norwegian Enterprises, “quotas are an effective tool if the focus is on statistics... [T]o get more talented female board candidates, it’s all about changing attitudes, which cannot be done by quotas... for this purpose, we need to look at disclosures...”<sup>82</sup> The debate on the level of substantive change promoted by disclosure rules on board gender diversity is based on whether mandatory or voluntary disclosure rules are adopted. This has differed depending on the motivations of the legislators. Mandatory disclosure rules imply that the objectives of the legislators are to create significant change.<sup>83</sup> Legislators opting for voluntary disclosure rules on board gender diversity allow public companies to reflect upon the concept of board gender diversity when making board appointments, which provides the necessary flexibility to apply the concept appropriately.<sup>84</sup>

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<sup>78</sup> PH Conac “France: The permanent reform of women on boards” (2013) <<https://france-permanent.reform.quotas/>>.

<sup>79</sup> N Bhalla “Indian firms mock gender diversity as boardroom deadline passes: Analyst” Reuters (April 2015).

<sup>80</sup> Sweigart, above n 58 at 13; Alstott, above n 58 at 5.

<sup>81</sup> Choudhury, above n 59 at 513; Du Plessis, above n 22 at 3.

<sup>82</sup> H Bjørkhaug and SO Sørensen “Feminism without Gender? Arguments for Gender Quotas on Corporate Boards in Norway” in Engelstad and Teigen at 198.

<sup>83</sup> Spender, above n 42 at 2; Choudhury, above n 59 at 513.

<sup>84</sup> Spender, above n 42 at 2; Choudhury, above n 59 at 513.

This has opened a debate concerning which type of disclosure rules on board gender diversity needs to be adopted.

Additionally, the quota approach has been criticised because it can result in a potential stigma on women directors if it is thought their appointments were made based on gender and not on the qualifications and experience required for the position. For example, the former Chief Executive Officer (CEO) of Allianz Global Investors Europe stated that “quotas have a negative effect because there will always be a question in people’s minds that a woman director only got onto a board because of her gender”.<sup>85</sup> On the contrary, the adoption of a disclosure approach on board gender diversity removes such a stigma as companies are allowed to analyse the nomination of women directors.

There are conflicting views on the positives and negatives of the quota and disclosure rules on board gender diversity. The analysis above has shown that there is no conclusive argument to determine the way forward when choosing between these rules as a way to achieve the goal of including more women on boards.<sup>86</sup>

#### **5.4 Exploring the adoption of a one-size-fits-all model**

Despite the ongoing debate on choosing between quotas and disclosures to regulate board gender diversity, the European Commission proposes that “the debate should end [at least among EU member states] by converging to the Norwegian quota model”.<sup>87</sup> While the European Commission recommends that all public companies of EU member states should adopt a quota of 40 per cent board representation of women as per the Norwegian quota rules,<sup>88</sup> the feasibility of converging to such a one-size-fits-all model is debatable. This is because of the variation in the underlying motivations of legislators in implementing rules on board gender diversity and in the availability of qualified women in different countries. Dhir considers that an analysis of these two factors is essential given the divergence among countries as it will determine whether a hard law approach imposing quotas or soft law approach adopting disclosures will be suitable.<sup>89</sup>

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<sup>85</sup> Allianz Global Investors Europe “women directors on boards” (2011) <<https://allianzglobal/women/forum/>>.

<sup>86</sup> Note - Bjørkhaug and Sørensen, above n 82; Sweigart, above n 58 where the authors draw on the Norwegian quota system and consider the achievement of 40 per cent show that it should be the path to be followed. However, as Choudhury, above n 59 and Spender, above n 42 note the Norwegian scenario is unique and cannot be generalised. Hence the debate is inconclusive.

<sup>87</sup> European Commission “Gender balance in decision-making positions” (2016) <[http://ec.europa.eu/gender-equality/gender-decision-making/index\\_en.html](http://ec.europa.eu/gender-equality/gender-decision-making/index_en.html)>.

<sup>88</sup> European Commission “Report on the proposal for a Directive of the European Parliament and the Council – COM(2012) 614” (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)> The European Commission recommends the Norwegian approach considering the success in increasing the number of women on boards in Norway.

<sup>89</sup> Dhir, above n 3 at 76.



The motivations of legislators in implementing rules on board gender diversity may differ. Studies suggest that in some countries they intend to achieve statistical change whereas others intend to achieve substantive change.<sup>90</sup> Statistical change is focussed on variations to the statistical data on board gender diversity whereas substantive change is the focus on creating impactful and meaningful change which has a genuine change in perceptions in society. While countries motivated to achieve statistical change opt for quotas because it is the quickest method to increase women on boards,<sup>91</sup> countries intending to achieve substantive change generally choose disclosures.<sup>92</sup> For instance, in Norway, legislators were motivated to achieve statistical change and selected the adoption of quotas.<sup>93</sup> Similarly, in India, legislators intended to achieve statistical change because of poor rankings in the World Economic Forum gender gap index and the Organisation for Economic Co-operation and Development (OECD) social institutions gender index.<sup>94</sup> Both countries were successful in their initiatives and have achieved significant statistical increases in board gender diversity after the implementation of quota rules. On the other hand, countries seeking to achieve substantive change have preferred disclosures. For example, in the UK, the Davies Report and Parker Review stated that the legislators should adopt disclosure rules on board gender diversity because “the intention is to achieve substantive change and not statistical change”.<sup>95</sup>

In addition to differences in the motivation for implementing rules on board gender diversity, the availability of qualified women is also an element to be considered as it differs across countries. Studies identify that countries with strict social and cultural norms that disadvantage women have fewer women in employment and seeking education, inevitably leading to the low proportions of qualified women.<sup>96</sup> In countries with less stringent social and cultural norms, there is a higher proportion of educated women with business knowledge and experience.<sup>97</sup> It follows that an analysis of the social setting in each country needs to be conducted to determine whether there is a sufficient number of qualified women to fulfil a quota or whether a disclosure approach would be more feasible.

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<sup>90</sup> Choudhury, above n 59 at 513; K Watson “Gender diversity on corporate boards” (2014) 3 Journal of Australian Law Teachers Association at 1.

<sup>91</sup> Sweigart, above n 58 at 14; Alstott, above n 58 at 5.

<sup>92</sup> Spender, above n 42 at 2.

<sup>93</sup> Sweigart, above n 58 at 14; Alstott, above n 58 at 5.

<sup>94</sup> N Bhalla “Indian firms mock gender diversity as boardroom deadline passes: Analyst” Reuters (April 2015).

<sup>95</sup> Lord Davies of Abersoch “Women on Boards: 5-year summary (Davies Review)” (2015) Department of Business, Innovation and Skills UK at 3; The Parker Review Committee “A report into the ethnic diversity of UK Boards” (2016) <[www.ey.com/publication/vwLUAsset](http://www.ey.com/publication/vwLUAsset)>.

<sup>96</sup> Choudhury, above n 59 at 513; Watson, above n 89; A Eagly and L Carlii “Women and the labyrinth of leadership” (2007) Harvard Business Review <<https://hbr.org/carliiand eagly>>.

<sup>97</sup> Eagly and Carlii above n 96 at 3.

Owing to differences among countries in motivations in implementing rules on board gender diversity and in the availability of qualified women, convergence to a one-size-fits-all model as proposed by the European Commission does not seem the appropriate solution.<sup>98</sup> According to Indian journalist and writer, Bhalla, “convergence towards a single model to implement rules on board gender diversity will lead to a mockery of the rules adopted for women’s board representation”.<sup>99</sup> Accordingly, the choice between quotas or disclosures as the basis for rules on board gender diversity should take into account the social context in each country.

## 5.5 Supplementing legal rules with systemic change

Notwithstanding the selection between quotas and disclosures as rules to include women on boards, studies suggest that sustainable and effective implementation of the concept of board gender diversity requires supplementing legal rules with systemic changes in society.<sup>100</sup> Particularly, Mill and Wollstonecraft considers that in a patriarchal society, systemic changes are essential to make legal rules on board gender diversity effective.<sup>101</sup> This is because in a patriarchal society it is necessary to reorganise the social structure where the customary barriers that promote female subordination and blocks women’s entrance and success in the workforce is eliminated. This will ensure that gender stereotyping is reduced, gender equality will be promoted, and there will be assistance for women to manage the double burden of work and family life.

Eagly and Carlii identify gender stereotyping as one of the key challenges preventing women from obtaining directorships.<sup>102</sup> They argue that society often demarcates occupations and jobs as requiring male characteristics or female characteristics.<sup>103</sup> Leadership roles seen to require assertion and control are often associated with males. Women tend to be considered suited for occupations associated with the need for compassionate qualities and are regarded “not to be cut-out as leaders”. There have been many initiatives taken internationally to empower women to reach directorships and reduce these existing gender stereotypes. For example, the United Nations Women (UN Women) launched a campaign titled HeforShe with

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<sup>98</sup> European Commission, above n 88, the European Commission proposed that a one-size fits all solution should particularly be followed among countries in the European Union, although this has been used as a basis to propose a generalised view by some writers. See Sweigart, above n 58 at 13; Alstott, above n 58 at 5.

<sup>99</sup> N Bhalla “Indian firms mock gender diversity as boardroom deadline passes: Analyst” Reuters (April 2015).

<sup>100</sup> Male champions of change “Progress Report 2015: Listening, learning, leading with action” (2016) at 13; UN Women “HeforShe IMPACT Report” (2016) <<https://www.heforshe.org>>.

<sup>101</sup> JS Mill “The Subjection of Women,” in JS Mill and H Taylor Mill, *Essay on Sex Equality* ed. AS Rossi (University of Chicago Press 1990) 184; M Wollstonecraft *A Vindication of the Rights of Women* ed. CH Hoston (New York 1995) 34.

<sup>102</sup> Eagly and Carlii, above n 96 at 3.

<sup>103</sup> Eagly and Carlii, above n 96 at 3.

the primary aim of empowering women and girls to reach CEO and directorship positions.<sup>104</sup> In addition, in Australia, the initiative “male champions for change” was launched to empower women to reach directorships.<sup>105</sup> In New Zealand, the campaign titled “champions for change” and the formulation of the Global Women’s group were also aimed at developing women as leaders to rise to directorship positions.<sup>106</sup> As discussed earlier, Sri Lanka has entrenched gender stereotyping, based on traditional social and cultural norms.<sup>107</sup> Therefore, campaigns to empower women would certainly be beneficial to reduce gender stereotyping and change societal perceptions.

Moreover, systemic changes need to be adopted to assist women with the double burden of a career and domestic responsibilities. Research points out that women are often burdened with domestic responsibilities and face difficulties in terms of balancing a career and domestic obligations.<sup>108</sup> As a result, many women opt for lesser demanding jobs, fearing the challenge of balancing a good career and domestic responsibilities. Common governmental measures to tackle this issue include providing affordable childcare, promoting flexible working hours, and maternity and paternity leave.<sup>109</sup> Needless to say, these measures have not been fully implemented across the globe. Particularly in Sri Lanka, child care facilities remain inadequate, and companies in general are not in favour of flexible working hours.<sup>110</sup> Therefore, if rules on board gender diversity are to be implemented in Sri Lanka, systemic changes to support women to manage the double burden seem essential if more women are to be appointed to boards.

## 5.6 Summary

Unlike what happened in several other countries, in Sri Lanka, legal rules on board gender diversity have not yet been introduced. Quotas and disclosures are the key legal approaches that have been adopted across the globe to promote more women directors to boards.<sup>111</sup> Quotas are favoured for achieving statistical change at a fast pace, although they are

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<sup>104</sup> UN Women “HeforShe IMPACT Report” (2016) <<https://www.heforshe.org>>.

<sup>105</sup> Male champions of change “Progress Report 2015: Listening, learning, leading with action” (2016) at 13.

<sup>106</sup> Champions for Change NZ “Key Messages” (2015) <<https://www.championsforchange.nz>>.

<sup>107</sup> HMA Herath “Place of Women in Sri Lankan society: measures for their development and good governance” (2015) 1(1) University of Sri Jayawardenapura at 3.

<sup>108</sup> International Labour Organisation “Women on Boards: Building the female talent pipeline” (2016) International Labour Organisation at 3; Catalyst “Knowledge center: Women on corporate boards globally” (2015) Catalyst <<https://www.catalyst.org/knowledge/women-boards>>.

<sup>109</sup> Catalyst above n 108 at 3.

<sup>110</sup> Herath above n 107 at 3 – explained further in Chapter 2. Also see Chapter 7.4.1.(c) which clarifies how the current 8 per cent of women directors in Sri Lanka do not need to face this issue because they are within a “privileged group” coming from elite families having the wealth to afford maids and the power to negotiate their work schedules to accommodate domestic duties. This is however not a reflection of the situation of the common Sri Lankan woman. These governmental measures mentioned need to support the common Sri Lankan woman.

<sup>111</sup> Detailed in section 5.2 above.

criticised for being too rigid and not creating meaningful change.<sup>112</sup> Disclosures instead are supported for creating substantive change, although they are questionable for the slow progress it achieves.<sup>113</sup> While neither mechanism is without flaws, the different choices made indicate that a common consensus is yet to be reached as to which one is the most effective mechanism. The European Commission identified the Norwegian quota model as the most effective option and recommended all EU countries to adopt the Norwegian quota approach.<sup>114</sup> However, this approach cannot be easily transplanted as countries differ according to the motivation in introducing rules on board gender diversity and in the number of qualified women. It is argued in this study that each country needs to adopt an approach that is compatible with its own social and regulatory environment, and it might not be desirable to converge towards a common legal approach. In the Sri Lankan context, if legal rules on board gender diversity are to be introduced, the choice between quotas and disclosures should be based on compatibility with the social setting and the regulatory motivations. Moreover, in order for legal rules to be effective, it is necessary to influence systemic changes in society to mitigate the barriers preventing women from obtaining directorships in companies.<sup>115</sup>

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<sup>112</sup> Detailed in section 5.3 above.

<sup>113</sup> Detailed in section 5.3 above.

<sup>114</sup> Detailed in section 5.4 above.

<sup>115</sup> Discussed in section 5.5 above.

## CHAPTER 6 – RESEARCH METHODOLOGY

### 6.1 Introduction

In a rapidly changing environment, there is a need for legal research to be conducted in a manner that identifies the workability and effects of law on society. This need is addressed by increasing the body of socio-legal research.<sup>1</sup>

This study adopts a socio-legal framing. It is an approach that is based on a philosophical stance that analyses the social significance of “black-letter law”.<sup>2</sup> The adoption of the socio-legal approach in this study provided an opportunity to gain a contextual understanding of how the Sri Lankan corporate community would perceive the introduction of rules on board gender diversity.

The first section of the chapter presents the manner in which the socio-legal approach was used as a theoretical framing for the study.<sup>3</sup> The second section considers the adoption of qualitative research methods to support the socio-legal framework of the study. These methods assist in capturing meanings, definitions, and descriptions of a phenomenon to understand why and how it occurs.<sup>4</sup> The specific qualitative research methods used consist of interviews as a primary source of data collection and secondary sources to conduct a documentary analysis. Primary data were collected by interviewing a subgroup of members from the corporate community in Sri Lanka. The documentary analysis was conducted using O’Leary and Bowen’s guidelines<sup>5</sup> and analysing textbooks, journals, articles, and legislation from Sri Lanka and overseas on corporate governance and board gender diversity.

The chapter finally focuses on the data analysis method<sup>6</sup> and depicts how Braun and Clarke’s thematic analysis method was used for this purpose.<sup>7</sup> This is an analytical method that focuses on identifying, analysing, and reporting patterns within qualitative data and is also a tool to organise and interpret qualitative data.<sup>8</sup> These aspects are explored in this section.

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<sup>1</sup> DH Genn, M Partington and S Wheeler “Law in the real world: Improving our understanding of how law works: Final Report and Recommendations” (2006) Nuffield Foundation 12.

<sup>2</sup> Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) “First Report on Legal Education and Training” (1996), 3, para 2.4. Black-letter law is referred to as traditional legal analysis where analysis is conducted purely through documentary analysis.

<sup>3</sup> Detailed in section 6.2 below. Only a UK-centric approach proposed by the Socio-legal Studies Association (SLSA) has been incorporated in this study. The publications and views of the US Law and Society Association has not been incorporated due to the growing debate that the US Law and Society Association is promoting a sociology of law approach. For example S Wheeler Socio-Legal Studies in 2020 (OUP 2020) 23.

<sup>4</sup> T McNulty, A Zattoni and T Douglas “Developing Corporate Governance Research through Qualitative Methods: A review of previous studies” (2013) 21(2) Corporate Governance: An International Review 183.

<sup>5</sup> Z O’Leary *The essential guide to doing your research project* (2 edn, 2014) SAGE publications 23; GA Bowen, “Document analysis as a qualitative research method” (2009) 9(2) Qualitative Research Journal 24 at 12. Discussed in section 6.3.1.

<sup>6</sup> Section 6.4 below.

<sup>7</sup> V Braun and V Clarke “Using thematic analysis in psychology” (2006) 3(2) Qualitative Research in Psychology 77.

<sup>8</sup> Braun and Clarke, above n 7 at 78.

## 6.2 The theoretical perspective: the socio-legal approach

The socio-legal approach emerged as a methodological framing of legal research in the 20<sup>th</sup> century.<sup>9</sup> It is an approach that blends empirical methods with doctrinal legal research, with the aim of gaining a contextual understanding of the operation of law.<sup>10</sup> It expands the traditional approach to legal research, which often is limited to an analysis of “black-letter law”.<sup>11</sup> The scholarly contributions to legal studies are testimony that this approach has developed as a theoretical framework in the legal field.<sup>12</sup> In setting the context for this study, this section begins by exploring the historical development of the socio-legal approach, outlining how this approach has become an established methodological paradigm in legal research and then provides examples of the findings from studies that have incorporated this approach. Then, the section explains the manner in which this approach is applied to this study and the inherent limitations of this framework.

### 6.2.1 The historical development of the socio-legal approach

The socio-legal approach has developed over recent decades as a theoretical framework in legal research and it has been severely criticised on the grounds that it fails to capture the true essence of conducting legal research.<sup>13</sup> This section shows that this claim is inaccurate by highlighting how this approach has become a useful framework in conducting legal research.

The roots of the socio-legal approach can be traced to the sociological writings during the Industrial Revolution.<sup>14</sup> At that time, attention was given to the social consequences of the Industrial Revolution,<sup>15</sup> especially towards examining law and legal structures and their effect on the nature of the social order. For example, a study conducted by Max Weber explored the origins of capitalism through an empirical examination of the legal changes which

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<sup>9</sup> Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC), above n 2. The report identifies the manner in which socio-legal research emerged as a new paradigm in the 20<sup>th</sup> century, and the manner in which the methods utilised to conduct legal research changed from being an exploration of secondary sources, to the use of dual sources, both secondary sources and primary data collected through the use of empirical methods.

<sup>10</sup> Centre for Empirical Legal Studies “Inquiry on Empirical Research Law – Consultation Document” (2004) 7 <<http://www.ucl.ac.uk/laws/socio-legal/empirical/docs/empirical.pdf>>.

<sup>11</sup> Lord Chancellor’s Advisory Committee, above n 2 at 4. The report uses the term “black-letter law” to define doctrinal research which limits the analysis to legal concepts, statutes and propositions.

<sup>12</sup> PA Thomas (ed) *Socio-Legal Studies* (Dartmouth Publishing 1997) 14; A Sanders *Criminal Justice: The Development of Criminal Justice Research in Britain* (2010) – a study on criminal law; D Galligan “Legal Theory and Empirical Research” in P. Cane and H. Kritzer (eds) *Oxford Handbook of Empirical Legal Studies* (Oxford University Press 2010) – in public law; W Mansell “Tort and Socio-legal studies: The road to Damascus: Paved with good intentions but few epiphanies” (2010) – in tort law; D Campbell *Good Faith and the Ubiquity of the “Relational” Contract* (2014) 77 *Modern Law Review* 475– in contract law; S Wheeler “From responsible investor to stewarded investor” in *Exploring the ‘Socio’ of Socio-legal Studies* (Palgrave MacMillan, 2013) 278 – in company law.

<sup>13</sup> *ibid.*

<sup>14</sup> CM Campbell and P Wiles “The study of law in society in Britain” (1976) 10 (4) *Law & Society Review* 547 <<http://www.jstor.org/stable/3053297>>; PA Thomas (ed) “Socio-Legal Studies: The Case of Disappearing fleas and bustards” in *Socio-Legal Studies* (Aldershot: Dartmouth Publishing Co. Ltd, 1997) 358.

<sup>15</sup> Campbell and Wiles, above n 14 at 547.

industrialisation produced in Germany.<sup>16</sup> Other examples include Emile Durkheim's writings on the transformation of laws in light of the increasing division of labour in French society.<sup>17</sup> and Eugen Ehrlich's empirical work on the legal culture of Austrian law.<sup>18</sup> These studies exemplify the interest of the researchers in the relationship between law and society. This approach laid the foundation for experimental empirical research to be conducted on law and legal structures. Many legal researchers started to carry out research by developing new theoretical frameworks instead of adopting a positivist approach.<sup>19</sup> In particular, they considered legal research conducted through the use of traditional legal theory and methods as inadequate and inappropriate to identify the issues emerging in an increasingly complex and rapidly changing society and introduced a theoretical framing that incorporated social scientific techniques into legal research.<sup>20</sup> This became the foundation of socio-legal research, which moved beyond an analysis of the black-letter law and considered empirical methods to identify the workings of law in society.<sup>21</sup>

When the socio-legal approach was initially introduced, it was regarded as a sub-field of the sociology-of-law approach. However, researchers suggested that the theoretical underpinnings of these approaches were different. In the socio-legal approach, the focus is on understanding the existing legal rules and structure and analysing the possibility of reforming the existing legal order by examining the effects of law in practice.<sup>22</sup> Under the sociology-of-law approach, instead, the subject matter and main concern is the social order.<sup>23</sup> As a result, the socio-legal approach can be identified as a separate theoretical framework.<sup>24</sup>

Initiatives to advance socio-legal research commenced in the 1960s, with many institutions promoting socio-legal thinking. These included the Law Commission of England and Wales, the Scottish Law Commission, Warwick, and Kent Law Schools, and the Institute of Judicial Administration at the University of Birmingham. All these institutions supported this approach and offered programmes in the area of socio-legal research. Especially notable was the establishment of the Nuffield Foundation, which was the first official body aimed at promoting law and society research.<sup>25</sup> One of its first initiatives was to offer law teachers learning opportunities in social research methods.<sup>26</sup> The Nuffield Foundation also established

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<sup>16</sup> M Weber *Max Weber on Law and Economy in Society*, M Rheinstein (ed) (HUP, 1954).

<sup>17</sup> E Durkheim *The Division of Labour in Society* (1893).

<sup>18</sup> Eugen Ehrlich *Fundamental Principles of the Sociology of Law* (1936).

<sup>19</sup> Campbell and Wiles, above n 14 at 563; Centre for Empirical Legal Studies, above n 10 at 8.

<sup>20</sup> Campbell and Wiles, above n 14 at 563; Centre for Empirical Legal Studies, above n 10 at 7.

<sup>21</sup> Campbell and Wiles, above n 14 at 561.

<sup>22</sup> Campbell and Wiles, above n 14 at 550.

<sup>23</sup> Campbell and Wiles, above n 14 at 550.

<sup>24</sup> Thomas, above n 12 at 14.

<sup>25</sup> Campbell and Wiles, above n 14 at 550; Centre for Empirical Legal Studies, above n 10 at 8; Thomas, above n 12 at 547.

<sup>26</sup> Campbell and Wiles, above n 14 at 550; Centre for Empirical Legal Studies, above n 10 at 8.

the Legal Advice Research Unit to provide legal advice on socio-legal research and funded the Legal Action Group (LAG), a pressure group extending free legal advice for researchers to publish socio-legal research work.<sup>27</sup> Another important step was the establishment of the Oxford Centre for Socio-legal studies in 1972.<sup>28</sup> The most notable research projects funded and organised by this Centre were in the areas of bias in the law and differential access in giving legal services,<sup>29</sup> financial consequences of accidents and impairment and the relevance of law,<sup>30</sup> and the operations of court processes, tribunals, and jury system.<sup>31</sup> Further, the Oxford Centre assisted many institutions to establish thematic research centres in order to promote the use of the socio-legal approach.<sup>32</sup>

The socio-legal approach was initially tested in criminal law, by considering how criminal legal rules were perceived by the regulators and offenders.<sup>33</sup> For example, one of the initial studies explored the nature of legal rules against the use of unlawful drugs, by drawing on the empirical evidence of drug takers and law enforcers.<sup>34</sup> Later, the socio-legal approach was followed in studies on judicial and legislative processes, government and executive conduct, and policy reform.<sup>35</sup> As Thomas and Banaker<sup>36</sup> show, the development of the socio-legal approach encouraged legal scholars to broaden legal research by engaging in interdisciplinary studies of law while “comfortably being housed in law schools”.

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<sup>27</sup> Campbell and Wiles, above n 14 at 563; Centre for Empirical Legal Studies, above n 10 at 8.

<sup>28</sup> Campbell and Wiles, above n 14 at 563; Centre for Empirical Legal Studies, above n 10 at 8.

<sup>29</sup> For example - B Abel-Smith, M Zander and R Brooke *Legal Problems and the Citizen and Bridges* (1973) Heineman Educational Books, L Bridges, B Sufrin, J Whetton and R White “Legal Services in Birmingham” (1975) University of Birmingham, Institute of Judicial Administration 8.

<sup>30</sup> Centre for Empirical Legal Studies, above n 10 at 8.

<sup>31</sup> For example, AE Bottoms and JD McClean *Defendants in the Criminal Process* (1976) Routledge; C Grace and P Wilkinson *Negotiating the Law: Legal Phenomena in Welfare Provision* (1975) Legal Advice Research Unit; W Cornish “Jury Research: Achievements and Prospects” (1974) Socio-Legal Group Conference; S McCabe and R Purves *Bypassing the Jury* (OUP 1972).

<sup>32</sup> Centre for Empirical Legal Studies, above n 10 at 8. The Institute for the Study of the Legal Profession in Sheffield was an interdisciplinary legal research center established in 1992, engaging in research on legal services and regulation, legal education and training, criminal justice and priorities and progress of the civil justice system; The Oxford Centre for Family Law and Policy, established in January 2001, brings together family lawyers and family policy researchers who research on the regulation of the obligations arising from personal relationships from a cross national perspective; Essex Human Rights Centre is an interdisciplinary Centre for research, publication, teaching on the practical engagement in human rights work through consultancy contracts, training and legal practice; ESRC Centre for Analysis of Risk and Regulation, interdisciplinary research Centre, focusing on organizational and institutional settings for risk management and regulatory practices; Centre for Research on Families and Relationships, established in 2001, is a research Centre engaging in research on families and relationships across the life course and generations.

<sup>33</sup> S Cohen “Criminology and the Sociology of Deviance in Britain – a recent history and current report” in P Rock and M MacIntosh (eds) *Deviance and Social Control* (Tavistock Publishing 1974).

<sup>34</sup> J Young “The Drug takers” (Paladin, 1971).

<sup>35</sup> For example, the publications by B Abel-Smith and R Stevens *Lawyers and the Courts* (Heineman publishing, 1967); M Zander “Discovering Bail Applicants’ background” (1967) *The New Law Journal* 921; M Zander “The Legal Profession and the Poor” (1969) 20 *Northern Ireland Legal Quarterly* 109; M Zander and C Glasser “A study in representation” (1967) *New Law Journal* 815.

<sup>36</sup> Thomas, above n 12 at 358; R Banaker “Law through the sociology’s looking glass: conflict and competition in sociological studies in law” (2009) in A Denis, D Kalekin-Fisherman (eds) *The New ISA Handbook in Contemporary International Sociology: Conflict, competition and cooperation* (SAGE 2009).



Despite the growth of the body of legal research utilising the socio-legal perspective, critics consider it subversive and adopted by those who indulge in legal research without understanding the true nature of the study of law which is to engage in an analysis and exploration of “black-letter law”.<sup>37</sup> This view ingrained in law schools and followed by some legal scholars has limited the growth in the number of socio-legal researchers.<sup>38</sup> Despite these issues and resistance by legal positivists, the socio-legal approach continues to be adopted in legal research as a theoretical perspective that explores the application of law in society.<sup>39</sup>

### **6.2.2 A snapshot of research incorporating the socio-legal research**

The relevance of the socio-legal approach can be evidenced by exploring the legal studies which have adopted this method. While not an exhaustive analysis, this section presents few examples with the aim of supporting the use of this theoretical framing in the present study.

Dhir used the socio-legal framework to analyse the societal perceptions of the Norwegian corporate laws on board gender diversity.<sup>40</sup> Initially, a documentary analysis was conducted on the legal rules on board gender diversity,<sup>41</sup> and thereafter the social meaning and contextual impact of the Norwegian laws on board gender diversity was tested by collecting primary data by conducting interviews with Norwegian company directors.<sup>42</sup> The interview data offered insights and revealed the experiences of Norwegian company directors in applying the laws on board gender diversity in practice, highlighting how the law in books has translated into the day-to-day practice of directors. The adoption of the socio-legal approach provided the necessary framework to examine, through the subjective experiences of corporate actors, the impact of board gender diversity laws in shaping boardroom dynamics and decision-making in corporate governance in Norway. Accordingly, “the socio-legal approach provided a window to gauge the human side of understanding and researching laws on board gender diversity”.<sup>43</sup>

In another study, the socio-legal approach was used to identify the impact of social norms in Russia on seeking litigation as a method of dispute resolution in neighbourhood disputes.<sup>44</sup> The Russian property laws and regulations which provide litigation as a dispute

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<sup>37</sup> Campbell and Wiles, above n 14 at 572.

<sup>38</sup> Centre for Empirical Legal Studies, above n 10 at 9.

<sup>39</sup> For examples of recent studies conducted using the socio-legal approach, reference can be made to AA Dhir *Challenging Boardroom Homogeneity: Corporate Law, Governance and Diversity* (CUP 2015); H Burke, P Nordqvist, and C Smart, *Relative strangers Key Messages* (2015) Morgan Centre for Research into Everyday Lives, University of Manchester; C Smart, R Jallinoja and ED Widmer (eds.) “Relationality and Socio-Cultural Theories of Family Life” in *Families and Kinship in Contemporary Europe: Rules and Practices of Relatedness* (2011) Palgrave Macmillan; N Sanford, J Eekelaar, M Maclean *Cross currents: family law and policy in the United States and England* (OUP 2000).

<sup>40</sup> AA Dhir *Challenging Boardroom Homogeneity: Corporate Law, Governance and Diversity* (CUP 2015).

<sup>41</sup> Dhir, above n 40 at 23.

<sup>42</sup> Dhir, above n 40 at 23.

<sup>43</sup> Dhir, above n 40 at 24.

<sup>44</sup> K Hendley “Resolving Problems among Neighbours in Post-Soviet Russia: Uncovering the Norms of the

resolution method were examined at first, and thereafter, the social perceptions on using litigation as a measure of dispute resolution were tested by collecting empirical data through focus groups and interviews.<sup>45</sup> The primary data revealed that despite property laws providing the option to seek litigation for neighbourhood disputes, parties were guided by norms and customs which existed in Russian society on litigating against a neighbour. These informal norms were based on the idea that invoking litigation against a neighbour is an antisocial act and a breach of neighbourly conduct. It was therefore established that cultural norms influence parties to resolve their disputes with neighbours and that the application of informal methods such as mutual negotiations should be sought rather than litigation. The application of the socio-legal approach in this study specifically provided the necessary framework to understand the impact of social norms on using litigation as a legal remedy in neighbourhood disputes.

Finally, a study conducted by Cowan and McDermont used the socio-legal approach to identify whether social housing regulations should consider societal perceptions.<sup>46</sup> The authors compared the existing literature and statistics on social housing with societal insights on social housing regulations gained through empirical data. These findings revealed that regulations on social housing needed to be framed on social perceptions if the regulations on social housing were to address societal issues.<sup>47</sup>

### ***6.2.3 Application of the socio-legal approach to the study***

Building on the above analysis, this section explores how the socio-legal approach could be applied to this study. According to Dhir, the socio-legal approach provides the necessary theoretical framework to analyse legal rules on board gender diversity by combining theoretical and empirical research.<sup>48</sup> This was done by conducting a documentary analysis of the legal rules in Norway on board gender diversity and then conducting interviews to identify the perceptions of Norwegian company directors on board gender diversity laws.<sup>49</sup> Adopting a similar framework, the present study used the socio-legal approach to explore both the theoretical content of the legal rules adopted globally on board gender diversity and the societal perceptions of the corporate community in Sri Lanka on the possible implementation of rules on board gender diversity. Further, the socio-legal approach provides the theoretical framework to explore the correlation between social norms and legal rules. Dhir's study was used to

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Pod"ezd" (2011) 36 Law & Social Inquiry 388.

<sup>45</sup> Hendley, above n 44 at 388.

<sup>46</sup> D Cowan and M McDermont *Regulating Social Housing: Governing Decline* (Routledge-Cavendish Abingdon, 2006).

<sup>47</sup> Cowan and McDermont, above n 46 at 3.

<sup>48</sup> Dhir, above n 40 at 24.

<sup>49</sup> Dhir, above n 40 at 24.

develop the overarching objectives of this study to explore the impact of the social and cultural norms in Sri Lanka on the implementation of rules on board gender diversity.

Most socio-legal theorists maintain that for a study to incorporate the socio-legal theoretical framing, it is necessary to adopt socio-legal thinking throughout the study.<sup>50</sup> This involves initially adopting socio-legal thinking in framing the objectives and research questions and thereafter analysing whether socio-legal thinking is reflected in the findings. This will be the scope of the sections below.

*(a) Adopting socio-legal thinking in framing the research objectives*

One of the overarching objectives of this study was to analyse the feasibility of implementing rules on board gender diversity in Sri Lanka. In order to achieve this aim, it was necessary to capture the Sri Lankan societal insights and perceptions on the introduction of board gender diversity rules. Adopting a doctrinal legal approach limiting the analysis to the content of positive law would not achieve the aims of this study. The socio-legal approach as a theoretical perspective provided the necessary framework to analyse the positive law by being sensitive to the context. The Socio-legal Association provides a succinct commentary of this point stating that:

The socio-legal approach embraces law as a social institution, by exploring the social effects of law, legal processes, institutions and services and the influence of social, political and economic factors on the law and legal institutions. To do such research, empirical findings are a necessity.<sup>51</sup>

Within the socio-legal approach, law is not viewed autonomously but as an element interrelated and shaped by broader social, political, and economic factors. As Thomas comments,

the socio-legal approach adopts the position that law is a component of the wider social and political structure and is inextricably related to it in an infinite variety of ways and can therefore only be properly understood if studied in that context by insights from society.<sup>52</sup>

The study began with an exploration of the literature on the laws on board gender diversity present globally and focussed on the existing corporate governance environment in Sri Lanka. This analysis clarified the existing status of the laws on board gender diversity in other countries and the improvements which could be brought to the corporate governance laws in Sri Lanka if rules on board gender diversity were to be adopted. Next, the study investigated

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<sup>50</sup> Dhir, above n 40 at 24; Hendley, above n 44 at 338; Cowan, above n 46 at 3.

<sup>51</sup> Socio Legal Studies Association “SLSA Statement of Principles of Ethical Research Practice” (January 2009) 1.2.1. <[www.slsa.ac.uk/index.php/8-general-information/4-slsa-statement-of-principles-of-ethical-research-practice](http://www.slsa.ac.uk/index.php/8-general-information/4-slsa-statement-of-principles-of-ethical-research-practice)>.

<sup>52</sup> P Thomas “Curriculum Development in Legal Studies” (1986) 20 Law Teacher at 112.

the societal perceptions from Sri Lanka on the introduction of rules on board gender diversity. In order to do so, elements of empirical research were incorporated by collecting data through interviews with some members from the corporate community in Sri Lanka. The insights obtained were valuable in determining how rules on board gender diversity could contribute to improve the effectiveness of corporate governance in Sri Lanka and the benefits to society.

*(b) Closing the gap between law in books and laws in action*

Doctrinal legal research aims at exploring the prescriptive content of the laws rather than its actual effect. As a result, findings from such doctrinal research often have inefficiencies when applied in practice. Research based on the socio-legal approach attempts to address this gap. It provides a realistic approach to law by focusing on how law functions in society. As Griffiths recognises, studies based on the socio-legal approach look at the socially contingent character of law as inseparable from the social context which produces it.<sup>53</sup>

Socio-legal research does not neglect the prescriptive content of law adopted in doctrinal research but also attempts to create a collaboration of law with the social context in which it operates. Accordingly, studies adopting a socio-legal approach aim at closing the gap between law in books and laws in action. This study aligns with the socio-legal framework because it does not only explore the prescriptive content of the laws on board gender diversity adopted globally but it also looks beyond at the efficacy of such laws if adopted in Sri Lanka. The findings of this study reflect how the laws on board gender diversity need to be drafted to suit the Sri Lankan context.

*(c) Adopting socio-legal thinking in framing Research Questions*

According to Donovan,<sup>54</sup> one of the steps for adopting a socio-legal framework in research requires to incorporate socio-legal thinking in framing the research questions. In this study, the research questions are framed by concentrating on the effect of legal rules on society, the impact of social factors on law, and how legal rules could promote social change. Research Question 1 (To what extent can board gender diversity contribute towards advancing good corporate governance in Sri Lanka?) is based on the goal of analysing the effect of legal rules on society, by obtaining insights from the Sri Lankan corporate community. Further, this research question considers the effect of legal rules on board gender diversity on the corporate governance rules in Sri Lanka. Research Question 2 (How do the social and cultural norms in

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<sup>53</sup> J Griffiths "The Social working of Legal rules" (2003) 8 Journal of Legal Pluralism 1.

<sup>54</sup> DO Donovan "Socio-legal methodology: Conceptual underpinnings, justifications and practical pitfalls" (2016) ResearchGate< [https://www.researchgate.net/publication/313640633\\_Socio-Legal\\_Methodology\\_Conceptual\\_Underpinnings\\_Justifications\\_and\\_Practical\\_Pitfalls](https://www.researchgate.net/publication/313640633_Socio-Legal_Methodology_Conceptual_Underpinnings_Justifications_and_Practical_Pitfalls)>.

Sri Lanka impact on the effective implementation of rules on board gender diversity in Sri Lanka?) explores the impact of social factors on legal rules, particularly the impact of the social and cultural norms in Sri Lanka concerning the status of women and its effect on developing rules on board gender diversity. Further, Research Question 2 considers whether rules on board gender diversity could promote social change by obtaining the views from the corporate community in Sri Lanka. Research Question 3 (What is the appropriate mechanism to implement board gender diversity in Sri Lanka?) is framed with the aim of identifying through the views of the corporate community in Sri Lanka whether mandatory rules or voluntary rules on board gender diversity would best suit Sri Lanka to achieve effective results. Thus, the findings of this study are not limited to an analysis of the literature but also provide insights and perceptions drawn from Sri Lanka towards introducing board gender diversity rules.

*(d) The impact of the socio-legal approach on the findings*

Cryer et al state, “the theoretical basis of a project ultimately determine the results which will be generated.....The socio-legal framing will generate results which reflect the nature of law’s interrelationship with society.”<sup>55</sup> While this section does not provide a detailed analysis of the findings from this study, the main themes are briefly discussed to indicate the manner in which socio-legal thinking is embedded in the findings, reflecting on the thoughts of the corporate community in Sri Lanka on the existing corporate governance rules on board composition. A doctrinal approach would have limited the study to an exploration of the existing corporate governance rules on board composition in Sri Lanka. However, adopting a socio-legal approach provided the opportunity to explore the perceptions of the corporate community in Sri Lanka on the existing corporate governance rules and their effectiveness. It also provided the necessary foundation to capture the views of the corporate community on the benefits which could be generated if rules on board gender diversity were introduced and the best method of introducing such rules. Finally, the socio-legal approach offered the necessary framework to generate findings that unravelled the relationship between legal rules and social and cultural norms existing in Sri Lankan society showing the impact of social and cultural norms on introducing rules on board gender diversity in Sri Lanka.

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<sup>55</sup> R Cryer, T Hervey, B Sokhi-Bulley, A Bohm *Research Methodologies in EU and International Law* (Hart Publishing 2011) 5.

### 6.2.4 Difficulties encountered in adopting the socio-legal approach

The insufficient availability of socio-legal research has affected researchers in understanding and applying this approach. This difficulty was also encountered in conducting the present study. There was a lack of availability of research that used the socio-legal approach in company law and corporate governance research and only a few past studies could be used for this study. However, there were several studies on other areas of law that were useful in understanding the context in which socio-legal research could be applied as a theoretical framing.<sup>56</sup>

Overall, it was a time-consuming exercise to collate these various guidance points from secondary sources to formulate a comprehensive framework that could be adopted to incorporate the socio-legal approach in the current study. Despite the difficulties encountered, the socio-legal approach was found to be a successful tool as a theoretical framework to achieve the overarching aims of this study.

### 6.3 Research methods

“The use of qualitative research methods to analyse corporate governance issues and concepts broadens the methodological scope of the research and strengthens the contribution of the study.”<sup>57</sup> As mentioned above, qualitative research methods were incorporated in this study with the aim of gaining a deeper and broader understanding of the corporate governance rules on board composition in Sri Lanka. They have been of particular relevance in analysing the feasibility of incorporating board gender diversity as a board composition rule.<sup>58</sup> Qualitative research methods consist of data collection through primary<sup>59</sup> or secondary sources.<sup>60</sup> However, the integration of two qualitative methods that provide primary and secondary data is regarded as providing significant insights and strengthening the findings.<sup>61</sup> In order to enrich the findings, in this study, a documentary analysis was conducted of secondary sources, and interviews were used as a primary source of data collection. The information obtained from the

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<sup>56</sup> K Hendley “Resolving Problems among Neighbours in Post-Soviet Russia: Uncovering the Norms of the Pod”ezd” (2011) 36 Law & Social Inquiry 388; Cowan D and McDermont M, *Regulating Social Housing: Governing Decline* (Routledge-Cavendish, Abingdon, 2006).

<sup>57</sup> T McNulty, A Zattoni and T Douglas *Developing Corporate Governance Research through Qualitative Methods: A Review of Previous Studies* (2013) 21(2) Corporate Governance: An International Review 183.

<sup>58</sup> McNulty et al, above n 57 at 187. Qualitative research methods assist in drawing out meanings, definitions, characteristics, and descriptions of a phenomena to understand why and how such phenomena occurs; qualitative methods contribute towards the objectives of this study as it provides the opportunity to understand the concept of board gender diversity as a corporate governance rule on board composition and its application in the Sri Lankan context.

<sup>59</sup> M Denscombe *The Good Research Guide* (OUP 2010) 276. Primary qualitative data sources consist of “original information collected afresh in respect of a field of study under the supervision and control of the investigator”.

<sup>60</sup> Denscombe, above n 59 at 276. Secondary data consists of “pre-existing qualitative data collated by document analysis”.

<sup>61</sup> C Cardno, N Rosales-Anderson and M McDonald “Documentary analysis hui: An emergent bricolage method for culturally responsive qualitative research” (2017) 6(2) MAI Journal 23  
<<http://journal.mai.ac.nz/sites/default/files/MAIJrnl62Cardno02Final.pdf>>.

documentary analysis was used to build on the literature chapters of the research, and also used as a basis to conduct interviews with a subgroup from the corporate community in Sri Lanka. This section initially analyses the use of documents as a secondary source to develop the literature chapters of the study.<sup>62</sup> Then a detailed explanation is provided of the manner in which interviews have been used as a primary research method for this study.

### **6.3.1 Documentary analysis**

As mentioned earlier, a documentary analysis using secondary data sources was used in this study to develop the literature chapters.<sup>63</sup> The documentary analysis developed in this study concentrated on “locating, interpreting, analysing and drawing conclusions through the use of documents.”<sup>64</sup> O’Leary and Bowen’s guidelines were used for the purposes of conducting the documentary analysis.<sup>65</sup> These guidelines outline steps to consider during the planning process and when conducting the documentary analysis. During the planning phase, a timeline was created to locate the necessary documents taking into account the availability of documents. This analysis revealed that some documents could only be located by conducting a physical search in Sri Lankan libraries. This was relevant to determine the time needed to conduct the documentary analysis.

It took approximately 12 months to finish gathering documents. For this purpose, documents available online and at libraries were collected. Most time was spent on searching for documents at Sri Lankan libraries. Some records were either physically deteriorated or could not be traced. However, this exercise resulted in the collection of a wide array of documents which generally covered the central themes covered in the research.<sup>66</sup> In exploring the content of the documents, those which revealed similar analysis were noted and these findings organised into the central research questions which required answering.

At first, the findings from textbooks, journals, and articles recognising the board as an internal constituency of a company were analysed to establish that the board is a central corporate governance organ. For this purpose, literature on Sri Lankan corporate governance

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<sup>62</sup> Literature chapters refer to Chapters 2 to 5 of the thesis.

<sup>63</sup> All secondary sources were obtained either as hard copies from the library or as soft copies downloaded online.

<sup>64</sup> Denscombe, above n 59 at 278.

<sup>65</sup> Z O’Leary, *The essential guide to doing your research project* (2 edn, 2014) SAGE publications 23; GA Bowen “Document analysis as a qualitative research method” *Qualitative Research Journal* 9(2) (2009) 24.

<sup>66</sup> Discussed in Chapter 6. The central themes consist of perceptions on the existing corporate governance rules in Sri Lanka on board composition, perceptions on introducing legal rules on board gender diversity in Sri Lanka, perceptions on gender equality in Sri Lanka, perceptions on the social and cultural norms in Sri Lanka and what would be the accurate mechanism to implement board gender diversity in Sri Lanka.

was especially useful to identify the developments in this space.<sup>67</sup> This literature assisted in narrowing the focus of the study to the board of directors. Then, legislation developed in Sri Lanka and overseas on board composition rules was used to identify how these rules mitigate managerial agency problems resulting from ineffective board monitoring.<sup>68</sup>

Next, textbooks, articles, journals, and legislation that focus on board gender diversity as a rule on board composition were reviewed.<sup>69</sup> This was useful in ascertaining the economic and social advantages associated with this concept. Also, scrutiny of international legislation that incorporates rules on board gender diversity assisted in identifying the legal methods to incorporate this concept.

“The use of qualitative methods such as documentary analysis in the exploration of corporate governance phenomena in different national contexts is regarded to assist scholars to understand the legal and cultural environment of a nation and its effect on corporate governance issues.”<sup>70</sup> To make use of this for the purposes of this study, secondary data describing the corporate legal environment in Sri Lanka was reviewed. In particular, it included an analysis of textbooks, articles, journals, legislation, government documents, and newspaper bulletins relating to Sri Lanka.<sup>71</sup> In addition, documents issued by international bodies<sup>72</sup> and Sri Lankan regulatory departments<sup>73</sup> helped to understand the social and cultural environment in Sri Lanka and the status given to Sri Lankan women in society. Statistical documents issued by Sri Lankan regulatory authorities provided valuable information on labour force participation,<sup>74</sup> literacy levels<sup>75</sup> and the threshold of gender diversity in Sri Lankan boardrooms.<sup>76</sup> Difficulties were encountered in locating these documents as most documents were not available online and had to be obtained through extensive searches at Sri Lankan libraries.

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<sup>67</sup> For example, the following legislation mandate rules on board independence and the separation of the roles of Chairman and CEO: the NYSE Listed Company Manual (2013) ss 303A.01-303.07; UK Corporate Governance Code, (2018) Principle F.11, 24; Code of Best Practice (Sri Lanka) 2017 Principle A.5.1, A.2.

<sup>68</sup> For example, the following legislation mandate rules on board independence and the separation of the roles of Chairman and CEO: the NYSE Listed Company Manual (2013) ss 303A.01-303.07; UK Corporate Governance Code, (2018) Principle F.11, 24; Code of Best Practice (Sri Lanka) 2017 Principle A.5.1, A.2.

<sup>69</sup> Referred to in Chapter 3. Textbooks: AA Dhir *Challenging boardroom homogeneity: Corporate Law, Governance and Diversity* (CUP 2015) at 23; Articles and Journals: B Choudhury “New Rationales for women on boards” (2014) Oxford Journal of Legal Studies 511; K Watson “Gender diversity on corporate boards” (2014) 3 Journal of Australian Law Teachers Association 1 at 4.

<sup>70</sup> McNulty, above n 57 at 187.

<sup>71</sup> Referred in Chapter 5. For example, A Wikramanayake *Company Law in Sri Lanka and developments* (2012), A Wickramanayake 47; H Cabral *Duties of Company Directors & Corporate Governance in Sri Lanka* (2011) H Cabral 145

<sup>72</sup> Referred to in Chapter 5: UNICEF “Statistics Sri Lanka – women and facilities” (2018) <[http://www.unicef/srilanka/statistics/find\\_facilities](http://www.unicef/srilanka/statistics/find_facilities)>.

<sup>73</sup> Ministry of Social Development “Women and Children in Sri Lanka” (2017) <<http://www.msidsl/overviewandstatistics>>.

<sup>74</sup> Department of Census and Statistics “Changing roles of women in Sri Lanka” (2014) <[http://www.statistics.gov.lk/samplesurvey/LFS\\_Annual%20Report\\_2014.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Annual%20Report_2014.pdf)>.

<sup>75</sup> World Bank “Education statistics 2019- Sri Lanka” <<http://datatopics.worldbank.org/education/country/sri-lanka>>.

<sup>76</sup> Daily FT “SLID Women’s forum shines light on gender diversity” (2016) <<http://www.ft.lk/article/531663/SLID-women-s-forum>>.



While providing the necessary context for this research, a documentary analysis alone was insufficient to capture the thoughts and views of the corporate community in Sri Lanka on the corporate governance environment and the status of board gender diversity. It was necessary to test the evidence gathered through the documentary analysis. For this purpose, interviews were conducted with a subgroup of members from the corporate community in Sri Lanka.

### **6.3.2 Using interviews as a research method**

“Interviews become an efficient source of data collection when researchers intend to include insights such as opinions, feelings, emotions, and experiences gathered from research participants in the research.”<sup>77</sup> One of the overarching aims of the current study was to explore the opinions and views of the corporate community in Sri Lanka in relation to the introduction of rules on board gender diversity. Interviews were a suitable method for data collection in achieving this aim because they provided a structure to discuss and obtain views from research participants. Accordingly, 24 interviews were conducted with a subgroup of members from the corporate community in Sri Lanka. Details of the research participants, interview framework, planning, and conducting the interviews, method of analysis, and drawbacks are provided in the sections below.

#### *(a) Research participants/ interviewees*

“The power-holders within the Sri Lankan corporate community consist of board members and company secretaries of public companies with high market capitalisation, senior members of the Sri Lanka Institute of Directors, Colombo Stock Exchange, and Securities and Exchange Commission, and corporate lawyers with more than 10 years experience.”<sup>78</sup> Because of the influence of this group on changes in corporate laws in Sri Lanka, interviewees were chosen from within this group.<sup>79</sup> In selecting interviewees, initially, a sample frame was created by perusing the Sri Lankan government’s official web portal,<sup>80</sup> the business directory of the Colombo Stock Exchange,<sup>81</sup> and the websites of the Sri Lanka Institute of Directors and the Sri Lanka Bar Association.<sup>82</sup> The Sri Lankan government official website was used to identify the key regulatory authorities/organisations which were involved in corporate governance reforms.

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<sup>77</sup> Denscombe, above n 59 at 184.

<sup>78</sup> Sri Lanka Institute of Directors “Corporate governance participants and their impact in Sri Lanka” (2017) <<http://www.slid/article0092017>>.

<sup>79</sup> This was disclosed to the interviewees in the information sheet.

<sup>80</sup> Government of Sri Lanka <<https://www.gov.lk/welcome.html>>.

<sup>81</sup> Colombo Stock Exchange <<https://www.cse.lk>>.

<sup>82</sup> Sri Lanka Institute of Directors <<https://www.slid.lk>>; Sri Lanka Bar Association <<https://basl.lk>>.

Thereafter, the websites of these regulatory authorities/organisations were searched to locate their key officials. The business directory of the Colombo Stock Exchange was used to identify Sri Lanka's top 10 public companies with high market capitalisation. The websites of each of these public companies were searched to identify their board members and company secretaries. In addition, the Sri Lanka Institute of Directors' website was useful to cross-check the list of directors of the top 10 public companies and to identify directors who were involved in forums and committees facilitating corporate governance reform. The Sri Lanka Bar Association website was used to obtain information about corporate lawyers in Sri Lanka.<sup>83</sup> This website lists the dates on which each lawyer has enrolled as legal counsels, areas of their specialty, whether they are attached to a firm, or engaging in private practice. This information was used to identify corporate lawyers in Sri Lanka with more than 10 years of experience (by using the date of enrolment).

After creating the initial sample frame it became apparent that some of the interviewees were personal acquaintances through previous relationships that were established while working as a corporate lawyer in Sri Lanka. These parties were excluded from the interviewee list in order to avoid any conflicts of interest and risks associated with such interviewees not being entirely forthcoming in their views. However, adopting the snowballing technique, the assistance of these excluded parties was used to identify and channel interviews with other potential parties. Snowballing is a sampling technique where the research participants for a study are recruited after approaching their acquaintances.<sup>84</sup> This technique uses a small pool of initial informants to nominate, through their social networks, other participants who meet the eligibility criteria and could potentially contribute to a specific study. The term "snowball sampling" derives from the analogy of a snowball increasing in size as it rolls downhill. Using this technique, the informants who were acquaintances of members of the corporate community in Sri Lanka were asked to assist in making contact and approaching other potential interviewees.

The final sub-group selected for the study consisted of 24 interviewees. This included 12 interviewees who were directors and company secretaries of Sri Lanka's top 10 public companies with the highest market capitalisation; six interviewees who were members employed in corporate regulatory authorities; four interviewees who were independent corporate lawyers and two who were corporate lawyers attached to firms. The variation within the interview sub-group and the selection of some of the dominant players among the corporate

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<sup>83</sup> Sri Lanka Bar Association <<https://basl.lk>>.

<sup>84</sup> M Lewis-Beck *Snowball sampling* (The SAGE Encyclopaedia of Social Science Research Methods, 2004) 12. One of the primary limitations of using this technique is that it may restrict the particular social group.

community in Sri Lanka enabled to obtain a mix of opinions and views which helped in gaining a sound understanding of the ideas of the corporate community towards the introduction of rules on board gender diversity.

*(b) The interview framework*

“A key element in conducting interviews is the selection of a suitable framework.”<sup>85</sup> The framework for the interviews can be either structured, unstructured, or semi-structured. For the purpose of this study, a semi-structured interview framework was chosen after conducting a comparative analysis of this framework with the structured and unstructured approaches and considering the feasibility of drawing out data necessary for this study.

Structured interviews are based on a predetermined list of questions prepared by the interviewer to which the interviewee provides answers.<sup>86</sup> All responses are kept strictly within the framework of the questions and the data collected are limited to the questions which are framed. This approach was not suitable for this study because it was necessary to adjust the line of questioning by adding or changing questions as needed to tease out the interviewees’ thoughts and opinions on introducing rules on board gender diversity to Sri Lanka. In unstructured interviews, the interviewer can introduce a broad theme or topic and allow the interviewees to express their opinions and views.<sup>87</sup> No prior questions are determined by the interviewer. The unstructured approach was not suited to the current study as difficulties could be encountered in analysing the data collected from an overly broad scope of responses. This would result in delays in data analysis and possibly, misleading interpretations. Accordingly, the semi-structured interview technique seemed the most suitable framework for this study.

In a semi-structured approach, the interviewer prepares a list of questions prior to the interview and may change the order of the questions or can add or change questions when conducting the interview.<sup>88</sup> The questions can be open-ended, permitting the interviewee to elaborate on the points of interest. Adopting this approach, in this study, a pre-determined list of questions was prepared based on the themes emerging from the literature.<sup>89</sup> These themes were based on the corporate governance rules and board composition in Sri Lanka and overseas, the use of the concept of board gender diversity as a measure to improve board effectiveness and promote gender equality in society, and on the regulatory measures adopted

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<sup>85</sup> Denscombe, above n 59 at 186.

<sup>86</sup> L Webley “Qualitative approaches to Empirical Legal Research” (The Oxford Handbook of Empirical Legal Research 2010) 3; Denscombe, above n 673 at 187.

<sup>87</sup> Webley, above n 86 at 3, Denscombe, above n 59 at 187.

<sup>88</sup> Webley, above n 86 at 3, Denscombe, above n 59 at 187.

<sup>89</sup> Derived from the document analysis.

globally to implement rules on board gender diversity. Accordingly, the following interview questions were prepared.

- *What are your views on the corporate governance reforms in Sri Lanka, particularly in relation to improving board effectiveness?*
- *The literature on this topic identifies board gender diversity as a strategy to promote board effectiveness and promote better corporate governance. What are your views on implementing this strategy in Sri Lanka?*
- *Would you consider the social and cultural norms in Sri Lanka, such as the views that females should give priority to domestic responsibilities, and that females are not cut out to be leaders, as a barrier if board gender diversity is to be implemented?*
- *The Sri Lankan Government seems to be implementing and initiating many measures to promote gender equality, such as by having Constitutional rights against discrimination on the basis of sex, establishing Ministries to deal with women's issues and promote female education, and in presidential addresses on the value of gender equality. In your opinion, would you consider board gender diversity as a measure towards promoting gender equality in society, and if so why?*
- *What are your views on implementing rules on board gender diversity as a tool to promote both better corporate governance and gender equality?*
- *Globally, countries have adopted mandatory and voluntary measures to implement board gender diversity. For example, countries such as Norway, Spain and India have adopted mandatory quotas requiring companies to include a certain percentage of females on corporate boards. Other countries, such as the UK and Australia, have adopted voluntary measures incorporating guidelines in their corporate governance codes requiring public listed companies to give due regard to this strategy of board gender diversity in formulating the board composition, and if not provide reasons in the company annual reports. If this strategy is to be implemented in Sri Lanka, what would you consider to be the appropriate mechanism, and why?*
- *Any other comments?*

During the interview, the questions above were rephrased, and follow-up questions were added where necessary to clarify the questions asked, or as strategies where interviewees were silent, reluctant to answer, or did not provide sufficient clarity in their responses. In most interviews, follow-up questions needed to be added when interviewees were questioned about the social and cultural norms existing in Sri Lanka concerning women.<sup>90</sup> Most interviewees gave vague answers and needed to be prompted with follow-up questions requesting

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<sup>90</sup> Referred to in Chapter 2 about the status of women in Sri Lanka where women are given a secondary status to men and required only to engage in domestic chores.

clarifications or the reasoning underpinning their responses. As a semi-structured approach was adopted, there was the necessary flexibility to add follow-up questions to gather additional essential data. As a result, greater input was obtained from the interviewees.

Semi-structured interviews can be conducted either as one-to-one interviews or as group interviews.<sup>91</sup> Owing to difficulties in gathering several interviewees at the same time for an interview, group interviews were not used in this study. Instead, interviews were separately conducted with each interviewee, adopting a one-to-one approach and face-to-face. Telephone interviews were not undertaken in order to avoid missing data or misinterpreting data for possible technical reasons. The use of the face-to-face approach provided the opportunity to create better interaction with the interviewees, and in some instances to create links and relationships for the future. Further, this approach provided the possibility to study the body language of the interviewees when responding. This information was particularly relevant for identifying the interviewees' interest in the study, attentiveness to questions, and resistance to answering questions. Generally, when interviewees were interested in the study or were attentive to questions, they had good eye contact, were smiling, nodded in agreement, and had a relaxed posture. Whenever there was a resistance to answer questions, interviewees were either looking down to prevent eye contact and/or crossing their arms with a stern facial expression. While a detailed analysis of nonverbal cues from interviewees was not conducted in this study, the insights were noted to assist with the responses. This information was useful in conducting the data analysis. Conducting face-to-face interviews in this study required significant planning and preparation, as detailed in the next section.

### *(c) Planning and conducting the interview*

#### *(i) The interviewer effect – personal identity and involvement*

Studies identify that people respond differently based on the interviewer's gender, age, ethnic origin, accent and occupational status.<sup>92</sup> Data collected through interviews get affected by the personal identity of the researcher, particularly where sensitive issues are discussed. This aspect was a significant issue when conducting some interviews as some of the interviewees had a preconceived view that the motivation for this research was based on personal challenges that I had faced as a Sri Lankan woman in building a professional career. This was noted through the comments made at the commencement of the interview by some of

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<sup>91</sup> Webley, above n 86 at 3, Denscombe, above n 59 at 187. One-to-one interviews are conducted with a single participant at one time whereas group interviews are conducted with two or more persons at the same time.

<sup>92</sup> D Silverman (ed) *Qualitative Research* (4<sup>th</sup> edn, SAGE Publications, 2016) 23.

these interviewees who raised questions such as “why are you interested in research on gender – is it because you’re a woman?,” “are you not happy with the status given to women in Sri Lanka?,” and “do you have any personal connections to what you are researching, like you never see yourself being a director?”. These questions were answered in a polite and receptive manner. It was also clarified that no personal beliefs were underpinning this research. This was reiterated by emphasising the aim of the project, which was to explore the implementation of rules on board gender diversity and its contribution to the development of corporate governance rules in Sri Lanka. This approach created the right climate for the interview and the interviewees felt comfortable in proceeding.

Throughout the interviews, it was necessary to adopt a passive and neutral stance to avoid any potential personal influence in the responses. The interviews flowed as a dialogue with minimal personal feelings or emotions shown, or by sharing any personal experiences with the interviewees.

#### (ii) Preparation, authorisation, consent, and validity of interview recordings

Before conducting the interviews, human ethics approval for the research was obtained from the Victoria University of Wellington Human Ethics Committee (HEC). The interviewees were informed of the HEC approval by disclosing this in an information sheet (Appendix 1) shared before the interview. This sheet was emailed to the interviewees one month prior to the interview. In addition to the HEC approval, the information sheet detailed the aims of the project, the subgroup chosen for the study, particulars about the venue, the duration of the interview, the subject area of questioning, confidentiality of the information provided and contact details for further clarifications. Most of the interviewees did request a phone chat after the information sheet was received to obtain more information about the objectives of the research and the line of questioning. While providing the necessary clarifications, this opportunity was also used to discuss the venue and times for the interview. Most interviewees were pleased with being given the option to choose a venue of their choice and opted for the interviews to be conducted at their offices.

Together with the information sheet, a consent form (Appendix 2) was emailed to the interviewees a month prior to the interview. The consent form detailed the time period for withdrawing from the study, the time within which transcripts would be dispatched, the duration for which information would be held for the purposes of the research, non-disclosure of the identity of the interviewees and confidentiality of the information. The interviewees were allowed to withdraw within two weeks after the interview transcript was sent, upon which the

information collected would be destroyed. Further, the interviewees were notified that their names would not be disclosed in the study although their identity as an employee of the respective organisation in which they were employed would be, which may result in their identity being obvious to some in their community. The consent form was collected from the interviewees a week before the interview. All the interviewees consented to the interviews by signing the consent forms. None of the interviewees withdrew from the research. However, among the 24 interviewees, only four consented for the interviews to be audio recorded. As a result, during most of the interviews, the responses of the interviewees were recorded by taking written notes. In order to prevent any misinterpretations, the responses were read out to the interviewees at the conclusion of the interview. Also, to ensure the accuracy and validity of the data collected, each interviewee was emailed a copy of the interview transcript within two days after the interview, requesting confirmation. Confirmations were sent by all interviewees via email (this assisted in complying with Phase 1 of the Data Analysis process).

#### *(d) Conducting the interview*

The interviews commenced by introducing myself. Then, the aims of the project were outlined. At the initial stage, the interviewees were asked whether they had any reservations about the project and were reassured about the confidentiality of the information provided. To set a positive tone for the interview, the interviewees were informed that the interview would flow as a dialogue. Moreover, they were informed that there was flexibility in terms of the order of questioning, with the interviewees having the right to choose not to answer any question. Also, they could ask any questions at any time during the interview. The interviewees were thanked for their participation and were assured that their views were valuable for the outcome of this research. This initial introduction helped provide a positive tone for the interview. In opening the questioning, in most interviews, it was necessary to ask general questions on their views on the corporate governance environment in Sri Lanka before describing the reforms on corporate governance and rules on board composition. This approach allowed the interviewees to be comfortable and relaxed in their responses. Thereafter, the interview gradually moved on to the prepared list of questions. When responses were inadequate, prompts and probes were given with follow-up questions. Further questions were added where there were inconsistencies in the responses. Nonverbal communication was also noted. During the interview, the time duration was monitored to ensure that the interviewees were not inconvenienced by going beyond the time allocated. Most interviews continued for about an hour, with a few interviews lasting for about one and a half hours. At the end of the

interview, an opportunity was provided for the interviewees to add any final comments and raise any points which they thought were material and should be covered in the study. Interviewees responded positively to this opportunity and were pleased to hear that their point of view could be communicated beyond the framework of questioning. Most interviewees conveyed their satisfaction at the flexible style of the interview and indicated their interest in creating professional links with me in the future. The responses which were written down were then read to the interviewees, allowing them to add or change their comments. At that stage, all the listed areas for discussion were briefly perused to ensure all areas were covered in the responses. The interviewees were finally thanked for their participation and for giving up their valuable time.

*(e) Drawbacks of interviews*

“Interviews can be time-consuming.”<sup>93</sup> This is the main disadvantage encountered in using interviews as a method of data collection in this study. The HEC approval necessary to conduct interviews took approximately two months. There was also a significant amount of time devoted to preparing documents necessary prior to the interviews such as the information sheet, consent form, and the preparation of the schedule for the interviews. In addition, in locating interviewees, it took a lot of time to access those who were not known to me. While the snowballing technique was useful in overcoming this difficulty in identifying interviewees, it was a time-consuming exercise although it restricted the group of interviewees. About a month was devoted to conducting the interviews, transcribing, and obtaining confirmation from interviewees. As most of the interviews were not recorded, it was a cumbersome and time-consuming exercise to transcribe the interviews using only written notes.

In addition, interviews were a costly method of data collection. To effectively conduct this research, it was necessary to travel to Sri Lanka and this resulted in costs associated with international travel, domestic travel to the venue, and accommodation. Apart from international travel, costs were kept to a minimum, owing to being able to make personal arrangements. Despite these drawbacks, interviews were a valuable tool in obtaining insights from the corporate community in Sri Lanka, which was necessary for this research.

#### **6.4 Data analysis: The thematic analysis method**

In conducting the data analysis of the interview data, Braun and Clarke’s thematic analysis method was used.<sup>94</sup> This is a method that focuses on identifying, analysing, and

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<sup>93</sup> Denscombe, above n 59 at 188; Webley, above n 86 at 6.

<sup>94</sup> V Braun and V Clarke “Using thematic analysis in psychology” (2006) 3(2) *Qualitative Research in Psychology* 77.



reporting patterns within qualitative data.<sup>95</sup> It is also used as a tool to organise and interpret qualitative data.<sup>96</sup> In this study, thematic analysis was used as the analytical tool to structure the qualitative data in the interview transcripts into themes and to draw interpretations relating to research questions. Thematic analysis is not wedded to any pre-existing theoretical framework, and therefore is compatible with the socio-legal theoretical framing chosen for this study. While the socio-legal approach incorporates social research methods to unravel the perceptions and effects of law on society,<sup>97</sup> thematic analysis analyses field data to reflect reality and to unpick and unravel the surface of reality.

According to Braun and Clarke, prior to conducting thematic analysis, the researcher must decide on the manner in which the data is sensitised. This requires making decisions regarding the type of analysis conducted in relation to the data (overall or detailed analysis of the data), select the method of engaging with the literature on the topic (inductive or theoretical approach), and identify the level at which themes are generated (semantic or latent).<sup>98</sup> When analysis is conducted on the entire data set, common themes are generated. Alternatively, when a detailed analysis is conducted, a comprehensive analysis of a particular element or research question relating to the data is conducted by drawing separate themes for each element or research question. This study adopted a detailed data analysis approach and a comprehensive analysis was conducted of the data by searching for themes relevant to each research question.

In using thematic analysis, it was also necessary to determine whether to adopt an inductive or theoretical approach to generate themes. A theoretical approach is a deductive or top-down method, where themes are derived from the concepts and ideas in the literature, research topic, research questions, and the researcher's theoretical interest.<sup>99</sup> This approach requires the researcher to engage with the literature prior to data collection or analysis to sensitise them to subtle elements relevant to the study. In contrast, in the inductive approach, themes are derived mainly from the collected data and this is a data-driven approach.<sup>100</sup> According to Braun and Clarke, there are no rigid guidelines regarding when the researcher should engage with the literature. However, while an inductive approach requires the researcher not to engage with the literature at an early stage of analysis (prior to data collection or coding), a theoretical approach requires engagement with the literature prior to or at the time of data collection or analysis. This study adopted both a theoretical approach and an inductive

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<sup>95</sup> Braun and Clarke, above n 94 at 77.

<sup>96</sup> Braun and Clarke, above n 94 at 77.

<sup>97</sup> CM Campbell and P Wiles "The study of Law in society in Britain" (1976) 10(4) Law and Society Review 547 at 549.

<sup>98</sup> Braun and Clarke, above n 94 at 84.

<sup>99</sup> Braun and Clarke, above n 94 at 83.

<sup>100</sup> Braun and Clarke, above n 94 at 83.

approach. The existing legal literature on the topic and theoretical underpinnings were used to develop the initial theory-driven codes, and the codes emerging through the active reading of the interview transcripts were included as data-driven codes.

The use of thematic analysis for data analysis requires a choice between identifying themes based on a semantic level or latent level.<sup>101</sup> Within the semantic approach, the analytical process involves developing themes by progressing from the description of the data in the literature and identifying and summarising patterns emerging in the literature. In contrast, an analysis on a latent level develops themes based on the underlying ideas, assumptions, and conceptualisations that shape the data. In this study, a combination of semantic and latent themes was developed to identify themes emerging through the surface meaning of the data and to theorise the sociocultural and structural context in which the responses were made.

Braun and Clarke provide guidelines on conducting a thematic analysis. This includes a six-phase approach that consists of familiarising oneself with the data, generating initial codes, searching for themes, reviewing potential themes, defining and naming themes, and producing a report. This study incorporated Braun and Clarke's guidelines to analyse the primary data. While these steps provide a guide, a linear process need not be followed when adopting this approach. Instead, a recursive process could be followed moving back and forth through the phases as needed to ensure compatibility between the research questions and data. Therefore, in conducting the data analysis in this study, there was flexibility in moving between stages in order to check the compatibility of the analysis with the research questions. The sections below provide a summary of Braun and Clarke's six-step approach. Thereafter the manner in which the first five steps of Braun and Clarke's guidelines were applied to the study is described. The sixth step, which is the production of the report, is not detailed in this chapter but will be discussed in Chapter 7 as it requires an analysis of the findings of the research.

#### ***6.4.1 Braun and Clarke's six-step guide to thematic analysis***

This section provides the foundation for identifying the manner in which Braun and Clarke's six-step approach was incorporated to conduct a thematic analysis of the data in this study. These steps are explained below.

##### *Phase 1 – Familiarising oneself with the data*

In this phase, the researcher is initially required to transcribe any verbal data into written form and check the transcripts for accuracy.<sup>102</sup> Next, the researcher is required to become immersed

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<sup>101</sup> Braun and Clarke, above n 94 at 84.

<sup>102</sup> Braun and Clarke, above n 94 at 87.

in the data by repeatedly actively reading the transcripts to ensure maximum familiarisation with the content of the data.<sup>103</sup> When reading the transcripts, the researcher is required to take notes and mark ideas that would assist in developing codes in the next phase.

### *Phase 2 – Generating initial codes*

This phase involves the production of codes from the data. Codes identify a basic segment of a group of data that can be assessed in a meaningful way in relation to a study.<sup>104</sup> Coding requires organising data and labelling extracts of data into groups. Codes are grouped as data-driven codes and theory-driven codes. Theory-driven codes are developed through the literature on the topic with specific attention to the research questions.<sup>105</sup> Data-driven codes are developed through primary data.<sup>106</sup> Coding can be conducted either by using manual methods or computer software. Manual coding is conducted by marking common data extracts together with making written notes or highlighting in coloured pens. Coding using computer software is conducted by tagging and naming selections from the transcripts into named groups.<sup>107</sup>

### *Phase 3 – Searching for themes*

Phase 3 requires searching for themes within the codes. It involves sorting the codes into specific themes. A theme captures a patterned meaning about the generated codes and represents a relationship to the research question.<sup>108</sup> A theme is not determined by quantifiable measures but rather is decided according to whether the theme captures an important element in relation to the codes and research questions.<sup>109</sup> In this phase, visual representation can be used to sort the codes into themes. Then, a thematic map needs to be developed to represent the relationship subsisting between the codes and themes. A thematic map is a visual representation of the links between the codes and themes.

### *Phase 4 – Reviewing potential themes*

Step 4 involves the refinement of the themes and analysing the relationship of the themes to all the data collected and the research questions. In conducting this phase of data analysis, initially, the collated data extracts for each theme needs to be read to identify whether a coherent pattern exists between the coded data and the themes.<sup>110</sup> Next, the themes need to be reviewed in

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<sup>103</sup> Braun and Clarke, above n 94 at 87.

<sup>104</sup> Braun and Clarke, above n 94 at 88.

<sup>105</sup> Braun and Clarke, above n 94 at 89.

<sup>106</sup> Braun and Clarke, above n 94 at 89.

<sup>107</sup> Braun and Clarke, above n 94 at 89.

<sup>108</sup> Braun and Clarke, above n 94 at 82.

<sup>109</sup> Braun and Clarke, above n 94 at 91.

<sup>110</sup> Braun and Clarke, above n 94 at 91.

relation to the research questions, to identify whether the themes could provide accurate responses to answer the research questions.<sup>111</sup> Then, the thematic map developed in Phase 3 needs to be reviewed to connect the themes to the research questions.

#### *Phase 5 – Defining and naming themes*

In this phase, the researcher is required to analyse each theme in the corresponding data. For each theme, a detailed analysis must be written to evaluate whether all the data is captured by the theme.<sup>112</sup> Then, the detailed analysis of each theme has to be examined in order to identify whether the themes answer the research questions.

#### *Phase 6 – Producing the report*

This phase involves writing up the analysis revealed through the data and finding the answers to the research questions.<sup>113</sup> Data extracts need to be incorporated in the report to illustrate the narrative, analysing the research questions and the findings from the study.

### **6.4.2 Application of Braun and Clarke’s six-step approach**

This section analyses the manner in which Braun and Clarke’s six-step approach was used to analyse the interview data collected for the purposes of this study.

#### *(i) Application of Phase 1*

In this phase, initially, all interview responses collected were transcribed and verified by the interviewees. Next, hard copies of the transcripts were made, and the transcripts were repeatedly read to identify patterns in the responses by concentrating particularly on the research questions. While reading the transcripts, written notes were made on post-it notes to mark similar ideas which could be used to develop codes in the next phase. Also, similar responses in the transcripts were marked using highlighters. Then, the following table was prepared to show common ideas that frequently arose in the responses in relation to each research question.

Research Question (RQ)	Common ideas/ patterns
RQ 1-	<ul style="list-style-type: none"> <li>Corporate governance reforms initiated through the international financial institutions (IFIs)</li> </ul>

<sup>111</sup> Braun and Clarke, above n 94 at 91.

<sup>112</sup> Braun and Clarke, above n 94 at 91.

<sup>113</sup> Braun and Clarke, above n 94 at 92.

<b><i>To what extent can board gender diversity contribute towards advancing good corporate governance in Sri Lanka?</i></b>	<ul style="list-style-type: none"> <li>• Status of the corporate governance rules on board composition in Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Introducing legal rules on board composition to Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Current situation of board gender diversity in Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Board effectiveness through rules on board gender diversity</li> </ul>
	<ul style="list-style-type: none"> <li>• Improving corporate financial performance through rules on board gender diversity</li> </ul>
	<ul style="list-style-type: none"> <li>• Improve corporate governance by introducing rules on board gender diversity</li> </ul>
	<ul style="list-style-type: none"> <li>• Drawbacks in implementing rules on board gender diversity</li> </ul>
	<ul style="list-style-type: none"> <li>• Board appointments to be based on merit</li> </ul>
	<ul style="list-style-type: none"> <li>• Changes in societal outlook</li> </ul>
<b><i>RQ 2- How do the social and cultural norms in Sri Lanka impact on the effective implementation of rules on board gender diversity in Sri Lanka?</i></b>	<ul style="list-style-type: none"> <li>• Traditional social and cultural norms concerning women in Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Current status of the social and cultural norms concerning women in Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Existing measures to promote gender equality</li> </ul>
	<ul style="list-style-type: none"> <li>• Effect of the social and cultural norms on implementing rules on board gender diversity</li> </ul>
	<ul style="list-style-type: none"> <li>• Rules on board gender diversity to promote gender equality</li> </ul>
	<ul style="list-style-type: none"> <li>• No existing issues of gender inequality in Sri Lanka</li> </ul>
	<ul style="list-style-type: none"> <li>• Rules on board gender diversity would create an upset of the social setting</li> </ul>
<b><i>RQ 3 – What is the appropriate mechanism to implement board gender diversity in Sri Lanka?</i></b>	<ul style="list-style-type: none"> <li>• Implementing board gender diversity by adopting mandatory quotas</li> </ul>
	<ul style="list-style-type: none"> <li>• Mandatory quotas to create an impact in society</li> </ul>
	<ul style="list-style-type: none"> <li>• Mandatory quotas to bring statistical change</li> </ul>
	<ul style="list-style-type: none"> <li>• Implementing board gender diversity through voluntary disclosure rules</li> </ul>
	<ul style="list-style-type: none"> <li>• Adopt voluntary disclosure rules because there are an insufficient number of qualified women</li> </ul>
	<ul style="list-style-type: none"> <li>• Voluntary disclosure rules are an effective solution within the Sri Lankan context</li> </ul>
	<ul style="list-style-type: none"> <li>• No rules needed because board appointments should be on merit</li> </ul>
	<ul style="list-style-type: none"> <li>• No rules needed because laws cannot bring change</li> </ul>

	<ul style="list-style-type: none"> <li>• Recommendations to improve the number of qualified women. e.g. awareness programmes, Sri Lanka Institute of Directors to train qualified women to be directors, women's empowerment programmes</li> </ul>
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(ii) *Application of Phase 2*

This phase involved generating codes. Codes indicate a common element captured in a group of data. In doing so, manual methods were adopted at first. Common ideas arising in the literature on the topic and the interview transcripts were marked using highlighters and labelled with a written summary using post-it notes. As the study adopted a theoretical deductive approach that required engagement with the literature prior to data collection, the theory-driven codes were generated first.<sup>114</sup> They were identified by analysing the literature in relation to each research question. The literature concerning Research Question 1 was based on the developments in the corporate governance environment in Sri Lanka. Given the focus of the study, particular attention was given to the rules on board composition and how the introduction of rules on board gender diversity could contribute to improving board effectiveness in Sri Lankan public companies. The literature on Research Question 2 was in relation to the social and cultural norms concerning women in Sri Lanka. This question concentrated on the issues of gender inequality in Sri Lanka, the measures taken by the Sri Lankan Government to promote gender equality in society, and the manner in which rules on board gender diversity could contribute to promoting gender equality. The literature on Research Question 3 related to the use of mandatory quotas and voluntary disclosure rules to implement rules on board gender diversity. Also, this research question was used to explore the suitable type of rules to adopt in the Sri Lankan context. After analysing the literature, common elements relating to each research question were summarised and marked as theory-driven codes. A table using Microsoft Word was created listing all the theory-driven codes (Table 1 below). Then, the data-driven codes<sup>115</sup> were developed by using the common ideas noted in Phase 1 of the data analysis. Primary data in the transcripts relating to each common idea were grouped. Each group was named and labelled using post-it notes. The data-driven codes were then added to the table (Table 1). In analysing the table, it was found that there was an overlap between most of the theory-driven and data-driven codes. The codes which overlapped were marked by adding a separate column on the Table.

<sup>114</sup> Braun and Clarke, above n 94 at 89. Theory-driven codes are created through common elements arising in the literature.

<sup>115</sup> Braun and Clarke, above n 94 at 89. Data-driven codes are developed by analysing the common ideas arising in the data collected.

Table 1

Research Question	Theory-driven codes	Data-driven codes	Overlapped
RQ 1	Corporate governance rules initiated through the International Financial Institutions (IFIs)	Corporate governance rules initiated through the International Financial Institutions	Overlapped
	Improve board effectiveness through the rules on board gender diversity	Board effectiveness through the rules on board gender diversity	Overlapped
	Positive progress in the corporate governance rules on board composition	Steady progress in the corporate governance rules on board composition	Overlapped
	Improve corporate financial performance through rules on board gender diversity	Advance corporate financial performance by introducing rules on board gender diversity	Overlapped
	Improve corporate governance through rules on board gender diversity	Advance overall corporate governance in Sri Lanka by introducing rules on board gender diversity	Overlapped
	Low percentage of board gender diversity in Sri Lanka	Current status and low percentage of female board representation in Sri Lanka	Overlapped
		Board appointments to be on merit	
		No necessity for rules on board gender diversity because of changes in society	
RQ 2	Social and cultural norms in Sri Lanka concerning women	Traditional social and cultural norms in Sri Lanka concerning women	Overlapped
	Current status of the social and cultural norms in Sri Lanka concerning women	Current status of social and cultural norms in Sri Lanka concerning women	Overlapped
	Measures to promote gender equality	Existing measures to promote gender equality in Sri Lanka	Overlapped
	Impact of the social and cultural norms on implementing board gender diversity	Effect of the social and cultural norms in Sri Lanka concerning women on introducing rules on board gender diversity	Overlapped
	Board gender diversity to promote gender equality	Rules on board gender diversity to promote gender equality	Overlapped
		Social and cultural norms a barrier to implement rules on board gender diversity	

		Social and cultural norms not a barrier to implement rules on board gender diversity	
<b>RQ 3</b>	Mandatory quotas	Mandatory quotas	Overlapped
	Voluntary disclosure rules	Voluntary disclosure rules	Overlapped
	Improve statistics	Mandatory quotas to bring statistical change	Overlapped
	Insufficient candidates	Insufficient number of suitable candidates	Overlapped
		Mandatory quotas create an impact in society	
		Voluntary disclosure rules are an effective solution in the Sri Lankan context	
		No laws are needed	
		Board appointments should be merit-based	
		Laws cannot bring societal change	
		Recommendations	

Next, the software programme NVIVO 12<sup>116</sup> was used to group data extracts from the interview transcripts into the theory-driven and data-driven codes. This is a qualitative research software used to organise, analyse, visualise, and share qualitative data and was selected for this study as it had the features necessary to assist in conducting a thematic analysis. On NVIVO 12 codes could be developed using the tab called nodes. A node can be used to group references about a specific data pattern, attribute, or relationship.<sup>117</sup> A node that shows a data pattern on a topic or idea is known as a theme node.<sup>118</sup> As the data in this study were grouped into codes based on the data patterns, theme nodes were created. Common theme nodes were created for the theory-driven and data-driven codes that overlapped to avoid duplication. However, separate nodes were created for codes that did not overlap. Data extracts from the interview transcripts were coded into the relevant node. The theme nodes which were created are shown in Appendix 3 in the appendices.

### (iii) *Application of Phase 3*

Data analysis in this phase involved generating themes by sorting the codes. A theme captures the key messages conveyed by a group of codes. In generating the themes in this phase, first the data extracts within each node were repeatedly read to understand the

<sup>116</sup> QSR International “About NVIVO 12” (2019) <nv12.qsrinternational.com/desktop/welcome/welcome/welcome.htm>. NVIVO 12 is a qualitative research software used to organise, analyse, visualise and share qualitative data.

<sup>117</sup> NVIVO 12, above n 116 “About Nodes” <nv12.qsrinternational.com/desktop/concepts/about\_nodes.htm>

<sup>118</sup> NVIVO 12, above n 116 “Theme Nodes” <nv12.qsrinternational.com/desktop/concepts/About\_theme\_nodes.htm>



underlying ideas. Then, a table was created on Microsoft Word to note the initial themes which were generated for each research question. An analysis of the initial themes revealed that further refinement was necessary by grouping the themes into a hierarchy by demarcating between main themes and sub-themes.<sup>119</sup> This grouping is depicted in Table 2 below.

**Table 2**

Research Question	Main themes	Sub-themes	Codes
<b>RQ 1</b>	Perceptions on the existing corporate governance rules in Sri Lanka on board composition	Corporate governance rules developed through the initiation of the International Financial Institutions	-
		Lack of appreciation of the corporate governance rules on board composition	-
		Positive progress in the corporate governance rules on board composition	Mandatory and voluntary rules
	Perceptions on introducing legal rules on board gender diversity in Sri Lanka	Neutral statements on introducing legal rules on board gender diversity	-
		Statements in favour of introducing legal rules on board gender diversity	<ul style="list-style-type: none"> <li>• Board effectiveness</li> <li>• Corporate financial performance</li> <li>• Overall corporate governance</li> </ul>
		Statements against introducing legal rules on board gender diversity	<ul style="list-style-type: none"> <li>• Merit</li> <li>• Changes in society</li> </ul>
	Current status and low percentage of gender diversity in corporate boards in Sri Lanka <sup>120</sup>	-	-
<b>RQ 2</b>	Perceptions on the social and cultural norms in Sri Lanka	Traditional perceptions/ Current status	-
		Effect on board gender diversity	<ul style="list-style-type: none"> <li>• Norms a barrier</li> <li>• Norms not a barrier</li> </ul>
	Perceptions on gender equality in Sri Lanka	Existing measures	<ul style="list-style-type: none"> <li>• Parliamentary representation</li> <li>• Free education</li> <li>• Constitutional rights</li> <li>• Awareness programmes</li> </ul>
		Rules on board gender diversity to promote gender equality	<ul style="list-style-type: none"> <li>• Positive statements</li> <li>• Negative statements</li> </ul>
<b>RQ 3</b>	Mandatory quotas	-	<ul style="list-style-type: none"> <li>• Tokenism</li> <li>• Impact society</li> <li>• Statistical change</li> </ul>

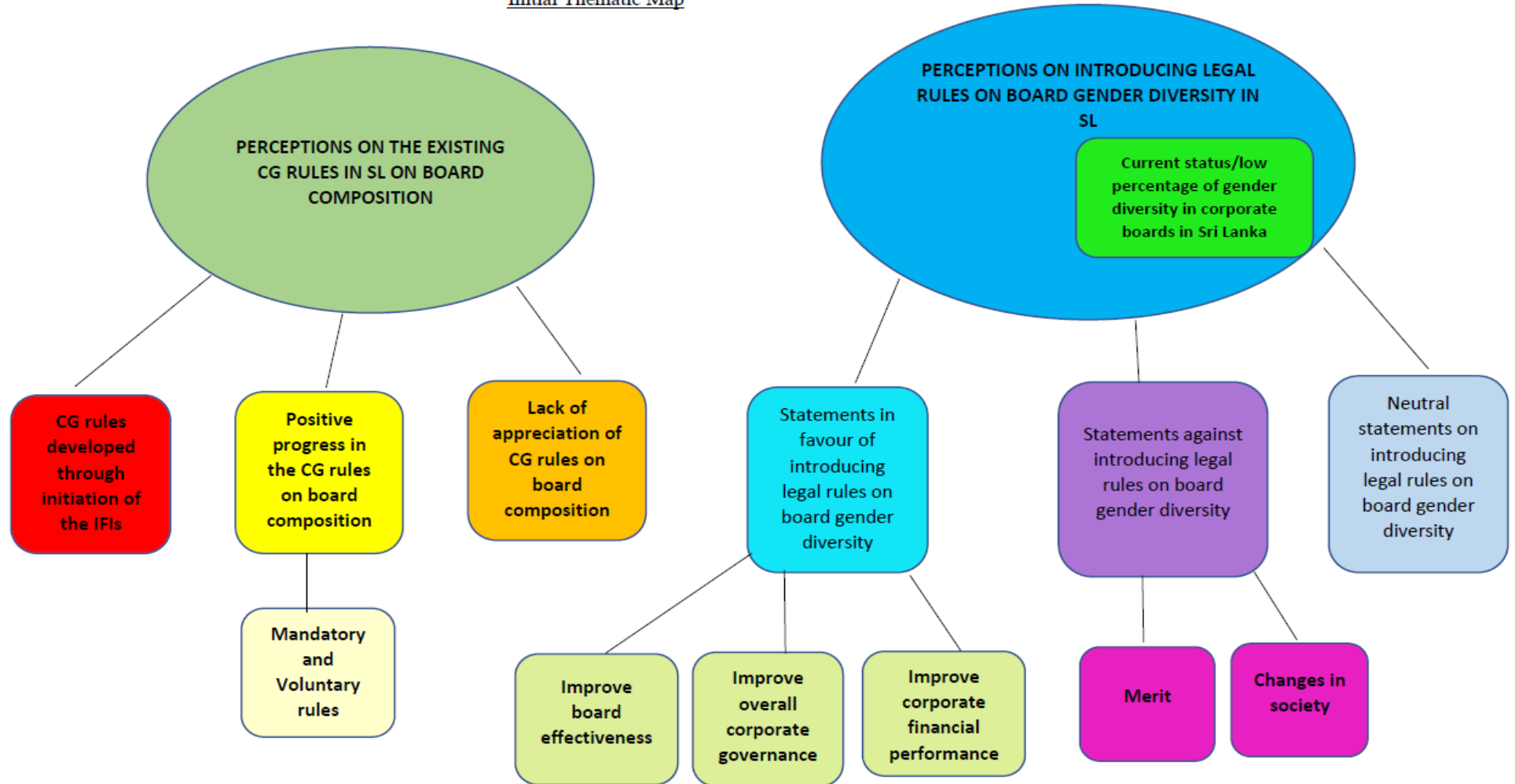
<sup>119</sup> The demarcation between main themes and sub-themes was not necessary for Research Question 3 and one theme in Research Question 1 as the themes generated initially could not be categorised further.

<sup>120</sup> It was identified that this theme impacts on the main theme “perceptions on introducing legal rules on board gender diversity in Sri Lanka”. Hence the relationship between the themes was noted when coding.

	Voluntary rules	-	<ul style="list-style-type: none"> <li>• Insufficient candidates</li> <li>• Effective solution in Sri Lanka</li> </ul>
	No laws needed	-	<ul style="list-style-type: none"> <li>• Laws cannot bring change</li> <li>• Board appointments to be merit-based</li> </ul>
	Recommendations	-	<ul style="list-style-type: none"> <li>• Awareness programmes</li> <li>• Sri Lanka Institute of Directors to train candidates</li> <li>• Guidance to corporates</li> <li>• Training programmes</li> <li>• Women's empowerment programmes</li> </ul>

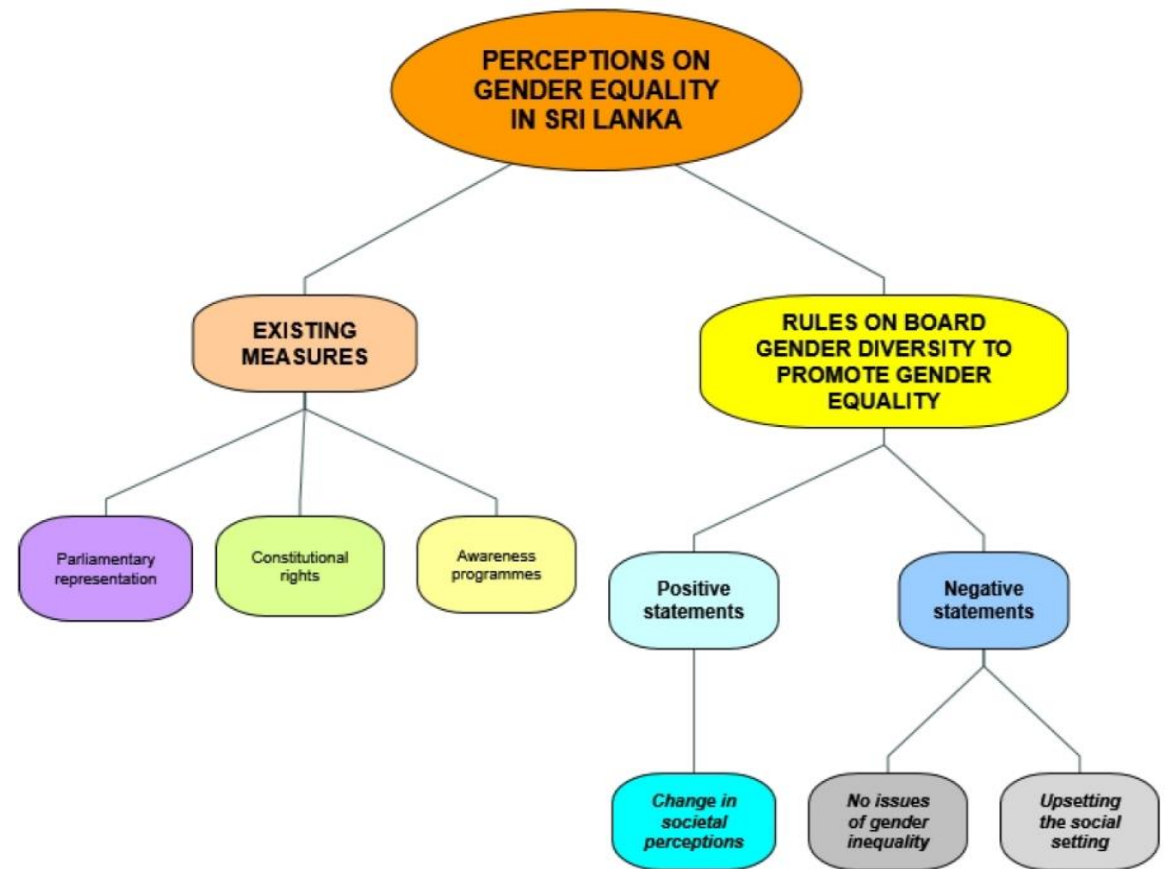
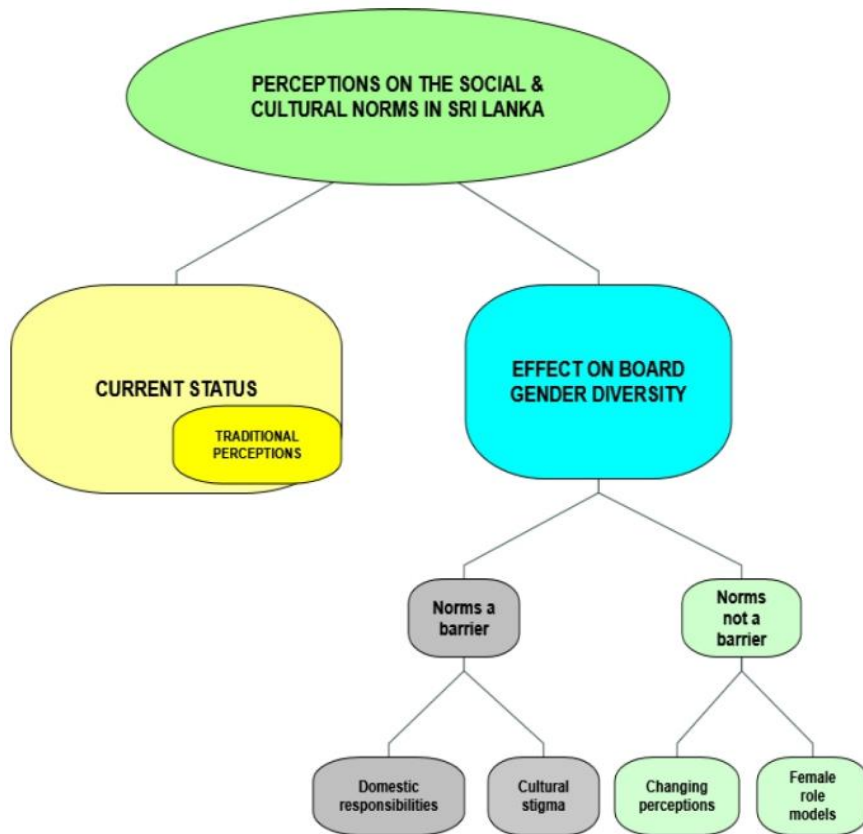
Next, the relationships between the themes and codes were analysed by developing several thematic maps. This provided a graphic representation of the relationships between themes and codes. The mind map tool on NVIVO 12 was used for this purpose. The initial thematic maps which were developed are shown below. These were a more effective approach than tables to analyse the data.

Initial Thematic Map

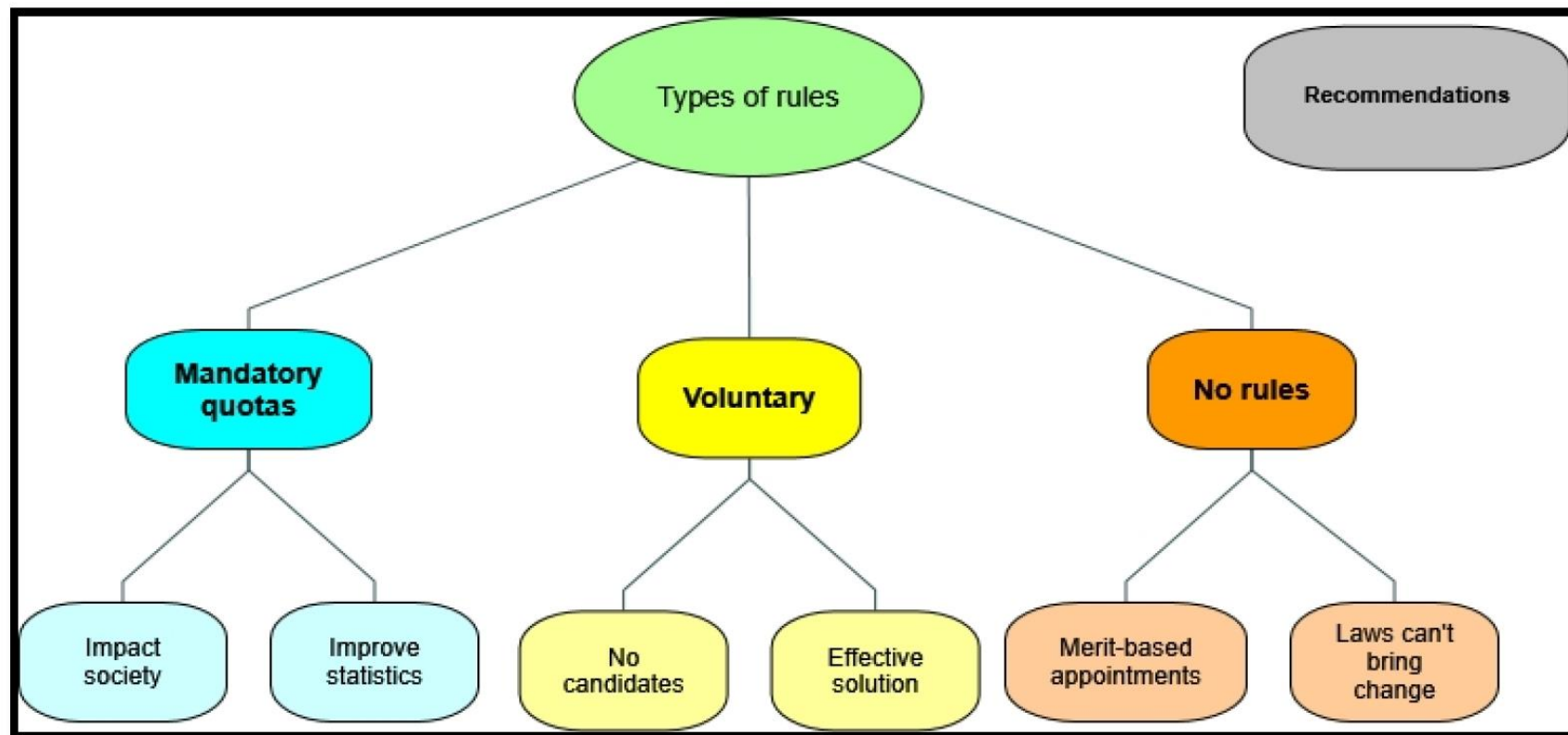


## RQ 2

### Initial Thematic Map



Initial Thematic Map

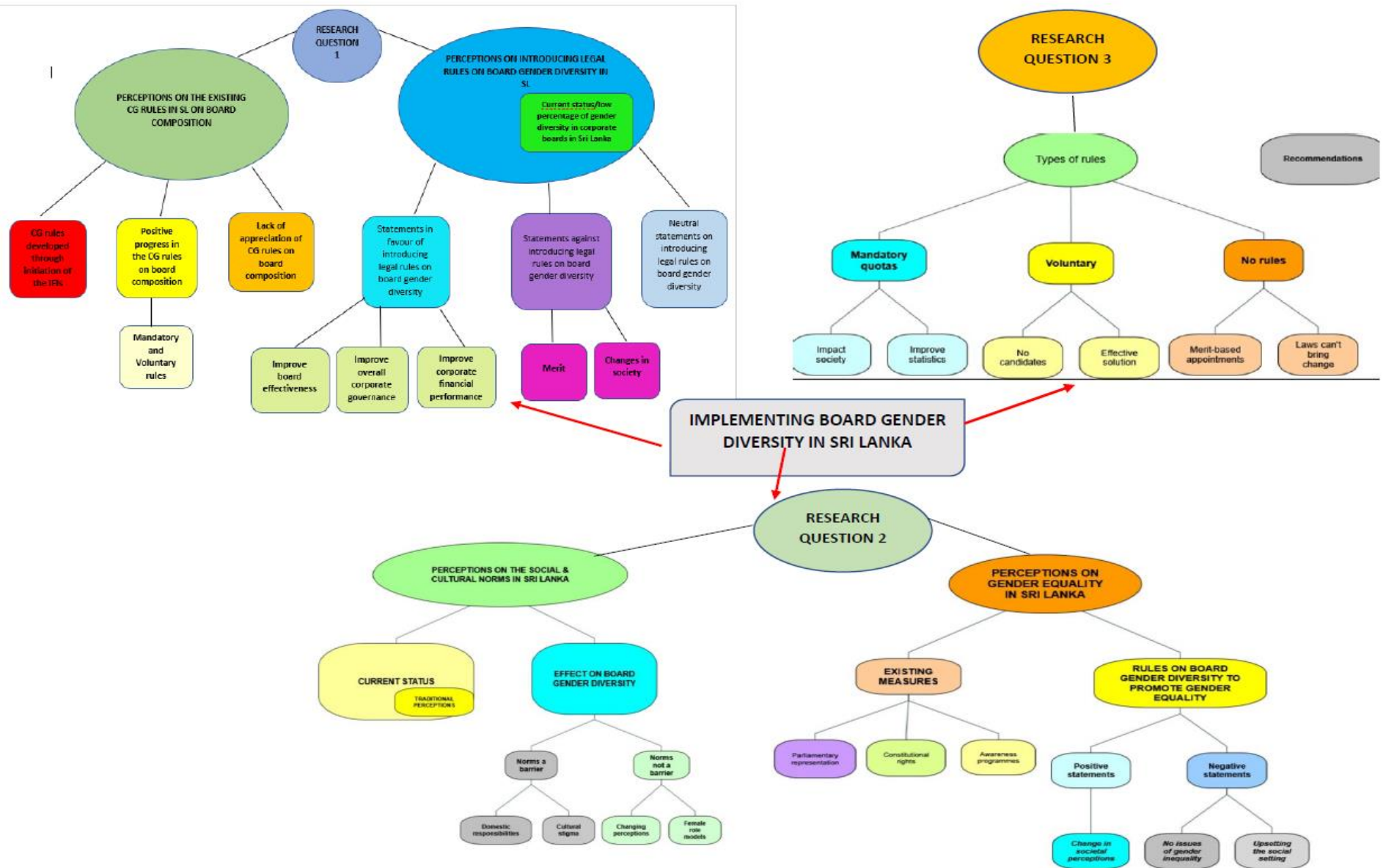


After analysing the initial thematic maps, the nodes created in Phase 2 above were re-organised to show the different levels of themes. On NVIVO 12, nodes can be classified according to hierarchy as parent nodes and child nodes. A parent node depicts the main theme, and a child node illustrates a subordinate theme or a code. By adopting this tool, the main themes which were generated were created as parent nodes and the sub-themes were developed as child nodes. The codes within the sub-theme were created as subordinate child nodes. There is a graphic representation of the hierarchical grouping of nodes in Appendix 4.

(iv) *Application of Phase 4*

This phase involved refining the themes and analysing the relationships of the themes with the research questions. In conducting this phase of data analysis, first, the data extracts under each theme were read to identify whether a coherent pattern existed between the coded data and the themes. Next, the themes were reviewed in relation to each research question to identify whether the themes could provide accurate responses to the research questions. Then, the initial thematic maps created in Phase 3 were revised to show the relationship between the themes and research questions, and the entire study. The revised thematic map is shown below. Next, the explore diagram tool on NVIVO12 was used to identify the relationship between the themes created as parent nodes and child nodes and the research questions. Appendix 5 depicts this diagram.

## Final Thematic Map



*(v) Application of Phase 5*

The themes were reviewed in this phase by writing a detailed analysis of each theme and examining the descriptions with the coded extracts. Then, a codebook on NVIVO12 was generated and reviewed to gain a comprehensive understanding of the findings as shown in Appendix 6.

When reviewing the codebook, it was identified that the findings generated needed to reflect different perceptions based on the attributes of the interviewees. In order to do so, the descriptive information captured of the interviewees was sorted through the case node tool and classification option on NVIVO 12. Using these tools, the attributes of the interviewees were categorised based on gender, age, experience, and the employed organisation. The classification table generated is shown in Appendix 7. Next, the diagrams in Appendix 8 were created to identify the groupings under each attribute. The diagram generated based on the gender of the interviewees revealed that the study consisted of 13 males and 11 women. Classifying according to age it was identified that there were 14 interviewees above 50 years of age and 10 interviewees who were younger. Further, based on industry experience, 16 interviewees had over 25 years of industry experience and eight interviewees had less than 25 years of industry experience. The grouping according to the employed organisation of the interviewees indicated that six interviewees were employed in corporate regulatory authorities, 12 interviewees were either directors or company secretaries of public companies with high market capitalisation, four interviewees were independent lawyers and two interviewees were corporate lawyers attached to law firms. After analysing this grouping of the interviewees, the results generated for the main themes were sorted using the attributes of the interviewees to identify any differences in views. These results will be discussed in Chapter 7.

*(vi) Application of Phase 6*

This phase involved the production of a report relating to the findings revealed through the data analysis. These will be discussed in Chapter 7.

**6.4.3 Drawbacks of Braun and Clarke's thematic analysis method**

The main difficulty encountered by using Braun and Clarke's thematic analysis was the lack of substantial literature incorporating this method in legal research. Studies from other fields such as Accounting and Marketing had to be read to understand the scope of using this



method.<sup>121</sup> Moreover, in adopting this approach, the software package NVIVO 12 had to be used. Prior to using the software, considerable time was devoted to becoming conversant with the various tools available on NVIVO 12 by participating in online training sessions and self-learning through YouTube videos.

## 6.5 Summary

This chapter detailed the research methodology adopted for this study. The first section discussed the benefits of using the socio-legal approach as a theoretical framework by providing an overview of its historical development and showing how this approach was established as a theoretical framework for conducting legal research. It also presented studies that have incorporated the socio-legal approach, and the application of the socio-legal approach to this study, and the issues encountered in doing so.

The second section detailed the manner in which qualitative research methods were incorporated to conduct a socio-legal analysis. In particular, it illustrated how the integration of primary and secondary sources assists in obtaining significant insights and strengthened the findings. A documentary analysis was conducted on secondary sources to build on the literature chapters. These findings were then supplemented by conducting interviews to obtain the views of the corporate community in Sri Lanka on introducing board gender diversity rules. The interview data were then analysed using Braun and Clarke's thematic analysis method. The application of their six-step guide to conducting thematic analysis together with the application of the software package NVIVO 12 was described. In addition, the chapter highlighted the drawbacks of using the socio-legal approach, the issues involved in using the interview technique, and the difficulties encountered in using Braun and Clarke's thematic analysis method for this study.

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<sup>121</sup>B Lee and C Humphrey "More than a numbers game: Qualitative research in accounting" (2006) 44(2) *Management decision*, Emerald Insights 180; MV Jones, N Coviello and YK Tang "International entrepreneurship research: an ontology and thematic analysis" (2011) 26(6) *Journal of Business Venturing* 632.

## **CHAPTER 7 – EXPLORING THE SRI LANKAN PERCEPTIONS ON INTRODUCING BOARD GENDER DIVERSITY RULES**

### **7.1 Introduction**

Extant literature analysing Sri Lankan corporate governance rules has provided few in-depth accounts of the perceptions of the corporate community in Sri Lanka. This is despite the Sri Lankan corporate community being recognised as an “important player”, and their lived experiences and views offering insights into how the corporate governance rules in the country operate in practice.<sup>1</sup> It follows that Sri Lankan corporate governance literature generally fails to identify critical contextual issues that the Sri Lankan corporate community face in the application of corporate governance rules. This study avoids this gap when assessing the possibility of implementing board gender diversity rules in Sri Lanka by incorporating the views of a subgroup from the Sri Lankan corporate community. The analysis of these empirical findings together with the findings in the literature considered in this chapter provide a valuable foundation to propose a unique Sri Lankan perspective on introducing board gender diversity rules.

This chapter is structured in four sections. The first section focusses on the corporate governance reforms in Sri Lanka. The empirical findings in this section provide a deeper understanding of how the Sri Lankan corporate community has perceived and understood the pressure placed by International Financial Institutions (IFIs) to undertake corporate governance reforms. From this point forward, the chapter focuses on the introduction of board gender diversity rules. The second section starts by analysing the existing situation relating to board gender diversity in Sri Lankan public companies and compares the statistics in the literature with the observations made by the interviewees. This analysis reinforces the need to introduce board gender diversity rules in Sri Lanka because of the low percentage of female directors on public company boards. To support this rationale, the focus is on the benefits that board gender diversity rules could offer in the Sri Lankan context. This leads to a discussion on the possible contributions that women directors offer to Sri Lankan boards. The third section takes this analysis further by suggesting how the introduction of board gender diversity rules could possibly assist towards addressing issues of gender inequality in Sri Lanka. Finally, the chapter

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<sup>1</sup> Sri Lanka Institute of Directors “Corporate governance participants and their impact in Sri Lanka” (2017) <<http://www.slid/article0092017>>.

ends with an exploration of the most suitable legal approach to implement rules on board gender diversity in Sri Lanka.

## **7.2 The efforts to improve corporate governance in Sri Lanka**

Understanding the corporate governance environment of a country is crucial for any study exploring corporate governance developments. Existing literature analysing the Sri Lankan corporate governance developments provides an account of the influence of the IFIs on this area but it is not substantiated with empirical evidence.<sup>2</sup> With a view to gain a more substantial understanding, this section compared the empirical findings with the literature focusing on how the interviewees perceived the impact of the influence of the IFIs on Sri Lanka. This analysis was limited to rules on board composition. The foundation for this analysis was one of the main themes that emerged when conducting the data analysis in Chapter 6 for Research Question 1, namely the theme which was termed, “perceptions of the interviewees towards the existing corporate governance rules in Sri Lanka on board composition”.<sup>3</sup>

### ***7.2.1 The influence of the IFIs on corporate governance reform in Sri Lanka***

As discussed in Chapter 2, literature depicts the necessity for Sri Lanka to improve its corporate governance practices after 1983.<sup>4</sup> However, it is not substantiated with empirical evidence that would have provided an increased contextual validation for the priority afforded to corporate governance reform after the IFI conditions were imposed on the country. The empirical findings in this study analysed this aspect through three key observations. Firstly, by considering the views of the interviewees on the level of initiation by the IFIs that had resulted in the corporate governance reform in the country. Secondly this research analysed whether the interviewees considered the possibility of improvements in foreign direct investment (FDI) through effective corporate governance practices, and thirdly by considering the views of the interviewees as to whether the Sri Lankan Government and legislators were convinced about the opportunity to increase FDI by improving corporate governance practices in the country.

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<sup>2</sup> For example, S Senaratne and PSM Gunaratne “Corporate Governance Developments in Sri Lanka: Prospects and Problems” (2008) 1(1) Sri Lanka Journal of Advanced Social Studies 3; S Senaratne “Corporate Governance Reforms in Sri Lanka” (2011) 1(1) Sri Lanka Journal of Advanced Social Studies 2. These studies analyse the influence of the IFIs on the corporate governance developments in Sri Lanka although such analysis is limited to a documentary analysis and is not supported by empirical findings.

<sup>3</sup> Chapter 6 – Data analysis Phase 3 Initial Thematic Map on RQ 1; Phase 4 Thematic Map.

<sup>4</sup> Refer Chapter 2 where it was discussed how Sri Lanka was subject to lending conditions of the IFIs. See for example, Asian Development Bank “Sri Lanka: Financial Sector Assessment Report” (Manila 2005) 149; International Monetary Fund “IMF Country Report No. 05/337” (Washington DC) (2005) 149.

With regard to the first observation on the level of initiation by IFIs towards corporate governance reform in Sri Lanka, the empirical views offered a different perspective to the findings in the literature. Studies often construe these IFI conditions with negativity and consider it as a burden on the country.<sup>5</sup> However, the empirical findings offer a more positive view as the interviewees consider these conditions as an initiative which reopened corporate governance reform in the country which was stagnated after Sri Lanka gained independence from the British in 1948. The sub-theme developed in Phase 3 for Research Question 1 depicts these thoughts and found that if not for the initiation of the IFIs, development of corporate governance practices would not have been prioritised in this regard by the Sri Lankan Government.<sup>6</sup> This point was particularly illustrated by two male interviewees who had extensive experience in the Sri Lankan corporate community. The first interviewee is a company director and the second interviewee is a senior member of the Colombo Stock Exchange. Their comments were as follows:

“The funding given by the International Financial Institutions like IMF and World Bank came with conditions. One of them was around reforming corporate governance rules because they thought it as a way of getting foreign investment into the country. However, one must note that if it wasn’t for this condition, there is highly unlikely to be any proper development in corporate governance rules in Sri Lanka.” (Interview Transcript 10, male company director)

“From the time Sri Lanka relied on the International Financial Institutions, which actually mainly started during the ethnic war, there was a drive to improve corporate governance because it was a condition imposed by these lending institutions. This we look at as a positive step.” (Interview Transcript 24, male, senior member of the Colombo Stock Exchange)

Similar comments to the extracts above were made by all the other interviewees irrespective of their age, gender, experience or place of employment. This depicts how this subgroup from the corporate community has a positive outlook towards the IFIs requiring corporate governance reform as a condition of financing. This view was particularly evident with the interviewees with over 25 years’ experience who had more practical experiences on corporate governance developments in Sri Lanka than the other interviewees who viewed these IFI conditions as a

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<sup>5</sup> S Perera *Corporate Ownership and Control: Corporate Governance and Economic Development in Sri Lanka* (World Scientific Publishing 2011) 4; S Senaratne and PSM Gunaratne “Corporate Governance Developments in Sri Lanka: Prospects and Problems” (2008) 1(1) Sri Lanka Journal of Advanced Social Studies 3; S Senaratne “Corporate Governance Reforms in Sri Lanka” (2011) 1(1) Sri Lanka Journal of Advanced Social Studies 2.

<sup>6</sup> Chapter 6 – Data analysis Phase 3 and Thematic Map on RQ 1 – When generating the themes by sorting the codes in Phase 3, the “perceptions on the corporate governance rules in Sri Lanka” was a main theme identified in relation to RQ 1. In the initial Thematic Map for RQ 1 this main theme is depicted. In the finalised Thematic Map in Phase 4 this main theme is depicted with the relationship to RQ 1.

“blessing in disguise rather than a curse.”<sup>7</sup> This strengthens the view that these IFI conditions were in fact a beneficial step towards the development of corporate governance practices in Sri Lanka.

The second key observation in this area depicted in the findings was the enthusiasm of the interviewees towards improving corporate governance practices in public companies because of the opportunity to improve investment by foreign investors. Literature on Sri Lankan corporate governance has not considered the validity of the IFIs reasoning for introducing corporate governance reform in Sri Lanka.<sup>8</sup> The empirical findings in this study provide support for the approach taken by the IFIs as all interviewees considered adherence to improved corporate governance practices as a step towards attracting foreign investment into the country. The theme on “perceptions of the interviewees on the corporate governance rules in Sri Lanka” explores these perspectives in more detail.<sup>9</sup> Particularly, one female interviewee who was a company secretary in a public company in Sri Lanka and a male interviewee who was a senior member of the Colombo Stock Exchange, both with more than 25 years’ experience being part of the corporate community in Sri Lanka stated as follows:

“I think following the IFI conditions is a good thing because it has enabled corporate governance rules to be improved which has also got more foreign investors interested in investing in companies in Sri Lanka.” (Interview Transcript 2, female company secretary)

“For the purposes of improving foreign investment I believe the IFI condition has contributed a lot.” (Interview Transcript 6, male, senior member of the Colombo Stock Exchange)

While the findings of this research show that the corporate community appear to be convinced as to the benefits of the IFIs conditions, same cannot be said of the Sri Lankan legislators. This was the third key observation made in this area. Studies suggest that the Sri Lankan Government and legislators were not fully convinced about attracting FDI by reforming corporate governance practices.<sup>10</sup> However, these studies do not analyse the

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<sup>7</sup> Appendix 9 – highlighted in green. The Appendix captures one of the tables sorted based on the attributes of the interviewees for RQ 1. The most significant attribute which emerged was in relation to the experience of the interviewees.

<sup>8</sup> For example, Senaratne above n 2; Senaratne and Gunaratne, above n 2. These studies depict how IFIs probed the corporate governance reforms in Sri Lanka although do not discuss whether this decision was accurate or not.

<sup>9</sup> Chapter 6 – Data analysis Phase 3 and Thematic Map on RQ 1 – When generating the themes by sorting the codes in Phase 3, the “perceptions on the corporate governance rules in Sri Lanka” was a main theme identified in relation to RQ 1. In the initial Thematic Map for RQ 1 this main theme is depicted. In the finalised Thematic Map in Phase 4 this main theme is depicted with the relationship to RQ 1.

<sup>10</sup> S Perera *Corporate Ownership and Control: Corporate Governance and Economic Development in Sri Lanka* (World Scientific Publishing 2011) 4; S Senaratne and PSM Gunaratne “Corporate Governance Developments in Sri Lanka: Prospects and Problems” (2008) 1(1) Sri Lanka Journal of Advanced Social Studies 3; S Senaratne “Corporate Governance Reforms in Sri Lanka” (2011) 1(1) Sri Lanka Journal of Advanced Social Studies 2.

reasoning underpinning this thinking of the Sri Lankan Government or the legislators. The findings of this study captured this reasoning through the thematic map developed for Research Question 1 under the sub-theme “lack of appreciation of the corporate governance rules on board composition.”<sup>11</sup> Among the 24 interviewees, 23 noted this point. The key theme that arose in this analysis was the weak negotiating position that Sri Lanka was subject to when entering into lending agreements with the IFIs because of the dire need of funding which had made the Sri Lankan Government agree on these conditions without proper analysis. The interviewees noted it as “the Sri Lankan Government blindly following instructions from the IFIs without being convinced that good corporate governance was the way forward to attract foreign investment.” The interviewees observed that although “the Government does not like allocating funds to improve corporate governance rules in the country, they do so to comply with IFIs conditions.” It was also interpreted as the Sri Lankan legislators being pressured by the IFIs to conform with improvements to corporate governance rules. These findings support the conclusion that although the Sri Lankan Government and legislators were not convinced that corporate governance reform could improve FDI, they promote it to avoid any non-compliance with the IFIs lending conditions.<sup>12</sup>

### ***7.2.2 Positive progress on board composition rules***

In fulfilling these lending conditions imposed by the IFIs, as outlined in Chapter 3, the Sri Lankan legislators since 2003 did introduce a number of new rules into the Sri Lankan Corporate Governance Code. Among these rules, the most significant developments to improve the board composition was the inclusion of requirements that boards must consist of a mix of executive directors and non-executive directors (NEDs) on the board and board committees and separating the roles of chairman of the board from the Chief Executive Officer (CEO). Chapter 3 discusses how these new board composition rules generally followed the developments in the United Kingdom (UK). This included following guidance from UK developments on appointing NEDs to the board, determining the threshold of NEDs to be appointed, appointing NEDs to board committees, determining the criteria for independence for NEDs and adopting the corporate governance rules of separating the roles of chairman and CEO to prevent the concentration of power of the board to a single board member.

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<sup>11</sup> Chapter 6 – Data analysis, Phase 4, Thematic Map - When generating the themes by sorting the codes in Phase 3, under the “perceptions on the corporate governance rules in Sri Lanka” the “lack of appreciation of the corporate governance rules” was recognised as a sub-theme in relation to RQ 1. In the initial Thematic Map for RQ 1 this sub-theme is depicted. In the finalised Thematic Map in Phase 4 the relationship of this sub-theme to the main theme and to RQ 1 is depicted.

<sup>12</sup> Appendix 9.; Literature in Perera above n 10 at 4; Senaratne above n 2 at 2 discussed in Chapter 2.

These developments in board composition rules have often been discussed in Sri Lankan literature and generally are considered to be positive steps in the progress in the corporate governance rules in the country. However, this literature has not been substantiated with empirical insights. The findings of this study through the sub-theme that emerged in the interview responses in relation to Research Question 1 provides support to the views expressed in this literature.<sup>13</sup> This is particularly evident in the transcripts of the interviewees who have over 25 years' business experience and are considered to be senior members of the Sri Lankan corporate community. These interviewees thought that there has been notable progress and as mentioned in the below comments considered Sri Lankan corporate governance rules on board composition to be "in par with international standards." A common theme in the interviewees quoted below and the other interview responses was that irrespective of their place of employment they all observed this progress in the corporate governance rules in Sri Lanka.

"Our corporate governance rules seem to be in line with international standards because we have incorporated UK corporate governance principles. So, I would say we are moving forward well. Especially, the rules on the structure and composition of the board are the same as in the UK, like the executive/non-executive blend." (Interview Transcript 4, employed as a senior member of the Colombo Stock Exchange)

"Sri Lanka has progressed very well. Looking at the corporate governance standards on the board we adopted UK principles that have put us in par with international standards. This is included, yes, in executive directors/NEDs and the rule on the chairman and CEO not being one person." (Interview Transcript 5, employed as an Executive director of a public company)

"If you look at the mandatory and voluntary corporate governance rules on board composition in Sri Lanka, it's quite clear that we have kept up with international standards. There is no question about it. The rules to improve the balance of executive and NEDs and chairman CEO separation have included UK principles and is in line with international standards." (Interview Transcript 19, employed as a corporate lawyer)

This analysis is helpful to enhance the literature on the progress made with regard to the corporate governance reforms in Sri Lanka relating to board composition.

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<sup>13</sup> Chapter 6 – Data analysis, Phase 3 - When generating the themes by sorting the codes in Phase 3, under the main theme on "perceptions on the corporate governance rules in Sri Lanka" and the sub-theme "Positive progress in the corporate governance rules on board composition" recognises these developments in relation to RQ 1.

### **7.3 Examining the introduction of board gender diversity rules to Sri Lanka as a tool to promote better corporate governance**

The Sri Lanka Institute of Directors in a recent forum discussing on corporate governance practices mentioned that it is vital for the Sri Lankan legislators to “figure out the next step in this space to improve board composition rules.”<sup>14</sup> Having explored the corporate governance developments to date, this study, from this point forward, attempts to determine whether introducing board gender diversity rules would contribute towards becoming the “next step to improve board composition rules” in Sri Lanka.

According to Dhir, when analysing the implementation of board gender diversity rules, it is necessary to adopt a holistic approach.<sup>15</sup> For this purpose, it is necessary to initially explore the current situation on board gender diversity and then engage in a detailed benefits analysis applicable to the specific context. This framework is followed in the proceeding sections. Initially, a contextual analysis is conducted of the current situation on board gender diversity, and thereafter, the specific benefits that Sri Lankan corporate boards could gain by appointing more women directors is explored. Utilising the economic and social advantages discussed in Chapter 4, these benefits are then analysed in the next sections.

#### ***7.3.1 Exploring the Sri Lankan situation on board gender diversity***

Statistics indicate female board representation in Sri Lankan public companies to be at 8 per cent.<sup>16</sup> The significant gender gap revealed by these statistics has become a topic of discussion in a number of recent articles published in Sri Lanka.<sup>17</sup> Without being limited to statistical data, this study went a step further to analyse the awareness of the interviewees of this situation and to assess through their experiences the presence of this gender imbalance in public company boards. This analysis provided more insights on the criticality of the situation. The theme captured through the empirical findings on the “current status and low percentage

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<sup>14</sup> Sri Lanka Institute of Directors “Board composition and gender diversity on boards” (2020) <<https://www.slid.lk/gender-diversity-boards-and-composition>>.

<sup>15</sup> AA Dhir *Challenging Boardroom Homogeneity: Corporate Law, Governance and Diversity* (CUP 2015).

<sup>16</sup> Sri Lanka Institute of Directors “Gender diversity on boards – statistics” (2017) <<http://www.slid.lk/gender-diversity-boards/>>; Department of Census and Statistics “Changing roles of women in Sri Lanka” (2020) <[http://www.statistics.gov.lk/samplesurvey/LFS\\_Annual%20Report\\_2020.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Annual%20Report_2020.pdf)>.

<sup>17</sup> The Financial Times Sri Lanka “The case for gender diversity among Sri Lanka Business leadership” (2019) <[https://www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The\\_Case\\_Gender\\_Diversity\\_Among\\_Sri\\_Lanka\\_Business\\_Leadership.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The_Case_Gender_Diversity_Among_Sri_Lanka_Business_Leadership.pdf?MOD=AJPERES)>; Sustainable Stock Exchange Initiative “Colombo Stock Exchange – Ring the Bell for gender equality” (2019) <<http://www.sseinitiative.org/2019-ring-the-bell-for-gender-equality/>>; Sri Lanka Institute of Directors “Gender diversity on boards” (2016) <<https://www.slid.lk/gender-diversity-boards>>.



of gender diversity in corporate boards in Sri Lanka”<sup>18</sup> depicts this finding. They depict general observations made by the interviewees as well as more specific insights from interviewees who worked in regulatory authorities who engage in analysing public company data on board composition.

The general observations made by the interviewees were based on the ratio of female and male directors in the companies in which they are employed. Some interviewees identified that the boards of companies in which they worked in were all-male whereas others commented on the presence of a significant majority of male directors on these boards as mentioned below. These insights provide evidence of the notable gender imbalance in public companies in Sri Lanka.

“... for example, in the organisation I work for, we have seven board members and all of them are male.” (Interview Transcript 1, male company director)

“If I start with the status of gender diversity within the company I work for, I’m the only female director on our board out of 10. So, inside the board males dominate.” (Interview Transcript 13, female company director)

“Currently, there is hardly any female representation on our corporate boards, especially in public companies. The organisation I work for presents awards to the best performing corporates each year. One of the criteria for selection is on equal employment opportunities based on gender. Companies are required to disclose the manner in which gender parity is maintained at every level of the company, which includes senior management to board level. When looking at the statistics, it reveals that the top 30 corporates in Sri Lanka have not maintained gender diversity when making board nominations.” (Interview Transcript 16, female company director)

The observations of the interviewees who worked in regulatory authorities reveals an awareness of the board composition statistics of public companies in Sri Lanka and this is reflected in their observations made on board gender diversity statistics. While this data is not available for public scrutiny, it provided useful insights to validate the significant gender gap in public company boards in Sri Lanka. In this regard, some of notable comments made by a male and female interviewee employed in the Sri Lanka Institute of Directors and Securities and Exchange Commission in Sri Lanka are mentioned below:

“when we were analysing public company data on board composition on an annual basis it showed that there were hardly any female directors. If we take the top 10 public companies in Sri Lanka there would be about 5 per cent or so.” (Interview Transcript 3, male employed in the Sri Lanka Institute of Directors)

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<sup>18</sup> Chapter 6 – Data analysis, Phase 3 Initial Thematic Map RQ 1; Phase 4, Thematic Map.

“In the annual public company board assessment survey I was involved in, the statistics came to around 8 per cent of women on public company boards. This showed that there was an issue that needed to be addressed.” (Interview Transcript 17, female, employed in the Securities and Exchange Commission)

The transcripts above highlight a belief among the interviewees that there is a significant underrepresentation of women directors and this should be addressed. The insights obtained throughout the empirical findings depicts this thought and confirms the statistical analysis that there is a significant underrepresentation of women directors in Sri Lankan public companies. This provides a better validation and basis to the findings in the literature and a basis to understand the current position of women on boards in public companies in Sri Lanka.

### ***7.3.2 Exploring the benefits of board gender diversity rules to Sri Lankan corporate boards***

Globally, the low level of women on boards has been addressed by introducing board gender diversity rules. This is supported by literature that depict the benefits of appointing women directors to boards. As discussed in Chapter 4, these benefits are either economic or social. To consider whether the low percentage of women directors in Sri Lankan boardrooms could be addressed by introducing board gender diversity rules, it is necessary to establish convincing justifications on the contributions that women directors could offer to the board. For this purpose, one strand is to establish a compelling economic justification that illustrates the benefits women directors could bring to the Sri Lankan boardrooms. This aspect was analysed in the findings as detailed in the proceeding section.

#### ***(a) Corporate financial performance or board effectiveness to establish an economic rationale on board gender diversity in Sri Lanka***

Chapter 4 discusses how the economic benefits of having board gender diversity rules can fall within two categories, namely, that having women directors improves corporate financial performance and also improves board effectiveness. While this literature offers guidance, to test the benefits board gender diversity rules could offer to Sri Lankan public company boards a contextual analysis was conducted by investigating how the interviewees' perceived these benefits.

The economic rationale for board gender diversity commonly is justified by a positive correlation between women on boards and corporate financial performance. Many empirical

studies, including research conducted by Credit Suisse<sup>19</sup> and Catalyst,<sup>20</sup> illustrate this point. Recent articles published in Sri Lanka refer to these international studies and recommend the inclusion of women directors on boards as a measure to improve corporate financial performance.<sup>21</sup> However, the empirical findings of this study identified that only a small minority of four interviewees out of a total of 24 considered improvements in corporate financial performance as a rationale for introducing board gender diversity rules.<sup>22</sup> Two male interviewees employed in different regulatory authorities, one from the Colombo Stock Exchange and the other from the Securities and Exchange Commission, and with distinct experience in the field, for example, commented on this point mentioning how women directors can assist in improving corporate profitability.

“As a country, we need to promote women to board level. Well, research supports it, pointing to a business case where women in the board can increase profitability.” (Interview Transcript 6, male employed in Colombo Stock Exchange)

“There is a discussion about board gender diversity, especially on increasing company profitability. I think it’s right and we should consider it.” (Interview Transcript 23, male, employed in Securities and Exchange Commission)

The majority of interviewees were sceptical about this rationale mainly because research findings on this area are not consistent and has provided mixed results. Studies have demonstrated a negative or neutral relationship between women on boards and corporate financial performance.<sup>23</sup> While the articles published in Sri Lanka have not yet highlighted the complexities of linking the existence of female directors with enhanced corporate financial performance, some of the interviewees were aware that there is no robust evidence to support this conclusion and that the relationship between women on boards and corporate financial performance is both complex and uncertain.<sup>24</sup> With a strong opposing view on this rationale,

<sup>19</sup> Credit Suisse “Gender Diversity and Corporate Performance” (2012) Credit Suisse at 4.

<sup>20</sup> Catalyst “The bottom line: Corporate performance and women’s representation on boards” (2007) Catalyst at 5.

<sup>21</sup> The Financial Times Sri Lanka “The case for gender diversity among Sri Lanka Business leadership” (2019) <[https://www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The\\_Case\\_Gender\\_Diversity\\_Among\\_Sri\\_Lanka\\_Business\\_Leadership.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c6cbb7b1-54e5-44f1-893f6deae41440dd/The_Case_Gender_Diversity_Among_Sri_Lanka_Business_Leadership.pdf?MOD=AJPERES)> ; Sustainable Stock Exchange Initiative “Colombo Stock Exchange – Ring the Bell for gender equality” (2019) <<http://www.sseinitiative.org/2019-ring-the-bell-for-gender-equality/>>; Sri Lanka Institute of Directors “Gender diversity on boards” (2016) <<https://www.slid.lk/gender-diversity-boards>>.

<sup>22</sup> Chapter 6 – Data analysis, Thematic Map RQ 1 and Appendix 10 – mentioned in reasons column as corporate financial performance.

<sup>23</sup> RB Adams and D Ferreira “Women in the boardroom and their impact on governance and performance” (2009) 94 J Fin Econ 291, 292; F Dobbin and J Jung “Corporate Board Gender Diversity and Stock Performance: The competence gap or institutional investor bias?” (2011) 89 North Carolina Law Review 809, 819; C Rose “Does female board representation influence firm performance? The Danish evidence” (2007) 15(2) Corporate Governance: An International Review 15; DA Carter, FP D’ Souza, BJ Simkins, WG Simpson “The Gender and ethnic diversity of US Boards and board committees and firm financial performance” (2010) 18(5) Corporate Governance: An International Review 396 at 411.

<sup>24</sup> See for example, Interview Transcripts in relation to Appendix 10 identified how board effectiveness is preferred by the interviewees as opposed to corporate financial performance as an economic rationale for board gender diversity because of

one of the female interviewees with more than 25 years of experience as a director commented on this point mentioning that,

“if board gender diversity rules are to have a proper basis and rationale, we cannot have an uncertain basis as its underlying principles. We cannot disregard the negative results in research and as such cannot rely on this principle.” (Interview Transcript 13, female company director)

A consistent foundation is a necessity when proposing a new rule. As identified above, this cannot be achieved by adopting an enhanced corporate financial performance as a rationale for introducing board gender diversity rules. Literature, as well as the interviewees perceptions highlight the inconsistencies in this approach. Hence it is unlikely that a proper justification for introducing board gender diversity could be established by following this path. Hence, this study does not propose endorsing this approach.

Most interviewees in the present study were of the view that the economic basis for implementing board gender diversity in Sri Lanka should be based on women directors' contribution towards improving board effectiveness.<sup>25</sup> This was one of the most coded themes depicted in the data analysis when determining the statements in favour of introducing legal rules on board gender diversity.<sup>26</sup> Considering these findings, it seems plausible to rely on the benefits that women directors can contribute towards improving board effectiveness as a rationale for introducing board gender diversity rules. According to these interviewees, women directors promote efficacy of the board and improve the ability of the board to make decisions together as a unified unit. These justifications are consistent with the findings in strategic management literature discussed earlier in Chapter 4, which analyses how women directors improve board effectiveness by contributing to board tasks, board processes and board cohesiveness. The interviewees specifically pointed out how a wider consistent scope of benefits could be achieved by basing the economic rationale on the benefits to board effectiveness, with one of the female directors interviewed explicitly articulating this point.

“You need to look at the wider picture and decide why you need to justify board gender diversity. Although so many things have been said, the strongest point is on board effectiveness. Female directors have the ability to promote it, and that should be the primary reasoning to include the strategy of board gender diversity.” (Interview Transcript 16, female company director)

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the uncertainty associated with linking women on board with corporate financial performance; For articles see for example, the Financial Times Sri Lanka, above n 21; Sustainable Stock Exchange Initiative, above n 21; Appendix 10 - only 4 interviewees were of the view that board gender diversity rules should be promoted to improve corporate profitability; mentioned in the table as corporate financial performance. Other interviewees recognised board effectiveness as the main economic rationale that should govern the implementation of board gender diversity.

<sup>25</sup> Appendices 10 and 11. 14 interviewees out of a total of 24 interviewees were in favour of adopting board gender diversity rules due to the benefits associated with board effectiveness.

<sup>26</sup> Chapter 6 – Data analysis, Phase 3 and 4; Appendix 10; Initial Thematic Map RQ 1; Final Thematic Map.

This was a view consistently mentioned by both gender groups in this study and from different corporate entities, as seen through, for example, the comments below from a female company secretary and a male senior member of the Colombo Stock Exchange:

“The whole reason to include board gender diversity for me is because you can improve board effectiveness.” (Interview Transcript 2, female company secretary)

“Board effectiveness is the key element. There are so many studies saying how women directors can help to promote effectiveness of the board. So, the whole basis should be laid on it.” (Interview Transcript 6, male, employed in the Colombo Stock Exchange)

By considering the comments of the interviewees, there seems to be greater benefits that could be offered by exploring the improvements to board effectiveness through board gender diversity rules. These comments touch on certain female characteristics that women directors are generally regarded to possess. These include their tough monitoring skills, risk averseness, participative leadership behaviour, greater sensitivity towards the views of others, the level of effort put by women directors in board functionality, the difference in knowledge and skills and greater evaluation and scrutiny of senior management remuneration and corporate decisions than male directors, which are regarded to improve effectiveness of the board.<sup>27</sup> These skills assist in the overall performance of the board which is the aim of the board composition rules. An exploration of the interviewees’ comments suggests the wide scope of benefits that the appointment of women directors could offer to Sri Lankan corporate boards. Coupled with the literature in this area, these comments provide the necessary evidence to build a sufficient economic rationale for proposing the appointment of women directors to boards through board gender diversity rules.

### ***7.3.3 Exploring deeper into the benefits of board effectiveness that assist Sri Lankan boards***

According to Choudhury, grouping the benefits that women directors offer to the board illustrates how they contribute towards improving the effectiveness of the board.<sup>28</sup> Choudhury drawing on strategic management studies that group the contributions that women directors can make under the categories of board tasks, board cohesiveness and board processes.<sup>29</sup> Within this framework, the benefits under these three strands are widespread. While this

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<sup>27</sup> Interview Transcripts in Appendix 11, explanation column and column depicting reasons in the table.

<sup>28</sup> B Choudhury “New Rationales for women on boards” (2014) Oxford Journal of Legal Studies 511 at 512.

<sup>29</sup> Choudhury, above n 28; DP Forbes and FJ Milliken “Cognition and Management: Understanding boards of directors as strategic decision-making groups” (1999) 24 Acad Management Rev. 489 at 490; S Nielsen and M Huse “The contribution of women on boards of directors: Going beyond the surface” (2010) 18 Corp Governance 136 at 137.

approach was adopted in principle, as discussed herein, the aim of this study was to identify and narrow down the specific characteristics of women directors within these strands that could add value in the Sri Lankan context. This will assist in establishing a convincing economic rationale for board gender diversity.

Within Choudhury's framework and in other strategic management studies, these benefits are discussed by relying on the intrinsic female characteristics of women directors. However, it is necessary to acknowledge that every women director will not contribute to each area suggested because of her gender. However, for the purposes of this study these characteristics of women directors are relevant to highlight the valuable contributions that they can generally make in these areas. The findings discussed below set out how the interviewees considered that women directors' tough monitoring skills, risk averseness, deeper evaluation of corporate decisions, stringent scrutiny of senior management remuneration, ability to promote participative and collaborative style of board engagement, the level of effort put towards board functionality and their knowledge and skills all contributes towards increasing the effectiveness of the board.

*(a) Stricter monitoring of senior management and better risk management*

Strategic management studies highlight the contribution of women directors to the board's tasks of monitoring senior management with a focus on certain gender-based characteristics that facilitate female directors to be more effective at monitoring senior management than male directors.<sup>30</sup> In relation to the tough monitoring skills of women directors, most interviewees suggested that female directors are better than male directors at closely monitoring company performance and holding CEOs accountable for poor corporate performance.<sup>31</sup> This provides a board with better oversight of possible misappropriation within the company. When asked to provide examples or anecdotes to support their statements in this regard, the interviewees did not hesitate or find it difficult, with two female company directors explicitly referencing their observations on the manner in which their female colleagues who are directors act, mentioning as follows:

“women directors are really strict, so if there is poor company performance, they will monitor the CEO's performance and get the CEO to answer.” (Interview Transcript 13, female company director).

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<sup>30</sup> RB Adams and D Ferreira “Women in the Boardroom and their impact on governance and performance” (2009) 94 J Fin Econ 291, 292; JD Westphal and EJ Zajac “Who shall govern? CEO/Board power, demographic similarity and new director selection” (1995) 40 Admin Sci Q 60.

<sup>31</sup> Appendix 11, explanation column in table which mentions this point as “task performance.” Initial Thematic Map for RQ 1 and Final Thematic Map under code for board effectiveness.

“there is no way out for the CEO when females are on the board. You can’t ‘fudge’ around. From my experience, I can tell you that females are very good monitors and tough monitors of senior management.” (Interview Transcript 16, female company director).

The comment that you cannot “fudge around” when there were women directors on the board depicted in Interview Transcript 16 was a term commonly used by all the male interviewees who commented in this regard. When questioned deeper on this point, it was clear that these interviewees through the term “can’t fudge around” meant to reference the instance when senior managers have acted in an inadequate or inappropriate manner in the performance of their functions, but women directors are able to in most instances identify such behaviour through the interaction with senior managers. In this regard a number of interviewees also referenced the Ceylinco Limited and Seylan Bank corporate scandals in Sri Lanka that were a result of improper monitoring by the board which the interviewees felt could have been avoided if women directors were appointed. This thinking of the interviewees co-relates with the research by Adams and Ferreira<sup>32</sup> and Forbes and Milliken<sup>33</sup> that argues that monitoring can be improved by having women directors on the board. This could be a possible area that Sri Lankan corporate boards could expect to improve by appointing women directors.

Furthermore, the strict monitoring skills of female directors was identified to assist in evaluating and scrutinising CEO compensation and other senior executive pay in a better manner than male directors. Literature in this area identifies that in comparison with an all-male board, boards and remuneration committees with women directors tend to have lower CEO compensation and executive pay when the overall company performance is low.<sup>34</sup> In Sri Lanka, following the corporate scandals, there was a need to strengthen the rules on evaluating CEO compensation and other senior executive pay. As a result, the Sri Lankan Corporate Governance Code requires the chairman of the remuneration committee and a majority of directors on the committee to be NEDs. However, there have been no further steps taken in Sri Lanka to further strengthen the composition rules of remuneration committees in public companies. The interview findings generally aligned with the literature in this area that suggests that female directors are able to “better evaluate and scrutinise CEO compensation

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<sup>32</sup> RB Adams and D Ferreira “Women in the Boardroom and their impact on governance and performance” (2009) 94 J Fin Econ 291, 292.

<sup>33</sup> DP Forbes and FJ Milliken “Cognition and Management: Understanding boards of directors as strategic decision-making groups” (1999) 24 Acad Management Rev. 489 at 490.

<sup>34</sup> Westphal and Zajac, above n 30 at 62; Adams and Ferreira, above n 32 at 293.

and other senior executive pay” than male directors. Accordingly, it is suggested that the appointment of an increased number of women directors to Sri Lankan boards is a path for improving the composition of remuneration committees in Sri Lankan public companies. In this regard, the interviewees commented on the intrinsic female-characteristic of women directors to better analyse and evaluate salary matters than their male counterparts. The fact that female as well as male interviewees appreciating this fact was a key finding on this issue. For example, a female company director and a male senior regulatory director of the Sri Lanka Institute of Directors commented as follows:

“One strength of women directors, in my opinion, is the ability for them to analyse and evaluate CEO pay and other senior manager salaries, which they are better at than male directors.” (Interview Transcript 13, female company director)

“As I have identified through my experience, women directors perform a better function at scrutinising compensation of CEOs and senior management, and they do that function better than male directors.” (Interview Transcript 3, male employed in the Sri Lanka Institute of Directors)

Moreover, many studies identify female directors as being better risk managers than male directors.<sup>35</sup> Some interview responses illustrated this aspect mentioning how appointing women directors could promote better risk management in the company due to the risk averseness of women directors. These interviewees referred to the psychology literature that argues that women are more risk averse than men and identified women directors in turn as having this characteristic. The male interviewees working in regulatory authorities, especially those who favoured the implementation of board gender diversity, specifically commented on this point identifying that through their experience they have identified that boards with gender diversity tend to consider risk-based implications more often and more rigorously than homogeneous boards.<sup>36</sup> One of the male interviewees employed in the Colombo Stock Exchange explicitly commented on this point stating as follows:

“women have the tendency to mitigate risk. This is proven in psychology literature. So, the business case for adding females should be appreciated and based on this point.” (Interview Transcript 4, male, employed in the Colombo Stock Exchange).

The interviewees also commented that the quality of women directors at being better at monitoring and evaluating risks would assist the board if women directors were appointed to

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<sup>35</sup> Adams and Ferreira, above n 32 at 292; Westphal and Zajac, above n 30 at 60.

<sup>36</sup> Appendix 11 – highlighted in grey; Appendix 11, explanation column in table depicts this point as “operational control (risk mitigation)”.



audit committees. Acknowledging this view, one of the male senior members of the Colombo Stock Exchange mentioned that “we should look closely at improving female representation in the board committee structures as well, because of the general risk-averseness of females. To that extent females in the audit committees would be ideal and beneficial because that committee looks at risk matters.” (Interview Transcript 6).

With regard to this point of risk averseness of women directors which makes their appointment suitable to the audit committees, there is often an argument that this was a point held by female commentators favouring the establishment of heterogeneous boards. The findings of the study were able to counter this argument. In this research this view was held mostly by male interviewees and they were members of homogenous boards and they considered that there was a necessity for boards to become heterogeneous as more rigorous risk mitigation and better consideration to risk-based implications could be provided by appointing women directors.<sup>37</sup>

*(b) Enhancement of long-term strategic development and adherence to corporate social responsibility*

Enhancement of the long-term strategic development of the company was another benefit that women directors offer.<sup>38</sup> This is through the inclusive leadership style adopted by women directors which involves sharing power and information with colleagues.<sup>39</sup> This in turn is recognised as a way of promoting better discussion and decision making by boards with women directors, which is particularly beneficial in making long-term corporate decisions. In this regard some of the interviewees commented on the different analysis patterns adopted between female and male directors. The male interviewees provided examples to explain their views by commenting on the general differing pattern adopted by women directors when analysing long-term decisions whereas the female interviewees explained this point by mentioning about how women directors assess products and resources necessary for the future when making strategic decisions. This contrast in explanation is visible through the comments of the male and female interviewees mentioned below who were both executive directors in the respective companies they worked in.<sup>40</sup>

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<sup>37</sup> Appendix 11.

<sup>38</sup> Westphal and Zajac, above n 30 at 62; Adams and Ferreira, above n 32 at 292.

<sup>39</sup> Westphal, above n 30 at 62; Adams and Ferreira, above n 32 at 293.

<sup>40</sup> Appendix 11, explanation column in table depicts this point as “operational control (risk mitigation)”.

“The style of deciding when making long-term decisions is very different among women directors and male directors for sure. It is in the different way they analyse things.” (Interview Transcript 1, male company director)

“When it comes to female directors the uniqueness comes in when making long term board decisions through the way they assess products and resources.” (Interview Transcript 14, female company director)

Moreover, many studies contend that long-term corporate decisions and policies need to be made taking into account a company’s social responsibility.<sup>41</sup> Some strategic management research supports the view that companies with a gender diverse board often make better long-term decisions with an awareness of corporate social responsibility related issues than companies with all-male boards.<sup>42</sup> Sri Lankan literature illustrate how Sri Lankan companies are at a very initial stage of considering corporate social responsibility issues when making corporate decisions or when formulating policies. This research further contends that Sri Lanka needs to develop rules that require companies to give active attention to corporate social responsibility considerations when making decisions. Supported by global literature on this issue, it is suggested that the appointment of women directors would also encourage the development of further rules in Sri Lanka to get companies to give attention to their social responsibility when making decisions. The interviewees’ perceptions on this point also supported the proposition that appointment of women directors could also promote corporate social responsibility in Sri Lankan companies. Among the interviewees, 13 stated that female directors are more concerned than male directors about corporate social responsibility issues when making corporate decisions.<sup>43</sup> Of note were the interviewees who commented on female directors being more “sensitive about a company’s social responsibility” than male directors. When questioned further on their reference to sensitivity, the interviewees mentioned that it was in relation to women directors being more “aware or attuned to” corporate social responsibility matters, and their arguments went back to how men and women fundamentally act differently. The interviewees could not provide any actual examples of scenarios to support these views. However, as opposed to an all-male board, these perceptions could be used as the basic foundation to promote rules requiring a gender diverse board.

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<sup>41</sup> RA Bernardi, S Bosco and K Vassill “Does female representation on boards of directors associate with Fortune 100 best companies to work for list?” (2006) 45 Bus Soc 235, 236; S Bear, N Rahman and C Post “The impact of Board Diversity and Gender composition on corporate social responsibility and firm reputation” (2010) 97 J Business Ethics 207 at 208.

<sup>42</sup> Bernardi, Bosco and Vassill, above n 41 at 236; Bear, Rahman and Post, above n 41 at 208.

<sup>43</sup> Appendix 11, explanation column in table depicts this point as “strategic control (leadership style/ corporate social responsibility)”.

*(c) Increase participative and collaborative engagement in the board*

Improvements in board cohesiveness is another benefit that has been identified in literature as an advantage of a gender-diverse board.<sup>44</sup> As outlined in Chapter 4, board cohesiveness is the degree in which the board acts as a well-integrated unit.<sup>45</sup> One of the issues highlighted in the Sri Lankan corporate collapses of Ceylinco Limited, Pramuka Bank and Seylan Bank was the dominance of one member of the board. Promoting a participative and collaborative style of engagement in a board has been identified as a measure that can prevent such dominance by some board members. This in turn is regarded as promoting effective communication among board members. Women directors' participative leadership behaviour and greater sensitivity towards the views of others has also been found to improve overall board cohesiveness.<sup>46</sup>

In the data analysis phase described in Chapter 6 the coded extracts under the theme on “the statements in favour of introducing legal rules on board gender diversity” reflects a view amongst the interviewees that the appointment of women directors may promote increased collaborative engagement on the boards of Sri Lankan public companies. Most interviewees in the study mentioning this point, commented that gender diversification would change the overall boardroom environment because women directors adopt a more rational, participative, and collaborative style in conducting board functions which will promote effective communication among board members and build the cohesiveness of the board.<sup>47</sup> A female corporate lawyer who had done research in this area and a female director of a leading conglomerate in Sri Lanka explicitly mentioned as follows.

“Female directors don’t try to dominate in the board unlike some of these males, they listen and give value to other board members’ views. Also, I have noticed that female directors always want to enter into decisions where all views are included, not just one person. So, the board then acts as an integrated group.” (Interview Transcript 11, female corporate lawyer)

“Keeping the board as an integrated unit is one of the key strengths seen in boards with women directors. That is because of their style of engagement which builds cohesiveness.” (Interview Transcript 21, female company director)

These extracts provide evidence that female directors do not dominate board discussions and wants to promote the cohesiveness of the board by their collaborative style of engagement.

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<sup>44</sup> Choudhury, above n 28; S Nielsen and M Huse “The contribution of women on boards of directors: Going beyond the surface” (2010) 18 Corp Governance 3.

<sup>45</sup> I Summers, T Coffelt and R E Horton “Work-group cohesion” (1988) 63 (2) SAGE Journal 627 at 629.

<sup>46</sup> Summers, above n 45 at 629; Nielsen and Huse, above n 44 at 3.

<sup>47</sup> Appendix 11, explanation column in table depicts this point as “board cohesiveness (style of engagement).”

*(d) Improve board functionality and diversity of skills and knowledge on the board*

Choudhury's framework and several other studies have also identified the contributions that women directors make to board processes.<sup>48</sup> These contributions relate to the level of effort put by women directors in board functionality and the variety of knowledge and skill women directors bring to the board.<sup>49</sup> In Sri Lanka, to date there are no corporate governance rules requiring directors to improve their participatory behaviour in board functionality or any steps requiring companies to improve the knowledge and skills of the board. Implementing board gender diversity rules would impliedly assist in addressing these gaps by the contributions women directors can bring to this area. As outlined below and in Chapter 6, the views of the interviewees reflected this reasoning.<sup>50</sup>

In relation to the efforts put by women directors in relation to board functionality, studies identify female directors to exert more effort than male directors in preparation for and participation at board meetings.<sup>51</sup> Owing to their higher levels of preparation, female directors have been identified as having the capacity to effectively highlight conflict-inducing and tough issues at board meetings in comparison to their male counterparts. Illustrating their personal experiences, the interviewees affirmed that female directors prepare better for board meetings and evaluate board decisions better than male directors. In this regard 14 interviewees mentioned that extensive preparation had resulted in female directors identifying key issues missed by male directors.<sup>52</sup> For instance, one of the interviewees who was a female company director stated that, "gender diversity on boards is something very important because, in her view, women directors spend more time when dealing, analysing and preparation with board matters. That enables them to identify important matters and engage in board decisions effectively" (Interview Transcript 13). Commenting on the greater level of effort exerted by female directors than male directors, the interviewees also identified that women directors could promote timely and efficient board decision-making.<sup>53</sup> As one of the interviewees who was a female corporate lawyer mentioned, "I think, well this is my personal view, if a female

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<sup>48</sup> Choudhury, above n 28; DP Forbes and FJ Milliken "Cognition and Management: Understanding boards of directors as strategic decision-making groups" (1999) 24 *Acad Management Rev.* 489, 490; S Nielsen and M Huse "The contribution of women on boards of directors: Going beyond the surface" (2010) 18 *Corp Governance* 136 at 137.

<sup>49</sup> Forbes and Milliken above n 48 at 490; Nielsen and Huse above n 48 at 137.

<sup>50</sup> Chapter 6, Data analysis, Phase 3 under the theme "statements in favour of board gender diversity" and coded under board effectiveness.

<sup>51</sup> Forbes and Milliken, above n 48 at 490; R Wageman "Interdependence and Group effectiveness" (1995) 40 *Admin Sci Q* 145 at 150.

<sup>52</sup> Appendix 11, explanation column in the table points this out as "Board processes".

<sup>53</sup> Appendix 11, explanation column in the table points this out as "Board processes".

director was appointed, things would change. Board decisions would have been more precise, and decisions would happen in a timelier manner” (Interview Transcript 7).

With regard to the knowledge and skills brought to the board by appointing women directors to the board,<sup>54</sup> the interviewees noted the increase in intellectual diversity, the diversity in viewpoints, increase in collective expertise on the board and experiential diversity as elements that would benefit Sri Lankan boards by appointing women directors.<sup>55</sup> Two female interviewees one being a corporate lawyer engaging in corporate forums in this area and the other being an experienced company director, provided a succinct summary in this regard as follows:

“I think it’s a question of appreciating what females can add to the boardroom. Owners, shareholders, and entrepreneurs should recognise that the female perspective is important not because it is a question of gender, but that a female could see things differently. This promotes better discussion within the board.” (Interview Transcript 11, female corporate lawyer)

“... it will be good ... Also, since the female director in our company is young, she brings in a fresh perspective to board decisions. That creates diverse views, and discussions go on various angles. Ultimately, there is good debate before an actual decision is made about each decision.” (Interview Transcript 21, female company director)

The female interviewees who favoured board gender diversity expanded further on this point, maintaining that the inclusion of women directors would increase the diligence of the board.<sup>56</sup> According to this group of interviewees, due to their inquiring nature, most female directors tend to ask more challenging questions and counterintuitive questions at board meetings than male directors. This was identified to result in productive boardroom discussions which better represent the concerns of a variety of stakeholders. Commenting on this point, one of the female interviewees who was an experienced company director stated that, “women directors ask lots of questions and inquire, although it helps them look at matters differently and consider the impact on all people dealing with the company” (Interview Transcript 13).

Moreover, the interviewees’ comments co-related with the findings in the literature that mention advancements of the collective expertise on the board through the appointment of women directors due to their unique knowledge and skills which male directors may not

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<sup>54</sup> Forbes and Milliken above 48 at 490; Nielsen and Huse above n 48 at 137.

<sup>55</sup> Appendix 11, in the explanation column in table depicted as intellectual diversity.

<sup>56</sup> Appendix 11, in the explanation column in the table depicted as diligence.

possess.<sup>57</sup> For example, studies have identified that female directors have a better understanding of consumer market structures than male directors. The London Annual Business Survey found that companies with gender-diverse boards developed new products needed by consumers at a faster pace than homogeneous boards because of a wider range of perspectives, experience, and expertise.<sup>58</sup> A similar viewpoint was expressed by some of the interviewees. One female interviewee who was a corporate lawyer stated that “female directorship is crucial when developing consumer items. They have very good insights” (Interview Transcript 7). In addition, nine interviewees identified the knowledge and skills of women directors as a useful tool in developing corporate strategies to cater to the needs of diversifying markets and to manage risks associated with the supply chain.<sup>59</sup> For instance, a company secretary of a leading Sri Lankan company and another experienced corporate director commented on this point as follows:

“Looking at the board structure of the company I’m working for, on our board, there are 12 directors and there is 1 female. But her contribution and knowledge is very good. She is very informed about market structures and risks associated with changing markets. She has a lot of market insights, so her contribution and knowledge is great” (Interview Transcript 2, female company secretary).

“In the organisation I work for ... there are 3 female directors. They are very strong in opinion, knowledgeable and well-educated. These women directors make very firm decisions and have contributed immensely towards the development of the organisation ... mainly changes in markets ... their knowledge is very important and valuable” (Interview Transcript 14, female company director).

Finally, an increase in experiential diversity was another element that was expressed as a ground to support the inclusion of women directors on boards.<sup>60</sup> A majority of the interviewees with more than 25 years’ industry experience identified that women directors could bring more diverse experience to a board compared to one solely comprised of men.<sup>61</sup> In particular, the male interviewees who were in favour of promoting board gender diversity in Sri Lanka generally recognised that blending the knowledge and experience of male and female

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<sup>57</sup> D Rock and H Grant “Why diverse teams are smarter” (2016) Harvard Business Review <<http://www.hbr.org>>; AA Hewlett, M Marshall and L Sherbin “How diversity can drive innovation” (2013) Harvard Business Review <<http://www.hbr.org>>.

<sup>58</sup> M Nathan and N Lee “Cultural Diversity, Innovation and Entrepreneurship: Firm-level evidence from London” (2013) 89 *Economic Geography* 367 at 389.

<sup>59</sup> Appendix 11.

<sup>60</sup> VW Kramer, AM Konrad and S Erkhut “Critical mass on corporate boards: Why three or more women enhance governance” (2006) Wellesly Center for Women – Report No. 74; P Bradshaw and D Wicks “The experiences of white women on corporate boards in Canada: Compliance and Non-compliance to hegemonic masculinity” in Ronald J Burke and Mary C Mattis (eds) *Women on corporate boards of directors: International challenges and opportunities* (Kluwer Academic 2000) 197 at 207.

<sup>61</sup> Appendix 12, explanation column in table depicts as experiential diversity.

directors would assist companies to survive in a competitive market.<sup>62</sup> To support this view point, the female interviewees also mentioned how companies with gender-diverse boards introduce new products at a faster pace than homogeneous boards. This line of thinking is compatible with the research presented by the UK Parker Review,<sup>63</sup> which identified that companies need to promote gender diversity on boards to manage risks and cope with the diversification of markets and stakeholders.

*(e) A “sum-up” on establishing a rationale based on board effectiveness*

There was a view among the male and female interviewees that women directors will contribute towards improving board effectiveness in Sri Lankan public companies. The intrinsic female characteristics of women directors discussed in the interview responses mostly co-relates with the literature on this area. Specifically, the interview responses provided the necessary context to streamline these benefits that are particularly relevant to Sri Lankan public company boards. However, there were two issues highlighted by the interviewees which questioned the ability to establish a concrete analysis through the interview responses. One instance was whether the interviewees were articulating the benefits that women directors can make without providing examples or anecdotes to illustrate the points. The study conducted by Broome, Conley and Krawiec<sup>64</sup> illustrated this aspect where the interviewees voiced their support of board diversity although could not provide any practical examples to substantiate their views. This prevents from establishing a concrete and universal claim. However, in this study the categories of benefits that women directors could offer discussed in the previous sections were substantiated by the interviewees through examples mentioned either through their personal experiences of being board members or based on their observations of the actions performed by women directors who served on Sri Lankan corporate boards. The second instance was whether a discussion of specifically female characteristics would open the door to both gender stereotyping and invidious comparisons. There were no concerns among the interviewees in this regard. Those that were not members of the specific gender group i.e. male, did not have any concerns in acknowledging the capabilities of women directors that they possess because of being a women. Further, interviewees who were women directors also acknowledged that in most circumstances females are in general alike and do possess

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<sup>62</sup> Appendix 12.

<sup>63</sup> Sir John Parker “Beyond One by 21: A report into the ethnic diversity of UK boards” (2016) 24.

<sup>64</sup> LL Broome, JM Conley and K D Krawiec “Dangerous Categories: Narratives of Corporate Board diversity” (2011) 89 North Carolina Law Review 759, 760.

capabilities that could be generalised. The ability to address these points provides better credibility to establish a rationale based on board effectiveness.

According to Dhir<sup>65</sup> for a conclusive analysis of board gender diversity rules, it is necessary to give sufficient consideration to counter-arguments. Adopting this thinking, the opposing statements on board gender diversity that were mentioned in the interview responses were also analysed. One narrative that ran counter to this general trend were the few interview responses that mentioned that board gender diversity rules can lead to anti-meritocracy.<sup>66</sup> Among the eight interviewees who opposed the introduction of board gender diversity rules, seven suggested that gender-based board appointments lead to anti-meritocracy.<sup>67</sup> For these interviewees, implementing rules on board gender diversity was regarded as diminishing the quality of board appointments and creating an imbalance in the criteria for board nominations from merit to gender.<sup>68</sup> This would diminish the effective composition of a board.

Studies that have discussed arguments against board gender diversity rules have not explored whether these arguments are made by males or females. Such an analysis would provide evidence as to whether gender has an impact on the opposing statements on board gender diversity. This aspect was explored in this study. The categorisation based on the attributes of the interviewees highlighted that mostly males held opposing views and considered board gender diversity rules to lead to anti-meritocracy. Two male company directors explicitly commented on this point as illustrated below:

“One argument against it is that appointments need to be on merit, because if there is a well-qualified suitable male for the post then it will be unfair to just appoint a female because we want to maintain gender diversity on the board.” (Interview Transcript 5, male company director)

“Nominations to the board should be on merit. In that context, it is not a question of having enough males and females on the board, but a question of nominating suitable members to the board. I don’t think having legal rules will be very effective. It’s about getting people groomed for the role ... At the end of the day, I’m of the view that this whole argument of improving board effectiveness should be based on appointing suitable candidates, which means basing the analysis on merit.” (Interview Transcript 20, male company director)

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<sup>65</sup> Dhir, above n 15 at 33.

<sup>66</sup> Appendix 10; Appendix 11 column depicting reasons and Appendix 12 explanation column mentions “merit” as the reasons for opting against the introduction of board gender diversity rules; Chapter 6, Data analysis, Phase 3 sub-theme “statements against introducing legal rules on board gender diversity” and Initial Thematic Map for RQ 1; Phase 4, Thematic Map.

<sup>67</sup> Appendix 10; Appendix 11 column depicting reasons and Appendix 12 explanation column mentions “merit” as the reasons for opting against the introduction of board gender diversity rules; Chapter 6, Data analysis, Phase 3 sub-theme “statements against introducing legal rules on board gender diversity” and Initial Thematic Map for RQ 1; Phase 4, Thematic Map.

<sup>68</sup> Appendices 11 and 12; Chapter 6, Data analysis, Phase 3 sub-theme “statements against introducing legal rules on board gender diversity” and Initial Thematic Map for RQ 1; Phase 4, Thematic Map.



Apart from these interviewees, there was general credible examples and anecdotes provided by the rest of the interviewees to support the appointment of women directors as a measure to improve board effectiveness in Sri Lankan public company boards.<sup>69</sup>

#### **7.4 Beyond the economic rationale: the social case for introducing board gender diversity to Sri Lanka**

Focusing solely on the economic benefits that women directors bring to the boardroom does not highlight the underlying issues that cause the underrepresentation of women directors. For board gender diversity rules to be effective in a country, it is important that these underlying reasons are identified and addressed. Such an analysis is vital in the Sri Lankan context for board gender diversity rules to create meaningful change. The aim of this section is to draw on the themes in the literature and the empirical findings to identify and address the specific issues that have caused the underrepresentation of women directors on Sri Lankan public company boards. This analysis is useful in addressing Research Question 2.

Globally, literature identifies gender inequality in society as one of the primary underlying issues that cause the underrepresentation of women directors.<sup>70</sup> Gender inequality in society is a cause of the disparity between men and women in terms of the distribution of power and access to resources, which in turn creates an imbalance in the distribution of leadership roles. As a result, “men and women at the same level of talent and ability are not given the same prospects of success.”<sup>71</sup> This is reflected in directorships in companies, where women with equal knowledge and competence as men do not get equal access to board seats. As identified in Chapter 4, studies conducted in Norway, Spain, and India recognise that issues of gender inequality in society were one of the main reasons for the underrepresentation of women directors in these countries.<sup>72</sup> Similar to these countries, literature indicates that gender

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<sup>69</sup> Appendices 11 and 12; Chapter 6, Data analysis, Phases 3 sub-theme “statements against introducing legal rules on board gender diversity” and Initial Thematic Map for RQ 1; Phase 4, Thematic Map. Out of the 24 interviewees 16 were in favour of introducing board gender diversity rules. 14 interviewees considered that board gender diversity rules will improve board effectiveness.

<sup>70</sup> Choudhury, above n 28 at 512; K Watson “Gender diversity on corporate boards” (2014) 3 Journal of Australian Law Teachers Association 1 at 4.

<sup>71</sup> Choudhury, above n 28 at 513.

<sup>72</sup> H Bjørkhaug and S O Sørensen “Feminism without Gender? Arguments for Gender quotas on corporate boards in Norway” (2014) *Nw J Int’L & Bus* 87. In Norway, in 1999 there was significant concerns about gender inequality and the low number of women on boards. As a response, the Norwegian Government took steps to introduce board gender diversity rules to improve the number of women on boards; European Parliament “Spanish policy on gender equality: Relevant current legislation and policies” (2009) EU Directorate-General for Internal Policy Department 5

<<http://www.europarl.europa.eu/studies>>; M Luckerath-Rover “A comparison of gender diversity in the Corporate Governance Codes of France, Germany, Spain, the Netherlands and the United Kingdom” (2010)

<<http://ssrn.com/1585280>>. Spain in 2004 introduced changes in policies and company laws to address issues of gender inequality in society; N Bhalla “Indian firms mock gender diversity as boardroom deadline passes: Analyst” *Reuters*, April

inequality in Sri Lankan society has negatively affected women from being appointed as directors.<sup>73</sup> This is due to the customs, values and beliefs followed in Sri Lanka that all reflect patriarchal values. However, the analysis in this literature is broad and does not streamline the exact areas where gender inequality in society has caused the underrepresentation of women directors in Sri Lankan company boards. In this section the empirical findings are used to capture these specific areas which could be improved to address the low percentage of women directors on boards.

For this purpose, the first section concentrates on the social structure in Sri Lanka to identify from the interviewees' responses which traditional patriarchal values have affected women from entering the labour force and the subsequent changes that have occurred to this situation. This analysis provides the foundation to consider the barriers that remain in the Sri Lankan social structure that affects the low percentage of women on corporate boards. The second section takes this analysis further by exploring whether these gender inequality issues in Sri Lanka could be addressed by introducing rules on board gender diversity. This inquiry draws on the equality standpoint on board gender diversity and shows how the interviewees consider board gender diversity rules as a measure to promote an equal distribution of power and participation among men and women in Sri Lanka. This analysis is used as the basis to justify the social benefits of introducing board gender diversity rules.

#### ***7.4.1 Sri Lankan social structure and gender inequality***

According to Tong, a society segregating the roles of men and women indicates the existence of a patriarchal world or a man-made world where there is sexual inequality.<sup>74</sup> This prevents the existence of an equal or balanced society where there is an equal distribution of power, resources and participation between men and women. As identified in Chapter 2, a characteristic in the Sri Lankan social structure is the segregation in roles among men and women, recognising men as the powerholders in society and women being ascribed a secondary status.<sup>75</sup> This distinction in the status among men and women shows that the Sri Lankan social

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2015. India faced a similar scenario, where women directorships before 2013 were less than 5 per cent which was addressed by introducing board gender diversity rules.

<sup>73</sup> C Ratwatte "Out of 198 Directors in 25 Top Corporate in Sri Lanka only 10 are women" (2012) <<http://dbsjeyaraj.com/dbsj/archives/11707>>; The Economist "Sri Lanka needs a stronger female force" (2015) <<http://www.lankabusinessonline.com/sri-lanka>>.

<sup>74</sup> R Tong *Feminist Thought: A Comprehensive Introduction* (3<sup>rd</sup> edn, Routledge 1995) 45.

<sup>75</sup> DS Vithanage "Understanding the nature and scope of patriarchy in Sri Lanka" (2015) University of Sri Jayawardenapura Colombo publications 37 <[http://repository.stcloudstat.edu/socresp\\_etds](http://repository.stcloudstat.edu/socresp_etds)>; HMA Herath "Place of women in Sri Lankan society: Measures for empowerment for development and good governance" (2015) 1 (1) University of Sri Jayawardenapura Colombo publications <<http://mysip.ac.lk>>.

structure seems to adopt a patriarchal framework.<sup>76</sup> This has been identified in literature as the root cause for the existence of gender inequality in Sri Lanka.

To identify the specific areas where this segregation is visible in the roles among men and women, it is necessary to conduct a deeper analysis of the social structure. Mill considers that any successful analysis of such a patriarchal social structure should be two-fold.<sup>77</sup> Firstly, there should be an exploration of the customary barriers that promote female subordination and blocks women's entrance to and success in the public world. Next, there should be an analysis of how deeply the patriarchal thinking is ingrained in society by exploring any changes, to consider the possibility of reorganising the social structure to create impactful change. The two-fold framework proposed by Mill was followed in this study.<sup>78</sup> The sections below draw on the empirical findings on the traditional social setting in Sri Lanka and the changes which came into force after 1942 aimed at eliminating discrimination against women. This analysis reveals the gender inequality issues that currently exist in Sri Lanka and the extent to which rules on board gender diversity could assist in addressing these issues.

#### *7.4.1 (a) The traditional social setting of the Sri Lankan woman*

Research conducted by Mill and Wollstonecraft,<sup>79</sup> identifies that when there are customary barriers that promote female subordination, society holds the false belief that women are by nature, less intellectually and physically capable than men and tends to discriminate against women in forums, education, and in the marketplace. Sri Lankan literature analysing customary values have identified that traditionally similar thinking existed in the country providing a weak social status for Sri Lankan women and prevented women from making decisions in the family, having access to education and engaging in employment. In conducting the data analysis in Chapter 6, under the sub-theme in the thematic map titled "traditional perceptions/ current status" developed through the interview responses captures this aspect and identifies these areas as the main elements causing the low percentage of women on boards in Sri Lanka.

The writings by Mill and Wollstonecraft which analyses the understanding of rationality of women also discuss that the underpinning reasons for men to be given a prominent role in relation to decision-making are generally due to the customary thinking that

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<sup>76</sup> Vithanage, above n 75 at 37; Herath, above n 75 at 22.

<sup>77</sup> JS Mill, "The Subjection of Women," in J S Mill and H Taylor Mill, *Essays on Sex Equality* ed. AS Rossi (University of Chicago Press, 1990) 184.

<sup>78</sup> Mill, above n 77 at 185.

<sup>79</sup> Mill, above n 77 at 185; M Wollstonecraft *A Vindication of the Rights of Women* ed. C H Hoston (New York, 1995) 34.

women do not have the intellectual capability to make decisions by embarking in calculative reasoning.<sup>80</sup> In Sri Lanka, the traditional customary belief was that all decisions relating to the family unit should be taken by men.<sup>81</sup> Women were not permitted to participate in decisions or voice their concerns regarding family matters. The interview responses analysed this aspect and reflected the thinking in the writings by Mill and Wollstonecraft. The empirical findings identified that traditionally in Sri Lankan society, men were considered to be more learned or intellectually capable than women. This thinking was reflected in the responses of both male and female interviewees with the responses of the following male and female interviewees specifically articulating this thought by expressing their own experiences on this point.

“Actually, what happened was that women were hardly visible in a family. If a girl spoke up, she would be considered forward and strictly punished by the males. This was the customary principle that was followed because men were thought to be more learned.” (Interview Transcript 6, male interviewee)

“In those days, females cannot give their opinion. Men in the family decide everything... This is because men are considered to be the educated folk in the family.” (Interview Transcript 21, female interviewee)

Traditional practices within the family unit are also based on the separate status of men and women in Sri Lanka<sup>82</sup> A prominent example in this regard illustrated in literature and the empirical findings was the routines adopted during mealtimes. Generally, women were not allowed to eat meals before men. Some of the interviewees of the study mentioned that the traditions adopted during mealtimes were illustrative of the subordinate status given to women within the family unit. The comments of the two female interviewees below reflect their personal experiences of the traditions followed within their family units.

“We don’t need to go far to see male dominance in our culture. Look at our historical notes on practices during meals. Women are never allowed to eat first or serve first. It is always the men. Men eat first and then us women.” (Interview Transcript 2, female interviewee)

“Have you read about the chores our Sri Lankan married women had to do? It never ended. Traditionally, women couldn’t eat in peace. Even if a woman was hungry, she needed to start by serving the husband or any male around.” (Interview Transcript 12, female interviewee)

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<sup>80</sup> Mill, above n 77 at 187; M Wollstonecraft *A Vindication of the Rights of Women* ed. C H Hoston (New York, 1995) 34.

<sup>81</sup> Vithanage, above n 75 at 3; Herath, above n 75 at 2; Ratwatte, above n 73 at 2.

<sup>82</sup> Vithanage, above n 75 at 3; Herath, above n 75 at 2.

According to studies conducted by Ruddick, Held and Kittay women as a group were considered to be care-focused.<sup>83</sup> As such it is suggested that the actions by Sri Lankan women to allow the men to eat before them are a sign of caring for the family and their identity and behaviour as care-focused humans. According to Ruddick, Held and Kittay the capacity to act in such a care-focused manner should be viewed as a human strength.<sup>84</sup> However, if this denotes a disproportionate shoulder of burden this should be eliminated. In the Sri Lankan context, from the interview responses and through the findings in the literature it seems that the behaviours during mealtimes do not depict any appreciation of women, rather it is looked at as a sign of the dominance of men.

Another traditional view maintained within the Sri Lankan social structure was that the role of a woman is within the family. Traditionally, men were allowed to either engage in employment or carry out domestic agricultural activities. Women were not allowed to engage in employment, but they were required to take care of domestic duties. Wollstonecraft in her study refers to such situation as “the socially constructed gender roles”.<sup>85</sup> The drawback of such socially constructed gender roles is that it deprives women from engaging in employment and gaining an education. Wollstonecraft was writing about the social position of European women during the eighteenth-century and observed that with industrial capitalism there was a drive for men to work in a public workplace.<sup>86</sup> This was on the basis of the belief that men were more physically capable than women. This impacted married women who found themselves left at home and their housework not being classified as productive work. This situation created a scenario where men as the breadwinners had more “power” to make decisions. The result was that women were not permitted to make their own decisions and lacked liberty. A similar situation seems to have occurred in Sri Lanka where with industrialisation, men engaged in workplace employment leaving women to manage domestic duties. This became the norm and resulted in women being confined to domestic activities. However, in the long term this has also resulted in low levels of labour force participation by women.<sup>87</sup> Drawing on their personal experiences and observations, most of the interviewees of

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<sup>83</sup> S Ruddick “Maternal Thinking” in *Mothering: Essays in Feminist Theory* Ed. J Trebilcot (Totowa, N.J: Rowman & Allanheld 1984) 35; V Held “Feminism and Moral theory” in *Women and Moral Theory* (Rowman & Littlefield 1987) 113; EF Kittay and DT Meyers (ed) *Woman and Moral Theory* (Totowa NJ: Roman & Littlefield 1987) 25. The authors adopt the definition provided in C Gilligan *In a different voice* (CUP 1982) and N Noddings *Caring: a relational approach to ethics & moral education* (OUP 2013) to explain what is meant by care-focussed. This is women’s natural capacity to care for another human. The authors consider this quality as being a natural quality in comparison to men whom this quality needs to be taught.

<sup>84</sup> Ruddick, Held and Kittay, above n 83.

<sup>85</sup> Wollstonecraft, above n 79.

<sup>86</sup> Wollstonecraft, above n 79.

<sup>87</sup> Vithanage, above n 75 at 3; Herath, above n 75 at 2.

the study commented on this point as identified through the responses of the male and female interviewees below.<sup>88</sup>

“A long time ago, being an Asian country, females had to attend to family affairs like looking after children and do the housework.” (Interview Transcript 6, male interviewee)

“In my day, that’s about 40 years ago, women were restricted to the house. A girl’s role is to attend to household chores and not go out to work. That is the role of the woman in Sri Lanka, and that’s what society expected her to do. Women couldn’t wait without doing household work.” (Interview Transcript 11, female interviewee).

This situation was aggravated by Sri Lankan women being prevented from having access to education.<sup>89</sup> Before 1942, Sri Lankan women were not allowed to attend education centres and only men were entitled to an education to help with gaining employment. This situation mirrors Wollstonecraft’s observations with respect to a similar time period in Europe when it was considered that only men needed an education to become the breadwinners of the family, and as the role of females involved caring for children and attending to domestic chores, women did not need to develop any powers of reasoning.<sup>90</sup>

In Sri Lanka prior to 1942, over 85 per cent of women were illiterate.<sup>91</sup> This point was mentioned by most interviewees with the two female interviewees below particularly commenting on this point through their own family experiences.<sup>92</sup>

“Look at how many women were kept without an education during this time. What a waste of knowledge and skill. This I can highlight through my own family experiences.” (Interview Transcript 12, female interviewee)

“Before 1942, our literacy scale for females was very low. That is because they were not given an education. Only some elite families could afford it. As I could see it, this had affected some of my female family members.” (Interview Transcript 21, female interviewee)

However, as noted in Interview Transcript 21 and some of the other interview responses, this situation pertaining to access to education did not affect the elite. Private tutoring was available for women from elite families. Wollstonecraft referred to such “privileged” women as members of “the feathered race,” who are like birds that are confined to cages and “stalk with mock

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<sup>88</sup> Appendix 13, the column depicting “effects of traditional norms – Acts as a barrier.” The interview transcripts underpinning this theme mentions this point; Chapter 6, Data analysis, Phase 3, Initial Thematic Map RQ 2, sub theme “norms a barrier” includes the code domestic responsibilities; Phase 4 Thematic Map also includes this code.

<sup>89</sup> Vithanage, above n 75 at 3; Herath, above n 75 at 2.

<sup>90</sup> Wollstonecraft, above n 79 at 53.

<sup>91</sup> UNICEF “Statistics Sri Lanka – women and facilities” (2018) <[http://www.unicef/srilanka/statistics/find\\_facilities](http://www.unicef/srilanka/statistics/find_facilities)>

<sup>92</sup> Appendix 13, the column depicting “effects of traditional norms – Acts as a barrier.” The interview transcripts underpinning this theme mentions this point; Chapter 6, Data analysis, Phase 3, Initial Thematic Map RQ 2, sub theme “norms a barrier” includes the code domestic responsibilities; Phase 4 Thematic Map also includes this code.

majesty from perch to perch.”<sup>93</sup> Other women, in Wollstonecraft’s estimation, had to sacrifice their knowledge, liberty, and virtue to the powers of their husbands and fathers. These observations are reflected in the traditional situation in Sri Lanka where elite women had the privilege of getting private tutoring, which was not available to the “common” Sri Lankan woman.<sup>94</sup>

#### *7.4.1 (b) Measures to change the traditional social and cultural beliefs in relation to the status of the Sri Lankan woman*

According to Mill where there are changes to patriarchal thinking, this is reflected in the reorganising of the social structure.<sup>95</sup> Mill considers the study of these changes in a patriarchal social structure as an important step to identify any departures from traditional beliefs.<sup>96</sup> Following the path proposed in Mill’s framework, an analysis was conducted of the changes in Sri Lankan society that impacted the traditional social and cultural beliefs discussed above. As identified in Chapter 2, several measures have been taken since 1942 to improve gender equality in Sri Lanka. However, prior research had not analysed the measures that were most effective. The empirical findings in this study assisted in identifying such measures.<sup>97</sup> These included improving access to education and the mandatory rule introduced in Sri Lanka requiring 25 per cent local government political representation for women. These two measures were considered by the interviewees as the most effective measures to date that “got women to step out of their domestic role.”

With regard to changes on access to education, as outlined in Chapter 2, these measures were introduced when Sri Lanka was a British colony. In 1942, the British introduced free education for men and women.<sup>98</sup> This included access to primary, secondary and university education. As a result, women had equal access to education as men, which resulted in a significant increase in women’s literacy levels from 15 per cent in 1941 to 40 per cent by 1943.<sup>99</sup> Currently, the female literacy level in Sri Lanka is at 94.6 per cent,<sup>100</sup> and the literacy gap between men and women decreased from 56.7 per cent in 1942 to 2.3 per cent by 2019.<sup>101</sup> The Ministry of Education reported a significant increase in the percentage of women entering

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<sup>93</sup> Wollstonecraft, above n 79 at 53.

<sup>94</sup> Depicted through the transcripts coded in Appendix 13.

<sup>95</sup> Mill, above n 77 at 187.

<sup>96</sup> Mill, above n 77 at 187.

<sup>97</sup> Chapter 6, Data analysis, Phase 3 and Phase 4.

<sup>98</sup> UNICEF, above n 91 at 3.

<sup>99</sup> World Bank “Education statistics 2019 – Sri Lanka” (2019) <<http://datatopics.worldbank.org/education/country/sri-lanka>>

<sup>100</sup> World Bank, above n 99 at 4.

<sup>101</sup> World Bank, above n 99 at 4.

university after the promotion of free education.<sup>102</sup> By 2017, the female undergraduate population at universities in Sri Lanka was at 60 per cent compared with less than 1 per cent prior to 1942.<sup>103</sup> The interviewees commented on this positive progress in women's education in Sri Lanka with one corporate director and a lawyer who had researched about women's education mentioning as follows:

“Since 1942, the female literacy levels have gone up. Also, if we check the statistics for university entrances, the female university entrance ratio is going up.” (Interview Transcript 13, corporate director)

“If we look at the female literacy levels, female university entrance, female education in general, there is actually a positive increase.” (Interview Transcript 15, independent lawyer)

The impact of this educational change was significant as it encouraged women to make use of their education by stepping out of their domestic roles and to join the workforce. As a result, women's labour force participation in Sri Lanka increased from 1 per cent around 1942 to over 35 percent as at the end of 2019.<sup>104</sup> Typical jobs included teaching, administration, tea-picking, and domestic maids. However, the interviewees noted that currently an increase in women's labour force participation could be mostly observable in the areas of administration and teaching. In this regard the interviewees below shared their personal experiences highlighting the increase in women's labour force participation in these areas.

“Looking at this from a wider perspective, now I have been part of these city councils in Sri Lanka, and in these city councils, there are more girls working than boys. And there are large percentages of ladies who are teachers. Females have come into the system and there are no issues in engaging in these professions. In schools, when we look at some of the better-known boys' schools, there are more female teachers in these schools than male teachers.” (Interview Transcript 6, male interviewee)

“In land registries, 95% of the staff consists of women. Similarly, in the national intellectual property office, females occupy most seats. I think we are changing, and things are looking different. But more needs to be done. So, females are trying to break through the social and cultural norms.” (Interview Transcript 13, female interviewee)

The empirical findings also revealed the reasons underpinning the choice for women to take up professions such as teaching and administration. This was identified to be due to the flexible working hours.<sup>105</sup> It was particularly considered relevant in relation to the teaching

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<sup>102</sup> Ministry of Education “Education census\_2018 Report” (2018) <<http://www.statistics.gov.lk/education/Report-2018.pdf>>.

<sup>103</sup> Ministry of Education “Education census\_2018 Report” (2018), above n 102 at 13.

<sup>104</sup> World Bank, above n 99 at 4.

<sup>105</sup> Appendix 15; Chapter 6, Phase 3, Initial Thematic Map coded as “Domestic responsibilities”; Vithanage, above n 75 at 3; Herath, above n 75 at 2; The teaching profession referred herein is in relation to teaching at schools. This job is usually



profession because teaching does not require a full-day's work and includes more holidays, which allows women to balance their domestic responsibilities while working. While a shift in the role played by women could be seen by more women engaging in employment, opting for jobs with flexible working hours questions whether Sri Lankan women were still trapped in their traditional role. The empirical findings considered that although women have entered the labour force, attending to domestic tasks remains a primary responsibility for Sri Lankan women. It was regarded as a "terrain that could not be escaped by Sri Lankan women." This shows that the traditional social and cultural beliefs of the patriarchal setting have not been fully eradicated.

Literature illustrating the changes in the Sri Lankan social structure also often refer to the shift in Sri Lankan politics that took place in 1960 with the appointment of the first female prime minister in the world and the appointment of the first female president in Sri Lanka in 1995.<sup>106</sup> As explained in Chapter 2, following the assassination of the prime minister at the time SWRD Bandaranaike, his wife Sirimavo Bandaranaike succeeded to the office. Subsequently, in 1995, their daughter Chandrika Bandaranaike Kumaratunga became the first female president of Sri Lanka. The interviewees, both male and female, identified the success of these two women as an inspiration for Sri Lankan women to step out of their domestic roles and to be more ambitious in building careers.<sup>107</sup> Particularly, the responses of the two male interviewees mentioned below who were over 50 years of age quoted their personal experiences of seeing the shift that took place in the thinking in Sri Lanka with these two women gaining political power.

"We are in a country which had the first female prime minister and president. That has definitely been a turning point." (Interview Transcript 5, male interviewee)

"We can't ignore the role models in Sri Lankan society like the Bandaranaike family. There were a lot of women getting inspired by those incidents." (Interview Transcript 20, male interviewee)

However, these two women fall within Wollstonecraft's category of a "privileged" group coming from elite families.<sup>108</sup> The political success of these two women was unique and

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limited to morning and afternoon hours from 7.30 a.m. to 2.30 p.m. Administrative jobs are mostly part-time during morning hours.

<sup>106</sup> Vithanage, above n 75 at 2; Herath, above n 75 at 2; Appendix 14.

<sup>107</sup> Appendix 14 depicted as political representation; Chapter 6, Data analysis, Initial Thematic Map RQ 2 – depicted under perceptions on gender equality in Sri Lanka under existing measures and coded as parliamentary representation.

<sup>108</sup> Wollstonecraft, above n 79 at 53. The author refers to a "privileged" set of women as members of the elite who have benefits not available to common women in society.

coincided with wealth, privilege, and sympathy.<sup>109</sup> This raises the issue as to whether other women in Sri Lanka could similarly succeed in politics if they were not from the elite. Some of the interviewees, particularly female, were critical of the literature that highlight the success of the “Bandaranaike women” as illustrative of the shift in the political success of women in Sri Lanka, as pointed out by the female corporate lawyer and female company director providing the responses below:

“How can we just use the Bandaranaike’s as the example of a change in the political success of women in Sri Lanka. They were wealthy and had all the privileges which we can’t compare to the situation of you or me. The general Sri Lankan woman during this time couldn’t just enter politics and be so successful.” (Interview Transcript 11, female corporate lawyer)

“The few women who have successfully contested and made a name for themselves in the political process have generally entered politics as a result of the death of a father or husband, inheriting as it were, the male’s mantle of power, like the Bandaranaike’s.” (Interview Transcript 14, female company director)

The above extracts and similar statements by other interviewees align with the statistical data prior to 2016. These statistics reveal that prior to 2016 the percentage of female representatives in Parliament was 5.8 per cent.<sup>110</sup> This statistic indicates that there has been little real change in the ability of women to succeed in politics. A further analysis of these statistics also reveals that the 5.8 per cent of females who had gained success in politics during this time were either relatives or close friends of the Bandaranaike’s or were from similar elite families. The empirical findings revealed that “meaningful change” in this space occurred only in 2016 with the Sri Lankan Parliament enacting a mandatory rule reserving a minimum of 25 per cent local government political representation for women.<sup>111</sup> According to the interviewees with the enactment of this rule, political parties were on the “hunt” for women to ensure there was compliance with the rule. There were a series of campaigns by political parties encouraging women to build political careers. These campaigns took place all around the country which encouraged women from rural areas to engage in politics. This was followed with mentoring programmes and other events to groom women to lead in politics. This led to an increase in female candidature at the election in 2016 from 58 to 17,000. Moreover, it resulted in the appointment of 2000 women as representatives of government and led to the appointment of

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<sup>109</sup> Appendix 14 depicted as political representation; Chapter 6, Data analysis, Initial Thematic Map RQ 2 – depicted under perceptions on gender equality in Sri Lanka under existing measures and coded as parliamentary representation.

<sup>110</sup> M Wickramasinghe and C Kodikara “Representation in Politics: Women and gender in the Sri Lankan republic” (2012) <<http://republic40.org/wp-content/uploads/2013/01/Representation-in-Politics.pdf>>

<sup>111</sup> Wickramasinghe and Kodikara, above n 110 at 3; Asian Development Bank, “Country Briefing Paper-Women in Sri Lanka” (2016); Appendix 14.

the first female mayor in the capital.<sup>112</sup> The interviewees acknowledged the progress brought through this legislation as “impactful change” in this space and as a step towards promoting gender equality.<sup>113</sup>

“The new law that parliamentary nomination lists should contain female representation is a measure introduced to create gender equality and it offers impactful change.” (Interview Transcript 15, male corporate lawyer)

“The recent law requiring female parliamentary representation is a very good step. It should help create gender equality.” (Interview Transcript 18, female company director)

“Now that the Sri Lankan Government has introduced a rule on minimum female representation in the political scenario, this concept will add further value towards creating gender equality in the country.” (Interview Transcript 24, male interviewee employed at the Colombo Stock Exchange)

The two measures mentioned above have been able to change traditional patriarchal thinking to a certain degree by making Sri Lankans believe that women have the intellectual capacity as men to have an education and engage in employment, as well as have the ability to succeed in politics. It also reflects some change in the patriarchal thinking with a growing recognition that the role of the Sri Lankan woman should be more than attending to domestic chores. However, according to most female interviewees, if Sri Lankan women are to succeed to the same level as men, the most important improvement should be for both males and females to share the burden of attending to domestic chores. According to the 2017 World Bank Report the most common underlying cause for the low female labour participation in Sri Lanka is the struggle for women to manage a career and domestic responsibilities.<sup>114</sup> This Report indicates that most women either give up their jobs or refrain from gaining employment to ensure they do not neglect their domestic responsibilities.<sup>115</sup> According to the interviewees “Sri Lanka is not yet there, and more work in this area is necessary.”<sup>116</sup> This shows the need to continue with measures to change patriarchal thinking as mentioned through the interview responses below.

“I agree we have not fully moved on ... The archaic views still are somewhat there. So, more efforts need to put in, particularly around this topic on board gender diversity and rules giving more opportunity for women.” (Interview Transcript 2, female company secretary)

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<sup>112</sup> M Wickramasinghe and C Kodikara, above n 110 at 3; Asian Development bank, above n 111 at 3; Appendix 14.

<sup>113</sup> Appendix 14 depicted as political representation; Chapter 6, Data analysis, Initial Thematic Map RQ 2 – depicted under perceptions on gender equality in Sri Lanka under existing measures and coded as parliamentary representation.

<sup>114</sup> UNICEF, above n 91 at 3.

<sup>115</sup> World Bank, above n 99 at 4.

<sup>116</sup> Appendix 16 depicted as patriarchy still exists.

“We were a patriarchal society, so there is still the perception of women doing the housework etc ... There is still such perception in the general public’s mind. Therefore, more efforts are necessary.” (Interview Transcript 15, male corporate lawyer)

#### *7.4.1 (c) Board gender diversity rules as a tool to address the existing barriers preventing Sri Lankan women’s access to the boardroom*

The 2017 World Bank Report stated that the weak participation of women in the labour force was one of the primary causes for the low number of women on Sri Lankan public company boards.<sup>117</sup> As mentioned in Chapter 2, according to the Department of Census and Statistics, the proportion of female directors in Sri Lanka is 8 per cent in public companies.<sup>118</sup> Among the top 25 public companies, there are only 10 women directors out of a total of 198 directors.<sup>119</sup> According to this Report, the traditional domestic role of the Sri Lankan woman has not changed and working women encounter difficulties in balancing work and household responsibilities, resulting in many Sri Lankan women sacrificing their careers to become full-time housewives. However, other studies have criticised the findings in the World Bank Report, arguing that the Sri Lankan social structure has changed, and men equally share the burden of domestic chores. Furthermore, this literature suggests that women opt to stay-at-home at their own “free will.”<sup>120</sup> These conflicting views are also evident in the empirical findings when the gender of the interviewees is taken into account. Most male interviewees declared that traditional perceptions were changing in Sri Lanka and that in most circumstances, men and women equally contribute to managing household activities as pointed out in the responses below.<sup>121</sup>

“Definitely things are changing ... things are better now. Now a female having a good career is accepted.” (Interview Transcript 5, male company director)

“The historical trend of the ‘domesticated’ female is changing. So, the number of qualified females going up the ladder is more ... so there is progress.” (Interview Transcript 23, male interviewee employed at the Securities and Exchange Commission)

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<sup>117</sup> World Bank, above n 99 at 4.

<sup>118</sup> Department of Census and Statistics “Changing roles of women in Sri Lanka” (2020) <[http://www.statistics.gov.lk/samplesurvey/LFS\\_Annual%20Report\\_2020.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Annual%20Report_2020.pdf)>

<sup>119</sup> Ratwatte, above n 73 at 3; The Economist, above n 73 at 3.

<sup>120</sup> LP Kuruppu “Colonialism and social change in Sri Lanka: implications of socio-economic differentiation for strategies of national development” (University of Tasmania 1999); M De Alwis “The Changing Role of Women in Sri Lankan society” 69(3) (2002) Johns Hopkins University Press 23.

<sup>121</sup> Appendix 15 coded as perceptions are changing.

In contrast, most female interviewees mentioned that the burden of managing domestic responsibilities falls on women in Sri Lanka which makes it impossible to maintain a work-life balance, as identified through the responses below:<sup>122</sup>

“Women get stuck with domestic responsibilities, and men expect women to do it, even if they are working or not. Most of the time, women have to leave their jobs because of these domestic responsibilities.” (Interview Transcript 13, female company director)

“Within Sri Lanka, women find it exceptionally difficult to maintain a work-life balance. All domestic responsibilities are placed upon the wife/mother of a family. In addition, females are encouraged to work so that there is an additional income for the family. Females in Sri Lanka do like to work and have careers, but the burden of domestic responsibilities becomes a hindrance. For example, after childbearing, you will never see the husband staying at home to look after the child. If the family cannot afford to get maids, the wife/mother of the child has to stay at home and give up their career. Sri Lanka is engrossed in traditional social and cultural norms where society expects a woman to take up domestic responsibilities. This has resulted in most educated females giving up their careers. I think it is one of the main reasons for the low female board representation in Sri Lanka. It is not that Sri Lankan females are not educated or committed to having a career, but it is because females find it difficult to become both a wife/mother and a career woman.” (Interview Transcript 17, female interviewee employed at the Securities and Exchange Commission)

“Generally, managing children has become the sole job for a female. Males hardly help. So when women who are working can’t manage both the children’s schedule and work, women give up their jobs and end up becoming a stay-at-home mom. Even when I was discussing this topic at a forum held by the Sri Lanka Institute of Directors, I noticed that these well-educated males who were holding high posts in companies and who had daughters, they do want their daughters to have careers, but after marriage, their expectation is for the daughter not to neglect family responsibilities. This mindset created by norms is a hindrance.” (Interview Transcript 18, female company director)

The empirical findings were also useful in determining the impact if Sri Lankan women failed to give priority to domestic responsibilities. The female interviewees of the study pointing out their personal experiences mentioned that women, especially married women and women with children, who give priority to their careers over their domestic responsibilities are stigmatised in Sri Lankan society as negligent wives and mothers.<sup>123</sup> The response of the female interviewee below particularly provides a succinct reflection of this point.

“It is actually a question of whether a female can maintain a work-life balance. If a woman neglects domestic responsibilities because of her career, there is a cultural stigma of not being a proper wife or mother. A family where the wife is pursuing a career would be subjected to criticism as not leading a normal family life. It rests on the norm that a family’s financial burden should be taken up by a man. A woman who

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<sup>122</sup> Appendix 13; Chapter 6, Data analysis, Initial Thematic Map RQ 2 coded under domestic responsibilities.

<sup>123</sup> Appendix 16 coded as domestic responsibilities; Chapter 6, Phase 3, Initial Thematic Map RQ 2 coded under norms a barrier as cultural stigma.

is working is considered to be giving a helping hand to the man to fulfil the financial burden... These views never escape our society and continue to hinder females' progress in their careers. This would definitely act as a barrier.” (Interview Transcript 14, female company director)

Considering such criticisms, within the Sri Lankan social structure, it seems that a woman needs to make a choice of either building a career or becoming a good wife/mother. Looking at the life and career of the 8 per cent of Sri Lankan women who have become company directors, it seems that they fall within Wollstonecraft's category of a “privileged group”. These women have either been from elite families being able to afford maids to attend to their domestic chores or working for their family businesses and having the power to negotiate their work schedule to accommodate their domestic duties. This, however, is not a reflection of the situation of the “common Sri Lankan woman” who struggles with the burden of managing domestic responsibilities with building a career.

According to Mill and Wollstonecraft one of the most effective measures to address the difficulties faced by the “common woman” is to change perceptions in a patriarchal social structure which can assist in bringing gender equality in society.<sup>124</sup> Considering the empirical findings, within the Sri Lankan social context if male perceptions change and men equally contributed to domestic chores as women, this would reduce the burden on women and assist them to pursue careers. According to Tong and Benston, the strongest tool that can be utilised to change perceptions in a patriarchal society is laws providing the path for women and men to equally succeed, which highlights a strong message in support of gender equality.<sup>125</sup> Considering this thinking, this study analysed the suitability of introducing laws on board gender diversity to change societal perceptions in Sri Lanka. Studies conducted in Norway, Spain, and India demonstrate how rules on board gender diversity were designed to address issues of gender inequality in society.<sup>126</sup> In addition, regulatory bodies and international organisations such as the European Commission, the Organisation for Economic Co-operation and Development (OECD), United Nations Women (UN Women), and the International Labour Organisation (ILO) have identified the possibility of rules on board gender diversity as a measure to advance gender equality.<sup>127</sup> Most interviewees in the present study identified the

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<sup>124</sup> Mill, above n 77 at 186; Wollstonecraft, above n 79 at 53.

<sup>125</sup> Tong, above n 74 at 56; M Benston “The political economy of women's liberation” 1969 21(4) *Monthly Review* 67.

<sup>126</sup> H Bjørkhaug and S O Sørensen “Feminism without Gender? Arguments for Gender quotas on corporate boards in Norway” (2014) *Nw J Int'l L & Bus* 87; M Lucknerath-Rover “A comparison of gender diversity in the Corporate Governance Codes of France, Germany, Spain, the Netherlands and the United Kingdom” (2010) <http://ssrn.com/1585280>; N Bhalla “Indian firms mock gender diversity as boardroom deadline passes: Analyst” *Reuters*, April 2015.

<sup>127</sup> European Commission “Report on the proposal for a Directive of the European Parliament and Council – COM(2012) 614” (2012) <[http://CELEX\\_52012PC0614\\_EN\\_TXT](http://CELEX_52012PC0614_EN_TXT)>; OECD “Report on the Gender Initiatives: Gender equality in

introduction of rules on board gender diversity as a measure towards making substantive changes in societal perceptions in Sri Lanka.<sup>128</sup> The interviewees considered that rules promoting women to board seats gives out the message that females should be considered in par with men in the workforce. This in turn makes men step out from their “power-holder role” and accept gender equality. The responses of the corporate lawyer and the company director below specifically illustrates this point:

“It can be one of the tools. The changes at the board level can assist a greater objective of creating gender equality in the long term. Good suggestion which will carry a lot of value.” (Interview Transcript 11, female corporate lawyer)

“It will be very good. We are a country that is still struggling to accept gender equality. We try to show that there is gender equality, but, especially among males, they still don’t want women to rise beyond a male. In people’s minds, they are refusing to give equal status to women. So, steps like this are crucial. The government should look into this step for sure.” (Interview Transcript 16, female company director)

As Kittay mentions, in a patriarchal society, change cannot happen in a short space of time and a path towards revisioning must be followed.<sup>129</sup> The path in Sri Lanka begun with the changes after 1942 and can be further improved through steps such as the introduction of board gender diversity rules. Increasing the number of women on public company boards build social thinking that values gender equality and no longer recognise men as the “power-holders in society”. This in turn will increase female labour force participation as it will probe men and women to share domestic responsibilities.

## **7.5 The suitable legal regulatory framework for adopting board gender diversity rules in Sri Lanka**

Overall, the study’s research findings depict the positive outcomes that could be achieved by implementing rules on board gender diversity in Sri Lanka.<sup>130</sup> Moving forward the next step is to identify the suitable regulatory framework to adopt these rules. This aspect is determined through Research Question 3. As discussed in Chapter 5, Choudhury considers that in designing the regulatory framework for board gender diversity it is necessary to determine

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education, employment and entrepreneurship” (2011) <<https://www.oecd/social/481111145.pdf>>; United Nations “Women’s empowerment principles: Equality means business”(2011)<[www.unwomen.org/2011/womensemowermentprinciples.en.pdf](http://www.unwomen.org/2011/womensemowermentprinciples.en.pdf)>; International Labour Organisation “Women in Business and Management: Gaining momentum Global Report” (2015) at 4

<sup>128</sup> Appendix 18 column depicted as substantial change; Chapter 6, Data analysis, Initial Thematic Map RQ 2 coded as positive statements under the sub-theme rules on board gender diversity to promote gender equality.

<sup>129</sup> EF Kittay and DT Meyers (ed) *Woman and Moral Theory* (Totowa NJ: Roman & Littlefield 1987) 25 at 101.

<sup>130</sup> Chapter 6 – Data analysis Phase 4, Thematic Map; Appendices 10 and 11.

whether a country intends to adopt an *ex ante* or *ex post* approach.<sup>131</sup> An *ex ante* approach will focus on preventing the underrepresentation of women directors on boards, whereas an *ex post* approach will deter such occurrence by imposing penalties on companies who fail to comply with board gender diversity rules. The approach that is chosen stems from whether legislators adopt soft laws or hard laws. Hard laws are generally considered to be legal rules that create enforceable rights and duties, and non-compliance result in penalties, whereas soft laws consist of standards of expected behaviour. Board gender diversity rules which are classified as soft law usually require companies to make disclosures regarding their gender breakdown in the boardroom whereas hard laws on board gender diversity consist of a quota approach mandating a particular level of gender balance and non-compliance results in penalties.<sup>132</sup> In between the soft-hard law continuum lies the mandatory disclosure approach where it is mandated on public companies to disclose the gender breakdown on the board.

As discussed in previous chapters, Dhir considers that the choice between adopting a hard law approach imposing quotas or implementing a soft law approach adopting disclosures need to be made after taking into consideration three key factors.<sup>133</sup> These include a country's cultural setting, the motivations of legislators and the availability of qualified women. Building on this framework and by analysing these factors proposed by Dhir, this next part of the chapter argues that in the Sri Lankan context an *ex ante* approach consisting of soft law measures such as disclosures would be more effective than *ex post* measures. This is after considering the number of qualified women, the cultural setting in Sri Lanka and motivations of legislators which necessitates creating gradual change to make laws acceptable in society and become effective rather than punishing companies for non-compliance. This will ensure that companies do not race towards achieving statistical change and instead meaningful change occurs in the Sri Lankan context. For the purposes of achieving such a conclusion, the empirical findings were compared to India where a hard law approach has been followed. Moreover, this section also considers the application of the research by Mill and Wollstonecraft,<sup>134</sup> and Eagly and Carlii<sup>135</sup> to the Sri Lankan context to depict how together with rules, systematic changes are also a necessity to create effective change.

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<sup>131</sup> Choudhury, above n 28 at 512; B Choudhury "Balancing soft and hard law for business and human rights" (2018) 67 (4) International & Comparative Law Quarterly 961.

<sup>132</sup> For example, H Raleigh "Evidence from Norway shows gender quotas don't work for women" (2017) 35(4) Nw J Int'l & Bus 86; Gender and Economy "The debate about quotas" (2019) <<https://www.gendereconomy.org/the-debate/>>; Forbes "Disclosures to bring women into the boardroom are missing the point" (2015) <<https://forbes-theconversation.gender/>>.

<sup>133</sup> Dhir, above n 15 at 78.

<sup>134</sup> Mill, above n 77 at 185; Wollstonecraft, above n 79 at 53.

<sup>135</sup> A Eagly and L Carlii "Women and the labyrinth of leadership" (2007) Harvard Business Review <<https://hbr.org/carliiandeagly/>>.



### ***7.5.1 Choosing between quotas and disclosures in the Sri Lankan context***

#### ***(a) Factors influencing the adoption of a disclosure approach as the framework to implement board gender diversity rules in Sri Lanka***

Adopting the framework proposed by Dhir, an empirical analysis was conducted by exploring the number of qualified women in Sri Lanka, the societal factors that affect regulation in the country and the possible motivations that could influence Sri Lankan legislators in selecting between hard laws and soft laws to implement board gender diversity rules.

Research indicates that for a country to adopt a quota approach on board gender diversity it is vital that there are a sufficient number of qualified women.<sup>136</sup> These studies indicate that tokenism may develop when quota rules are imposed on countries with an insufficient number of qualified women. As identified in Chapter 5, this situation occurred in India, when the quota law on board gender diversity was introduced, and there was an insufficient number of women with business knowledge and experience.<sup>137</sup> This resulted in Indian public companies facing difficulties in finding suitable candidates and many Indian companies appointing female relatives to board seats irrespective of their experience and knowledge in order to comply with the rules. Alternatively, research in countries such as Norway had found that the imposition of quotas in a society with an insufficient number of qualified women had led to a scenario where few women directors hold multiple directorships.<sup>138</sup> Most interviewees observed that they were concerned about the limited number of qualified women in Sri Lanka and suggested that the type of issues identified in literature could occur in Sri Lanka if a quota approach is followed.<sup>139</sup> As a result, most interviewees dismissed the adoption of a quota approach and recommended the disclosure approach as “the effective solution and way forward in Sri Lanka.”<sup>140</sup> In this regard some notable responses provided by two company directors illustrating this point are mentioned below. These interviewees particularly made reference to the issues faced in India and anticipated a similar scenario to occur in Sri Lanka if a quota approach is followed.

“Quotas in Sri Lanka would not work definitely because of the lack suitable qualified women. This can be a significant issue. I think India had a similar issue when they went

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<sup>136</sup> Choudhury, above n 28 at 514; Dhir, above n 15 at 35.

<sup>137</sup> Bhalla, above n 72 at 2.

<sup>138</sup> A Swigart “Women on boards for change: The Norway model of boardroom quotas as a tool for progress in the United States and Canada” (2012) 32(4) *Nw J’ Int’L & Bus* 82A at 13; A Alstott “Gender quotas for Corporate Boards: options for legal design in the United States” (2014) Yale Law School Legal Repository 5.

<sup>139</sup> Appendix 17.

<sup>140</sup> Appendix 17; Chapter 6, Phase 3, Initial Thematic Map RQ 3 coded under the sub-theme “voluntary” to depict the perceptions on the voluntary disclosure rules.

and adopted a quota rule in this regard.” (Interview Transcript 13, female company director)

“In Sri Lanka, there would be issues in terms of finding suitable candidates. If quotas come in, with the current situation of not having enough qualified women, daughters of top shareholders will automatically take up board seats. This will prevent suitable females from taking the post. Although we don’t have rules, it is currently happening ... and with mandatory rules, it will just get worse ... With the issue of finding suitable candidates, the best way to go forward will be with disclosures. We don’t want the Indian scenario to happen in Sri Lanka.” (Interview Transcript 16, female company director)

Dhir identifies the cultural setting as another factor influencing the choice between quotas or disclosures. As identified in Chapter 5, Gelfand et al considers quotas as an effective tool to address the gender biases in countries with strict social and cultural norms.<sup>141</sup> Gelfand et al defined the societal cultures in countries as tight or loose.<sup>142</sup> Countries with tight cultures are identified as strictly adhering to social and cultural norms, whereas countries with loose cultures are regarded as less restrictive on following social and cultural norms. Gelfand et al identify gender quotas as a strong approach that can diminish gender biases in society.<sup>143</sup> Based on the definition in the research by Gelfand et al, Sri Lanka appears to have a tight culture, with its adherence to traditional social and cultural norms, particularly concerning women. In this regard a parallel could be drawn between Sri Lanka and India as India also is regarded to have a tight culture. As identified in Chapter 2, there is a long historical link between the two countries through its religious, linguistic and cultural similarities. With regard to the cultural similarities, the strong adherence to social and cultural norms and the weak social standing of women compared to men are a common factor in both countries. Similar to the thinking proposed by Gelfand et al Indian legislators introduced a quota approach to increase women on boards.<sup>144</sup> However, the effectiveness of introducing a quota approach in India has been questioned due to the minimum societal change to norms concerning women that has occurred since the introduction of these rules. In considering the Sri Lankan context, the interviewees noted that the country has a tight culture similar to India but were concerned whether the adoption of the quota approach could possibly create effective societal change.<sup>145</sup> The interviewees considered the adoption of an approach that promotes gradual change, by allowing

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<sup>141</sup> MJ Gelfand, JL Raver, L Nishii and others, “Differences between tight and loose cultures: A 33 nation study” (2011) 332 (6033) *Science* 1100

<sup>142</sup> Gelfand, above n 141 at 1100.

<sup>143</sup> Gelfand, above n 141 at 1100.

<sup>144</sup> Indian publications have referred to the thinking of Gelfand as seen in the publication by Bhalla, above n 72, at 3; R Pande and D Ford “Gender quotas and female leadership” (2011) World Bank Publications 22.

<sup>145</sup> Appendix 17 and 18.

people to realise the value of detaching from their gender biases as the way forward in the Sri Lankan context. This view seems to be contrary to the analysis proposed by Gelfrand et al. However, considering that in India a quota approach has not brought significant change to societal norms, it is questionable whether the analysis proposed by Gelfrand et al would be workable in the Sri Lankan context. This highlights the manner in which “a one size fits all solution would not be workable.” Herath identifies that the most effective changes in society had occurred when “people appreciated the law.”<sup>146</sup> Based on this thinking the aim of introducing board gender diversity rules should be for Sri Lankan society to gradually understand the value in departing from social and cultural norms. As a less restrictive mechanism, introducing disclosures would offer an opportunity for the corporate community to reflect upon the aims of these rules, which could possibly influence a wider societal change in thinking by lesser adherence to social and cultural norms promoting gender bias.

The motivation which the legislators would have when introducing rules on board gender diversity is another factor to consider.<sup>147</sup> These motivations primarily are to promote statistical or substantive change. The interviewees considered that the rules on board gender diversity need to promote substantive change to make the laws acceptable in society and to prevent any resistance towards these rules. Further if the aim is to promote change in attitude disclosures need to be followed. Quotas were dismissed as many of the interviewees considered this approach as only promoting statistical change. In this regard the interviewees particularly made reference to the Indian scenario where a notable statistical increase in the number of women on boards was achieved through a quota approach although companies were not appointing suitable candidates but merely appointing female relatives to comply with the rules. This is an outcome that did not increase the effectiveness of company boards which is one of the key ulterior aims of introducing board gender diversity rules. Considering this issue most of the interviewees over 50 years of age commented on the need to implement board gender diversity rules in Sri Lanka with the aim of creating substantive change.<sup>148</sup> Studies suggests that the disclosure approach is more aligned with creating this kind of change.<sup>149</sup> Therefore, if the Sri Lankan legislators aim at promoting gradual change, it seems necessary to adopt a disclosure approach in regulating board gender diversity.

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<sup>146</sup> Herath, above n 75 at 67.

<sup>147</sup> Choudhury, above n 28 at 514; P Spender “Gender quotas on boards – Is it time for Australia to lean in?” (2015) 20 Deakin Law Review 1.

<sup>148</sup> Appendix 19.

<sup>149</sup> Choudhury, above n 28 at 514; Spender, above n 147 at 3.

An analysis of the factors discussed above makes the selection between quotas and disclosures in the Sri Lankan context more straightforward as it clarifies which mechanism would be suitable given specific elements in the Sri Lankan society. The comparison with the Indian context highlighted through the empirical findings further assisted in determining that a soft law approach requiring some form of disclosures is the most suited. This analysis also provides support that an *ex ante* mechanism needs to be adopted. The findings reveal that for an effective regulatory mechanism in the Sri Lankan context getting companies to reflect on their practices and improve them is important. This could be at the point of reviewing board nominations. An *ex post* mechanism such as a quota law with penalties will not provide such an opportunity for companies to review their practices and result in compliance with the rules mainly due to the fear of penalties. In such instance although statistical change will occur, a substantive change cannot be achieved.

*(b) Selecting the type of disclosure rules on board gender diversity to adopt in Sri Lanka*

Having identified that a disclosure approach should be followed in Sri Lanka in implementing board gender diversity rules, next it was necessary to determine whether these rules should be structured as mandatory or voluntary rules. Most mandatory disclosure rules in this area compel public companies to disclose the gender breakdown on the board.<sup>150</sup> Non-compliance results in sanctions and penalties. For example, as discussed in Chapter 5, the New Zealand listing rules include mandatory disclosure laws on board gender diversity, with potential penalties including the delisting of the entity for noncompliance.<sup>151</sup> In contrast, voluntary disclosure rules on board gender diversity are often included in Corporate Governance Codes, requiring public companies as part of maintaining good corporate governance to report periodically on the gender breakdown in companies.<sup>152</sup> Public companies failing to comply are required to provide reasons for noncompliance. In the UK and Australia, the Corporate Governance Codes require public companies to disclose their gender breakdown in boardrooms with reasons to be disclosed for noncompliance.<sup>153</sup>

Considering these options, the interviewees in the study favoured the adoption of a voluntary disclosure approach in Sri Lanka.<sup>154</sup> They suggested that the most workable option

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<sup>150</sup> Spender, above n 147 at 4; J Du Plessis, J Sullivan and R Rentschler “Multiple layers of gender diversity on corporate boards: To force or not to force?” (2014) 19(1) Deakin Law review 2.

<sup>151</sup> NZX Listing Rules 2020, Rule 3.8.1(c)

<sup>152</sup> Spender, above n 147 at 4; Du Plessis, above n 150 at 5.

<sup>153</sup> Financial Reporting Council, UK Corporate Governance Code (2018), Principle B.2; ASX Corporate Governance Principles and Recommendations 2019, Recommendation 1.5

<sup>154</sup> Appendix 17.

was to include rules in the Sri Lankan Corporate Governance Code requiring public companies to disclose their gender breakdown in the board and for these rules to require boards to consider gender diversity when selecting candidates for board seats.<sup>155</sup> The adoption of a voluntary measure was seen as supporting a substantive change in Sri Lankan boardrooms. This was particularly articulated by the interviewees with more than 25 years' experience working in the corporate governance industry.

“The voluntary approach requiring disclosure for sure. This will give a good footing for boards to set measurable objectives for achieving gender diversity and assess it accordingly. If there are mandatory laws, then it becomes just another box-ticking exercise. If I comment also on how these rules should be structured, I would say there should be an annual disclosure required by these companies on their gender breakdown. Also getting boards to think about gender diversity when selecting candidates for new directorships is another method of enhancing this area.” (Interview Transcript 4, male interviewee employed in the Colombo Stock Exchange)

“We need to look at this voluntary disclosure approach. That would give enough flexibility for companies to get used to this law and make a change. Because of the significance of public companies, requiring them to go first would be best. If I comment on the way the rules need to be structured, I think an annual disclosure with rules requiring gender diversity as a consideration for board appointments would be good options.” (Interview Transcript 5, male company director)

The approach depicted in the empirical findings of having rules in the Sri Lanka Corporate Governance Code requiring public companies to periodically report their gender breakdown in the board will provide more publicly available data on the status of board gender diversity in companies, which is not currently available. This measure may have a public reputational impact if reports are published pointing out companies that have low statistics of women on their boards. It may impliedly encourage Sri Lankan public companies to consider the need to have gender diversity on boards more seriously. This in turn will invoke an effective consideration of gender diversity when making new board appointments.

Moreover, given the colonial influence on Sri Lankan laws, the interviewees considered “the adoption of an approach similar to UK law” as the more suitable option.<sup>156</sup> The workability in adopting an approach similar to the UK is questionable considering the contrast in the ownership structures among public companies in the two countries. As discussed in Chapter 3, UK public companies have a dispersed ownership structure whereas in Sri Lanka public companies have a concentrated ownership structure. However, this contrast has not prevented Sri Lankan legislators in the past from implementing corporate governance rules and concepts

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<sup>155</sup> Appendix 17.

<sup>156</sup> Appendix 18 coded as substantial.

based on those adopted in the UK. As Herath points out the colonial influence continues to follow Sri Lankan corporate governance rules.<sup>157</sup> The empirical findings clarify this position in relation to the thinking underpinning the introduction of board gender diversity rules. However, this could be a workable option considering that the current board composition rules in the Sri Lankan Corporate Governance Code have mostly followed UK law. As the board composition rules currently applicable in Sri Lanka are mostly similar to the UK, this could be another scenario where the Sri Lankan rules could be similar to the UK laws as it will be compatible with the existing corporate governance framework.

However, considering that these rules in Corporate Governance Codes are voluntary, to encourage compliance and promote proper disclosure, there may be a need for effective action by regulators if they notice inadequate disclosure. Regular audits by regulators and publication of information of companies that have not complied or have low compliance has been identified in literature as effective mechanisms.<sup>158</sup> This could even lead to naming and shaming of companies who have low compliance. The interviewees identified these aspects as useful but did not comment further on the particular regulatory authority that should be involved in this regard or how effective naming and shaming as a tool would be effective in Sri Lanka. However, considering the current regulatory structure in Sri Lanka, it seems that the Colombo Stock Exchange as the regulator of public companies listed on the Colombo Stock Exchange could ideally check on compliance with this disclosure rule on board gender diversity and publish such data in their website. This information could be easily subject to media scrutiny which could have an impact. Considering the concentrated ownership structure in Sri Lanka which is dominated by family-owned companies there may be an impact on the reputation of these families if their companies did not comply with such rules. This could be an alternative way of increasing the interest of the dominant shareholders in Sri Lanka. However, if the motivations of the legislators in introducing board gender diversity rules are to be achieved it would be necessary for these dominant shareholders to understand and appreciate these rules which could be a step towards greater change.

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<sup>157</sup> Herath above n 75 at 69.

<sup>158</sup> A Kamalnath “Transnational corporations and modern slavery: Nevsun and beyond” (2021) *Journal of Corporate Law Studies* 6.

*(c) Systematic changes to support the disclosure rules on board gender diversity in Sri Lanka*

Studies often acknowledge the need to supplement board gender diversity rules with systemic societal changes to ensure that the rules implemented are effective.<sup>159</sup> Feminist writers Mill and Wollstonecraft particularly consider this as a necessity in a patriarchal society to create impactful change.<sup>160</sup> According to Eagly and Carlii, one of the steps to eradicate gender stereotyping in society is to promote initiatives on gender equality in the corporate arena and programmes to empower women.<sup>161</sup> The empirical findings noted this aspect with the interviewees acknowledging the need to have programmes in Sri Lanka empowering women to pursue professional careers.<sup>162</sup> In particular, the interviewees identified the need for the Sri Lanka Institute of Directors, as one of the main bodies promoting directorship in companies, to facilitate training programmes and seminars to encourage women to reach the higher echelons in companies.<sup>163</sup> The interviewees who were corporate directors specifically pointed out the influence that the Sri Lanka Institute of Directors has on the corporate community in Sri Lanka, as seen through the extracts below.

“I think the Sri Lanka Institute of Directors should get involved. Awareness programmes, training programmes could be conducted by them for this purpose.” (Interview Transcript 1, male company director)

“What is necessary is to enlighten women on progressing in careers so that women become key candidates for board nominations. We have to concentrate on making women valuable assets for companies. We can also look at training programmes to groom educated females to be board-ready.” (Interview Transcript 22, female company director)

Furthermore, research indicates that systemic changes are needed to assist women with the double burden of managing a career and domestic responsibilities.<sup>164</sup> These include the availability of affordable childcare, promoting flexible working hours, and providing maternity leave. Although Sri Lanka has laws providing maternity leave for women,<sup>165</sup> many women wishing to return to work after childbirth struggle to find suitable childcare facilities and face

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<sup>159</sup> Choudhury, above n 28 at 513; Dhir, above n 15 at 20.

<sup>160</sup> Mill, above n 77 at 185; Wollstonecraft, above n 79 at 67. Referred to in Chapter 2.

<sup>161</sup> A Eagly and L Carlii “Women and the labyrinth of leadership” (2007) Harvard Business Review <<https://hbr.org/carliiandeagly/>>; UN Women “HeforShe IMPACT Report” (2016) <<https://www.heforshe.org/>>; Champions for Change NZ “Key Messages” (2015) <<https://www.championsforchange.nz/>>.

<sup>162</sup> Appendix 20 coded as empowerment initiatives necessary; Chapter 6, Data analysis, Phase 3, Initial Thematic Map RQ 3 and Phase 4 Thematic Map coded as recommendations.

<sup>163</sup> Appendix 20- column in the table on empowerment initiatives necessary are measures for the Sri Lanka Institute of Directors to take in this regard.

<sup>164</sup> International Labour Organization “Women on Boards: Building the female talent pipeline” (2016); Catalyst “Knowledge center: Women on corporate boards globally” (2015) Catalyst <<https://www.catalyst.org/knowledge/women-boards/>>.

<sup>165</sup> Shop and Office Employees (Regulation of employment and remuneration) (Amendment Act, No. 14 of 2018, s 18; Maternity Benefits (Amendment) Act 2018, s 3.

difficulties with the rigid working hours imposed by employers.<sup>166</sup> This fact was noted by most female interviewees who had personal experiences in this regard as highlighted in the responses below.

“There is no support system from the government, by promoting better childcare or getting companies to allow mothers to work from home. I had to face this scenario and it was so stressful at the time.” (Interview Transcript 2, female company secretary)

“The thing is no proper day-cares, so females have issues when it comes to looking after children. Corporates also don’t recognise and try to do something about these issues. Companies don’t provide part-time work or flexible working hours, so women have to decide either to work and build a career or just stagnate in one position and look after the domestic front. At one time, I had to face this scenario but not many people talk about these types of issues. These types of research will at least give more opportunities for this topic to be spoken about.” (Interview Transcript 7, female corporate lawyer)

Currently, Sri Lanka has only 15 registered childcare facilities for the entire country.<sup>167</sup> These childcare facilities in total can only accommodate around 2000 children.<sup>168</sup> However, Sri Lankan demographic statistics depict that there are approximately 4.5 million children under the age of 14 years.<sup>169</sup> These statistics highlight the insufficient number of childcare facilities in Sri Lanka. In addition, according to a 2018 United Nations International Children’s Emergency Fund (UNICEF) Report 90% of companies in Sri Lanka do not have flexible working policies.<sup>170</sup> Sri Lankan legislators have not yet adopted any regulations to address these issues, although a few government institutions are testing the possibilities of flexible working and have introduced workplace day-cares for children. As identified in the extracts below and throughout some of the responses, to be able to promote women to directorships, these initiatives have to be rigorously implemented.<sup>171</sup>

“In the government sector, there are some companies that have begun day-care centres to help employees manage their children while at work. Also, a few government institutions are now trying out flexible working hours. At — Bank, we now give employees the option to work from home and permit flexible working hours. These initiatives need to be promoted if we want our women to continue with their careers.” (Interview Transcript 14, female company director)

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<sup>166</sup> Responses received by interviewees based on Appendix 20.

<sup>167</sup> UNICEF “Statistics Sri Lanka – women and facilities” (2018) <[http://www.unicef/srilanka/statistics/find\\_facilities](http://www.unicef/srilanka/statistics/find_facilities)>

<sup>168</sup> UNICEF above n 167 at 3.

<sup>169</sup> Department of Census and Statistics “Statistical pocketbook- Population growth” (2021) <[https://www.statistics.gov.lk/ref/PocketBook2021\\_SiTa](https://www.statistics.gov.lk/ref/PocketBook2021_SiTa)>.

<sup>170</sup> UNICEF above n 167 at 3.

<sup>171</sup> Responses received by interviewees based on Appendix 20.



“In some government institutions, employees have flexible working hours. It has become a good rule which can help working females manage their domestic responsibilities.” (Interview Transcript 18, female company secretary)

As identified above introducing board gender diversity rules in Sri Lanka cannot happen in isolation and need to be supplemented with systemic changes to support women to continue to build a career while managing their domestic responsibilities.

## 7.6 Summary

After 1983, the development of corporate governance rules became a priority for the Sri Lankan legislators in order to fulfil IFI conditions for funding.<sup>172</sup> This is despite Sri Lankan legislators not being fully convinced that FDI could be improved through corporate governance developments. The empirical findings in this chapter provide a substantial understanding of this area by exploring the influence of the IFIs on Sri Lanka. One area of specific focus has been on board composition rules concerning the appointment of a blend of executive directors and NEDs and separating the roles of chairman of the board from the CEO. There has been positive progress in Sri Lanka in respect of these board composition rules with most changes following UK corporate governance rules. The analysis in this chapter enhances the credibility of the literature on the progress made of the country’s corporate governance rules on board composition.

Despite following UK corporate governance rules, Sri Lankan legislators have not considered the introduction of rules on board gender diversity as a board composition rule. A number of articles published in Sri Lanka have suggested that it is necessary to introduce rules on board gender diversity because of the gender gap in boards of Sri Lankan public companies, where female representation is only at 8 per cent. The empirical findings further reinstate this position and reinforces the need to introduce rules to support the inclusion of women on boards.<sup>173</sup>

To support this rationale the analysis shifts towards the benefits that board gender diversity rules can offer in the Sri Lankan context. The economic rationale supporting the introduction of board gender diversity rules is often based on the positive correlation between women on boards and corporate financial performance.<sup>174</sup> Sri Lankan research has referred to this literature despite this analysis producing questionable results. However, the interviewees

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<sup>172</sup> Discussed in 7.2.

<sup>173</sup> Discussed in 7.3.

<sup>174</sup> Discussed in 7.3.

of the study did not favour relying on this research highlighting its mixed results.<sup>175</sup> This suggests that there is a need to establish a better argument for introducing more women on boards. The findings touched upon the value of basing the economic rationale by considering the ability for women directors to promote the efficacy of the board and improve the ability of the board to make decisions as a unified unit.<sup>176</sup> These justifications are consistent with the findings in strategic management literature discussed in Chapter 4 and consistent with Choudhury's framework that analyses how women directors improve board effectiveness by contributing to board tasks, board cohesiveness and board processes. Adopting this framework in principle, the empirical findings highlight how it could be applicable in the Sri Lankan context. These findings reveal that women directors' tough monitoring skills, risk averseness, deeper evaluation of corporate decisions, stringent scrutiny of senior management remuneration, ability to promote participative and collaborative style of board engagement, the level of effort put towards board functionality and their knowledge and skills would be useful benefits for Sri Lankan public company boards.<sup>177</sup> Despite these findings generally depicting the benefits of having women directors on boards, a few interviewees were not in favour on the basis that these rules would promote anti-meritocracy by diminishing the quality of board appointments and create an imbalance in the criteria for board nominations from merit to gender.<sup>178</sup>

In addition to the economic benefits, it is necessary to understand and address the underlying issues that cause the underrepresentation of women directors on boards. For this purpose, it was necessary to look deeper into the social aspect of the status of women in society. Gender inequality in the distribution of power, access to resources and participation in society is regarded as the primary cause for the low number of women directors in Sri Lanka. In the Sri Lankan context, traditional customs, values and beliefs that promote patriarchal values are responsible for the disparity in the status of men and women in society.<sup>179</sup> This was reflected in the findings that considered the secondary status of a woman's role in the family, limitations in access to enter the labour force and restricted access to education. Historically, women were primarily assigned domestic roles and were not given the opportunity to enter the labour force. Changes were introduced after 1942 through the introduction of free education, which increased female literacy levels and provided opportunities to gain employment. However, the

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<sup>175</sup> Discussed in 7.3.

<sup>176</sup> Discussed in 7.3.

<sup>177</sup> Discussed in 7.3.3.

<sup>178</sup> Discussed in 7.3.3(e).

<sup>179</sup> Discussed in 7.4.

professions chosen are ones that generally provide flexibility in order for women to continue to balance work with their responsibilities for domestic chores. This suggests that the traditional domestic role of a women has not significantly changed. Women who engage in employment have a double burden of managing domestic chores and pursuing a career, which mostly result in women giving up their jobs due to the inability to manage both. The empirical findings were useful in identifying that patriarchal perceptions have not been fully eradicated in Sri Lankan society and more changes in the corporate arena was a necessity to create normative change. This analysis provides the basis to recommend the introduction of board gender diversity rules as a positive measure to change societal perceptions and promote gender equality in society.

The chapter finally analysed the suitable regulatory framework to introduce these rules in Sri Lanka.<sup>180</sup> The countries that have implemented board gender diversity rules have either adopted legislative quotas or disclosure. The selection between the two approaches have been based on the pros and cons of each. Quotas are considered a quick fix, although criticised for promoting tokenism. Disclosures are praised for being a less interventionist approach, although regarded not to bring statistical change in a quick pace. Adopting Dhir's framework it is identified in this chapter that the cultural setting, the motivations of legislators and the availability of qualified women are key factors affecting the choice between quotas and disclosures. Considering Dhir's framework, in the Sri Lankan context, the empirical findings reveal that a disclosure approach would be most effective. This is after considering the number of qualified women, the cultural setting in Sri Lanka and the motivations of legislators to promote gradual change to make laws acceptable in society. For the purposes of establishing this conclusion a comparison is drawn with India where a quota approach is followed. This chapter also considers the type of disclosure rule on board gender diversity that needs to be adopted. Disclosure rules have been structured as mandatory rules or voluntary rules. The empirical findings provided credibility to conclude that the adoption of voluntary rules was suitable due to the need to create substantive change and the motivation to adopt rules similar to the UK due to the colonial influence. As the current board composition rules in the Sri Lankan Corporate Governance Code have mostly followed UK law, this was considered a workable option.

Finally, the chapter ends by depicting the need to supplement any introduction of board gender diversity rules with systemic social changes to make the implementation of the rules

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<sup>180</sup> Discussed in 7.5.

effective. The empirical findings particularly pointed out that the Sri Lanka Institute of Directors, as the main body promoting directorships in companies, should facilitate training programmes and seminars to encourage women to become directors.<sup>181</sup> Another area was to introduce initiatives to assist in managing the double burden of attending to domestic chores and pursuing a career. It is identified through the empirical findings that the promotion of flexible working arrangements in companies and implementation of workplace day-care for children were vital initiatives that could assist women to balance the double burden of building a career and managing domestic responsibilities.

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<sup>181</sup> Appendix 20.

## CHAPTER 8 – CONCLUSION

It is an interesting time of regulatory development in Sri Lanka, as policymakers continue to introduce legal rules in order to meet conditions imposed by the International Financial Institutions (IFIs). Accordingly, introducing legal rules to improve corporate governance practices continues to be of paramount importance for Sri Lankan legislators.<sup>1</sup> Against this background, using a socio-legal framework, this study empirically investigated the potential introduction of board gender diversity rules in Sri Lanka. This final chapter provides a summary of the study by revisiting the key findings and concludes by providing a snapshot of possible future research that could arise as a result of this study.

### 8.1 Summary of the study

The study began with an exploration of the suitability of introducing board gender diversity rules by considering the corporate governance environment in Sri Lanka. This analysis provided an overview of the history of corporate governance in Sri Lanka and focuses on recent developments. Due to colonial ties, the corporate governance rules in the country have been improved by Sri Lankan legislators by generally following and adopting the United Kingdom (UK) corporate governance developments.<sup>2</sup> Moreover, the corporate governance reforms that were initiated in Sri Lanka in response to the IFIs lending conditions largely replicated UK corporate governance rules. As discussed in Chapter 2, these IFI lending conditions were imposed on Sri Lanka due to the country relying on IFI funding to stabilise the economy after a 26-year ethnic conflict. The IFIs by imposing this condition considered it as a step towards attracting foreign direct investment (FDI) into the country and fostering economic growth.

One of the areas subject to reform in the UK and Sri Lanka were the corporate governance rules concerning the board of directors of a company. The reforms were designed to alleviate managerial agency problems.<sup>3</sup> These managerial agency problems are usually common in public companies with a dispersed ownership structure due to the significant separation of ownership from control. However, the share ownership structure of Sri Lankan public companies is concentrated. As explained in Chapter 3, in a concentrated share ownership

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<sup>1</sup> Explained in detail in Chapters 2 and 3.

<sup>2</sup> Detailed in Chapter 3.

<sup>3</sup> Detailed in Chapter 3.

structure, managerial agency problems are generally non-existent because shareholders take a more active role in monitoring management. However, this was not a reflection of the Sri Lankan scenario because of two different circumstances. As discussed in Chapter 3, one situation arose from the low-level of shareholder monitoring of board decision-making due to public companies growing and gaining a higher level of complexities. The second situation resulted from the appointment of family members as executive directors of public company boards. In such companies, shareholders and sometimes other board members were often reluctant to question these executive directors due to the trust placed by family bonds or to avoid any disagreements among family members. Despite having a contrasting share ownership structure to the UK, Sri Lankan legislators have mostly adopted UK corporate governance rules regulating the composition of the board in order to address these issues. As explained in Chapter 3, these reforms were particularly visible in relation to the adoption of board composition rules requiring a blend of executive directors and non-executive directors (NEDs) on the board and by requiring that the role of chairman of the board be separate from that of the Chief Executive Officer (CEO). However, reforms in this area in Sri Lanka have not proceeded further. One area that Sri Lankan legislators have not considered is rules on board gender diversity. As a result, this study proceeded to explore these rules further.

Chapter 4 explains that the UK and many other jurisdictions have introduced board gender diversity rules to complement other rules regulating the composition of the board of a company. Empirical evidence suggests that rules on board gender diversity could be a measure to reduce managerial agency problems. In addition, research has indicated additional benefits that may arise by the appointment of female directors. These benefits include the contributions that women directors make to board monitoring and overall board functionality. This research was used in this study to depict how introducing board gender diversity rules would provide additional benefits that are over and above addressing managerial agency problems.

These benefits of board gender diversity rules were explored in this study from an economic and social perspective.<sup>4</sup> From an economic point of view, the justifications were analysed around improving board effectiveness. These justifications provided the basis to address Research Question 1 (To what extent can board gender diversity contribute towards advancing good corporate governance in Sri Lanka?) and illustrated how board gender diversity rules would advance good corporate governance in Sri Lanka. This analysis revealed that in the Sri Lankan context including female directors would improve board effectiveness

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<sup>4</sup> Detailed in Chapter 4.

because female directors can contribute to board tasks, improve board cohesiveness and enhance board processes better than male directors. In relation to board tasks, the study identified that female directors are better than male directors at the task of monitoring senior management because female directors exercise tougher monitoring skills. Moreover, female directors were regarded to be better at risk management than their male counterparts. Female directors have also been found to evaluate corporate decisions in more depth which contributes towards better strategic and long-term corporate decision-making.<sup>5</sup> The study also identified that board cohesiveness can be improved with the appointment of female directors as a more gender-diverse board may enhance the overall board environment. Moreover, the level of effort put by female directors in board functionality has been found to be higher than that of male directors. Further, cognitive conflict among board members promoted by women directors was regarded to contribute to board processes. The variety of knowledge and skills women directors bring to the board has also been found to improve board processes. Further, the inclusion of women directors was also acknowledged as improving the intellectual diversity and collective expertise on the board. This is because of diverse viewpoints which would be brought to board decision-making by having female directors who may have unique knowledge and skills that male directors may not possess.

The study went beyond the economic viewpoint and also considered the social perspective with the aim of addressing the underlying issues that have caused the underrepresentation of women directors in Sri Lankan boards. This analysis initially revealed that there were issues of gender inequality existing in Sri Lankan society due to the impacts of traditional customs, values and beliefs that promote patriarchal values. The study also identified that despite regulatory changes, these patriarchal perceptions still exist and more changes in the Sri Lankan society, as well as the corporate arena, was a necessity to create substantive change. This background assisted in answering Research Question 2 (How do the social and cultural norms in Sri Lanka impact on the effective implementation of rules on board gender diversity in Sri Lanka?) and identified the need to address these social and cultural norms if board gender diversity rules are to be effectively implemented. This discussion extended to the societal benefits that can be obtained by introducing board gender diversity rules. The recommendations made by international organisations and the policy objectives of countries that have adopted board gender diversity rules were examined in relation to Research Question 2. As discussed in Chapter 4, among these organisations, the European Commission,

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<sup>5</sup> Discussed in 7.3.

Organisation for Economic Co-operation (OECD), United Nations Women (UN Women), and the International Labour Organisation (ILO) have all proposed board gender diversity rules as a measure to promote gender equality in leadership among men and women. Moreover, the policy objectives of some of the countries that have implemented board gender diversity rules are based on promoting gender equality in society. Considering these recommendations, this study identified that board gender diversity rules could be regarded as a positive measure to promote gender equality in Sri Lanka.

The empirical findings identified that most of the interviewees were optimistic about introducing board gender diversity in Sri Lanka. Building on this analysis, the study explored the possible regulatory approaches to effect this change in Sri Lanka. This assisted in addressing Research Question 3 (What is the appropriate mechanism to implement board gender diversity in Sri Lanka). For this purpose, the quota and disclosure approaches that have been adopted globally were explored. As detailed in Chapter 7, considering the cultural setting in Sri Lanka, the number of qualified women and motivations of legislators it was identified that a disclosure approach is most effective to implement board gender diversity rules. Moreover, among the types of disclosure rules, it was identified that a voluntary disclosure approach would be the best option due to the need to promote gradual substantive change and the current Sri Lankan board composition rules being similar to the UK laws. These rules could be included in the country's Corporate Governance Code requiring public companies to annually disclose the board gender breakdown and rules requiring the consideration of gender diversity when selecting candidates for board seats.

Finally, the study identified that structural arrangements also needed to be introduced for the successful implementation of board gender diversity rules. It was recommended that to assist with the double burden of managing domestic chores and work, it is necessary to promote flexible working arrangements in companies. Further increasing childcare facilities were also identified to assist women in balancing the double burden of a career and their domestic role and encourage women to remain in the workforce. These structural measures would support a meaningful change to occur through the introduction of board gender diversity rules.

## **8.2 Limitations**

The most significant limitations of this study arose from the research methodology and the data analysis techniques which were adopted. The use of the socio-legal approach as the theoretical framing posed difficulties due to only a few past studies using this framework to



conduct studies relating to company law and corporate governance.<sup>6</sup> There was only limited guidance on the adoption of the socio-legal framework in the subject area of this research. As a result, only a few past studies could be used for the purposes of analysing this study.

Limitations were also encountered in the research methods which were used.<sup>7</sup> In conducting the documentary analysis, difficulties were faced in locating documents relating to the case study. Sri Lankan documents were mostly not available online. As a result, during the visit to Sri Lanka for the data collection, much time was spent at Sri Lankan libraries and the national archives trying to locate relevant information. Moreover, using interviews as a data collection method became a time-consuming and costly exercise. Difficulties were particularly encountered in the allocation of interviewees. Many members of the corporate community in Sri Lanka were subject to non-disclosure agreements and confidentiality agreements which prevented them from participating in the research. In addition, to comply with conditions of the Human Ethics Committee, it was necessary to exclude participants who were known, in order to prevent any issues which may arise in the interviewees not being entirely forthcoming in their responses. This made the group of interviewees for the study smaller. This interview group also consisted of some members from “the privileged group” which could be mentioned as a limitation in terms of representing the general views of the corporate community. Moreover, as a data collection method, interviews were time-consuming due to the time spent on conducting the interviews, transcribing and obtaining confirmations from the interviewees. Further, given the focus of the study, it was necessary to travel to Sri Lanka. This resulted in costs associated with international travel, domestic travel to the venue, and accommodation.

The use of Braun and Clarke’s thematic analysis method posed difficulties due to insufficient legal research incorporating this method.<sup>8</sup> As a result, it was necessary to consider the studies in other fields and consider the application of Braun and Clarke’s thematic analysis method for this research. In conducting the data analysis, it was necessary to have a sufficient understanding of the software package which was used for data analysis. The time devoted to learning the NVIVO12 package posed difficulties in relation to time constraints placed to complete the data analysis. Further the change in versions from NVIVO 11 to NVIVO12 during the course of conducting the research resulted in the need to update the data analysis results with any new features which were available on the latest version.

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<sup>6</sup> Detailed in Chapter 6. Note- this is due to the adoption of studies which are specific to the socio-legal approach approved by the Socio-Legal Studies Association. The US Law and Society Association publications have not been incorporated due to the growing debate that these studies are adopting a sociology of law approach.

<sup>7</sup> Detailed in Chapter 6.

<sup>8</sup> Detailed in Chapter 6.

### **8.3 Future research paths**

Research on women directors' contribution to board functionality continues to grow. As a result, this study could be used as the basis for future research in at least three ways. Firstly, the economic rationale on board gender diversity depicted in this study could be expanded to explore the improvements which could be made to board effectiveness by having women as Chairs of corporate boards. This could be explored in the Sri Lankan context to consider the benefits if legal rules are implemented on gender diversity concerning nominations to the seat of board chair. Moreover, this analysis could be used together with the principles enshrined in the equality rationale for board gender diversity, to understand whether women acting as chairs on boards could be used as a driving force to build gender equality in Sri Lankan society.

This study identified the need to supplement legal rules on board gender diversity with structural arrangements, which will assist women to balance the double burden of a career and managing domestic chores. These findings could be expanded further to explore the actions which companies could take internally to assist women employees and build the female talent pipeline.

Thirdly, the findings of the study could be generalised by using focus groups as a method of data collection. This would provide the opportunity to explore the perceptions shared among a group rather than individual perceptions. A broader range of views would also be obtained by adopting such an approach, which would provide the opportunity to generalise the findings.

### **8.4 Concluding comments**

This study is a contribution to the corporate governance literature in Sri Lanka. The key findings of the study provide the necessary foundation for the Sri Lankan legislators to implement rules on board gender diversity. Moreover, the study contributes by detailing the wider social benefits which Sri Lankan legislators could achieve by implementing rules on board gender diversity in Sri Lanka. This study is also one of the few studies on Sri Lanka conducted through a "social lens." Accordingly, the study is more applicable in the Sri Lankan context due to the findings containing the perspectives from a subgroup of members of the Sri Lankan corporate community. This ensures that the "human side of board gender diversity" is captured.

## **APPENDICES**

### **Appendix 1 – Information Sheet**

(See overleaf)



## ***Project Title- Implementing Board Gender Diversity in Sri Lanka***

### **INFORMATION SHEET FOR PARTICIPANTS**

Thank you for your interest in this project. Please read this information before deciding whether or not to take part. If you decide to participate, thank you. If you decide not to take part, thank you for considering my request.

#### **Who am I?**

My name is Menaka Angammana and I am a Doctoral student in the School of Accounting and Commercial Law at Victoria University of Wellington. This research project is work towards my thesis.

#### **What is the aim of the project?**

This project aims at addressing a gap in the corporate governance rules in Sri Lanka, by the failure of the Sri Lankan regulators to give attention to the concept of board gender diversity. Globally, board gender diversity is recognised as a strategy to advance both good corporate governance and gender equality. Currently, Sri Lankan policymakers are incorporating international concepts to advance corporate governance practices in the country, and are also reviewing measures to promote gender equality. While, internationally the debate on board gender diversity is well established, the Sri Lankan regulators have not given attention to this concept of board gender diversity. The aim of this study is to address this issue, by exploring the feasibility of implementing board gender diversity in Sri Lanka to achieve both better corporate governance and gender equality.

This research has been approved by the Victoria University of Wellington Human Ethics Committee [approval number 0000025141].

#### **Why you are chosen/approached as a participant for the study?**

The study aims to explore the feasibility of implementing board gender diversity in Sri Lanka by obtaining the views of the corporate community in Sri Lanka. Participants recruited from the corporate community for the study will include individuals who are employed in the corporate regulatory authorities in Sri Lanka, Directors and Company Secretaries of Public Listed Companies in Sri Lanka with high market capitalisation, and registered corporate lawyers in Sri Lanka. You are chosen/approached as a participant for the study because you are an employee of the aforementioned organisations/companies, and/or, a registered corporate lawyer in Sri Lanka.

#### **How can you help?**

If you agree to take part I will interview you at a location convenient to you. I will ask you questions about the corporate governance environment in Sri Lanka and the position of board gender diversity and gender equality in Sri Lanka. The interview will take approximately forty five (45) minutes to one (1) hour. I will record the interview and also make notes during the interview. The interview transcript will be written up later. The interview transcript will be emailed to you within two (2) weeks after the interview. You

can withdraw from the study within two (2) weeks after the interview transcript is emailed to you. If you withdraw, the information you provided will be destroyed.

### **What will happen to the information you give?**

This research is confidential. This means that I will be aware of your identity but will not disclose your identity in any reports, presentations, or public documentation. However, you will be described as an employee of the respective organisation/corporation you are employed in, and/or, as a corporate lawyer in Sri Lanka. Therefore, you should be aware that your identity might be obvious to some in your community.

Only my supervisors and I will read the notes or transcript of the interview. The interview transcripts, summaries and any recordings will be kept securely and destroyed three (3) years after the research ends.

### **What will the project produce?**

The information from my research will be used in my PhD report.

### **If you accept this invitation, what are your rights as a research participant?**

You do not have to accept this invitation if you don't want to. If you do decide to participate, you have the right to:

- choose not to answer any question;
- ask for the recorder to be turned off at any time during the interview;
- withdraw from the study within two (2) weeks after the interview transcript is emailed to you;
- ask any questions about the study at any time;
- receive a copy of your interview recording;
- read over and comment on a written summary of your interview;
- be able to read any reports of this research by emailing the researcher requesting a copy.

### **If you have any questions or problems, who can you contact?**

If you have any questions, either now or in the future, please feel free to contact either:

#### **Student:**

Name: Menaka Angammana

University email address:

Menaka.Angammana@vuw.ac.nz

#### **Supervisors:**

Name: Trish Keeper

Role: Senior Lecturer

School: Accounting and Commercial Law

Phone: +64 4 463 5203

Email: Trish.Keeper@vuw.ac.nz

Name: Dr. Matteo Solinas

Role: Senior Lecturer

School: Faculty of Law

Phone: +64-4-463-6406

Email: Matteo.Solinas@vuw.ac.nz

**Human Ethics Committee information**

If you have any concerns about the ethical conduct of the research you may contact the Victoria University HEC Convener: Associate Professor Susan Corbett. Email [susan.corbett@vuw.ac.nz](mailto:susan.corbett@vuw.ac.nz) or telephone +64-4-463 5480.

## **Appendix 2 – Consent Form**

(See overleaf)



## Project Title- Implementing Board Gender Diversity in Sri Lanka

### CONSENT TO INTERVIEW

This consent form will be held for three (3) years.

Researcher: Menaka Angammana, School of Accounting and Commercial Law, Victoria University of Wellington.

- I have read the Information Sheet and the project has been explained to me. My questions have been answered to my satisfaction. I understand that I can ask further questions at any time.
- I agree to take part in an audio recorded interview.

I understand that:

- I may withdraw from this study within two (2) weeks after the interview transcript is emailed to me, and any information that I have provided will be destroyed.
- The information I have provided will be destroyed three (3) years after the research is finished.
- Any information I provide will be kept confidential to the researcher and the supervisors. I understand that the results will be used for a PhD report and a summary of the results may be used in academic reports and/or presented at conferences.
- My name will not be used in reports. However, I agree to be described as an employee of the respective organisation/corporation that I'm employed in, and/or, as a corporate lawyer in Sri Lanka. I understand that this may result in my identity being obvious to some in my community.
- I will receive a copy of the interview transcript within two (2) weeks after the interview.
- I would like to receive a copy of the final report and have added my email Yes ☐ No ☐ address below.

Signature of participant: \_\_\_\_\_

Name of participant: \_\_\_\_\_

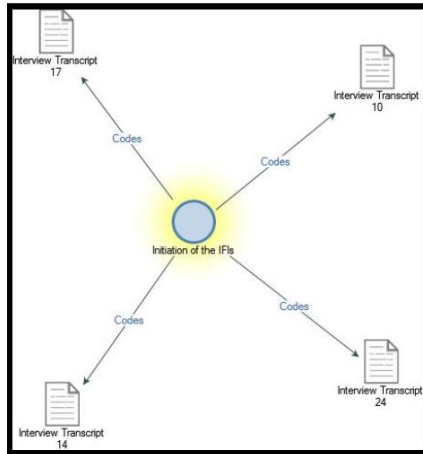
Date: \_\_\_\_\_

Email address: \_\_\_\_\_

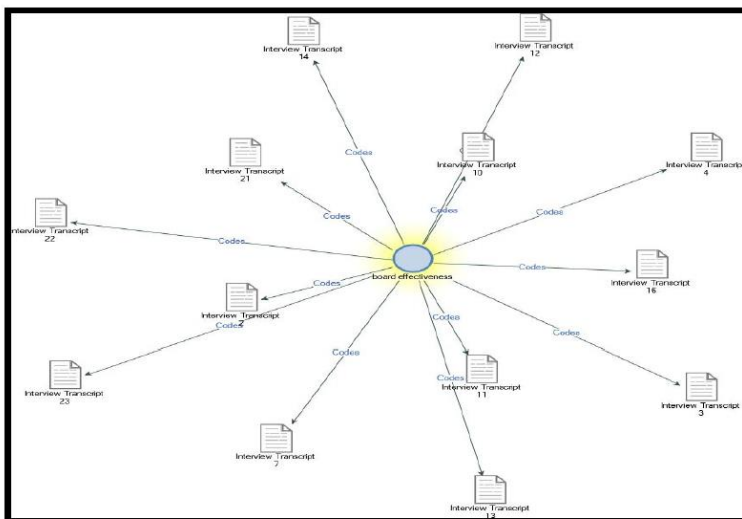


### Appendix 3

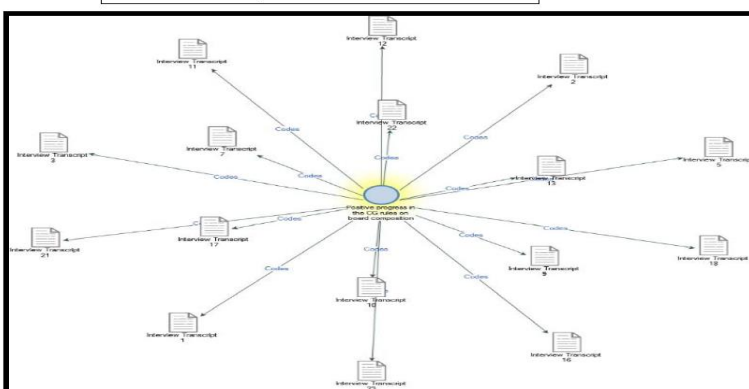
#### 1. Corporate governance rules initiated through the International Financial Institutions (IFIs)



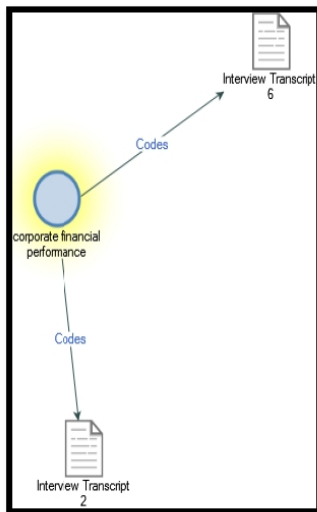
#### 2. Board effectiveness through rules on board gender diversity



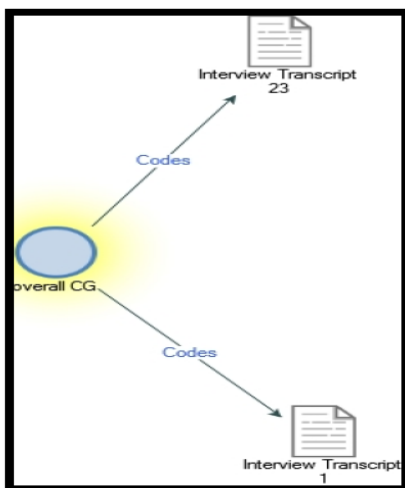
#### 3. Positive progress in the corporate governance rules on board composition



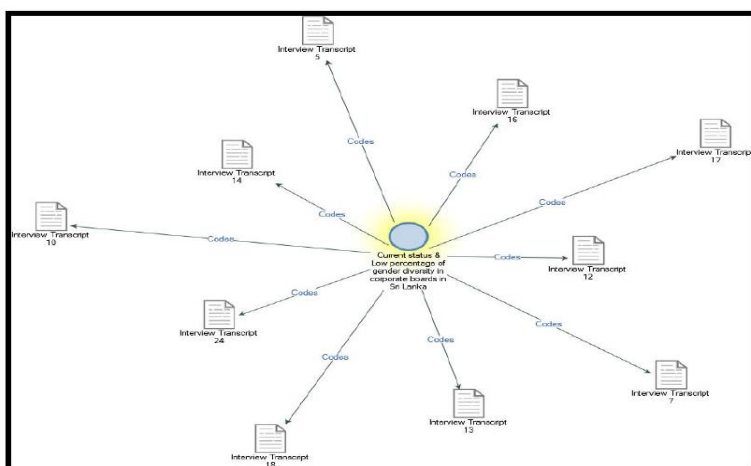
4. Improve corporate financial performance through rules on board gender diversity



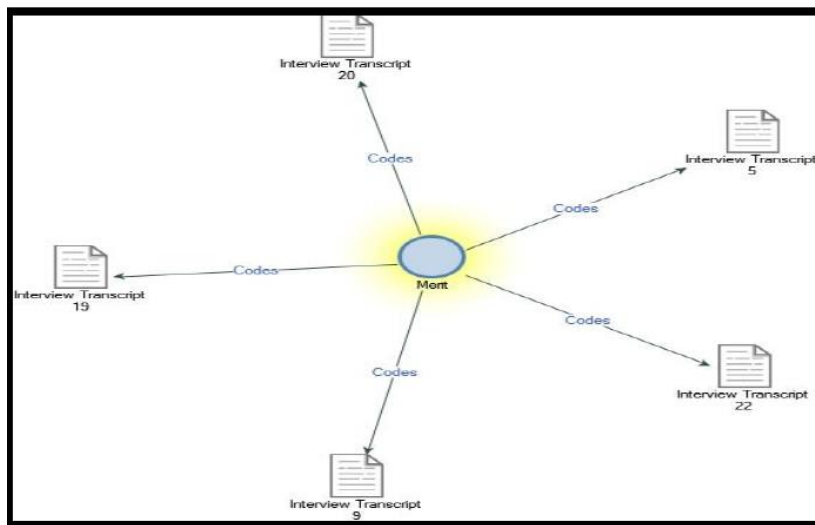
5. Improve overall corporate governance through rules on board gender diversity



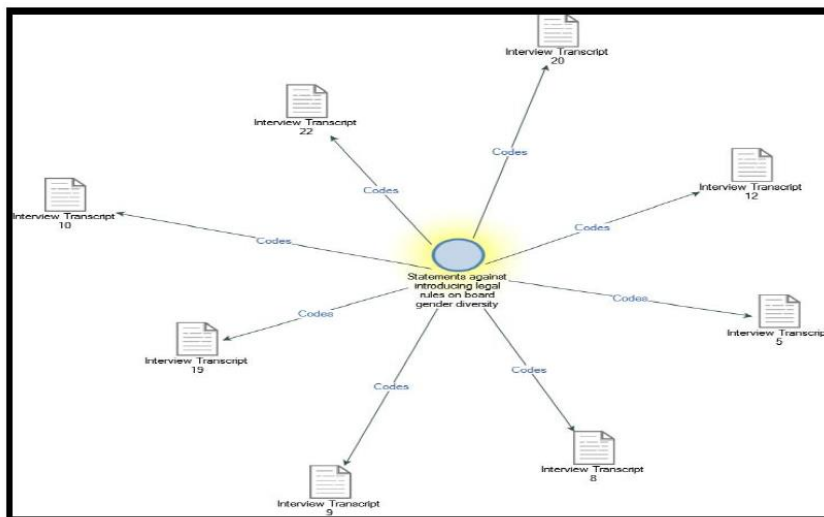
6. Current status and low percentage of female board representation in Sri Lanka



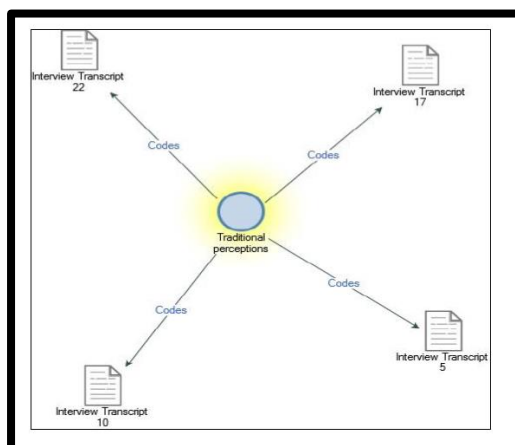
## 7. Board appointments on merit



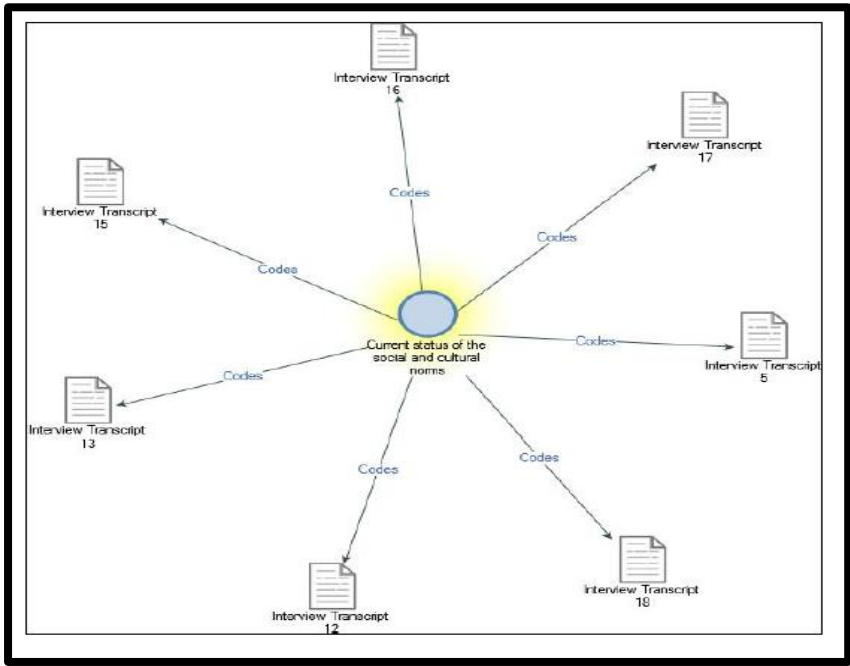
## 8. No necessity for rules on board gender diversity because of changes in society



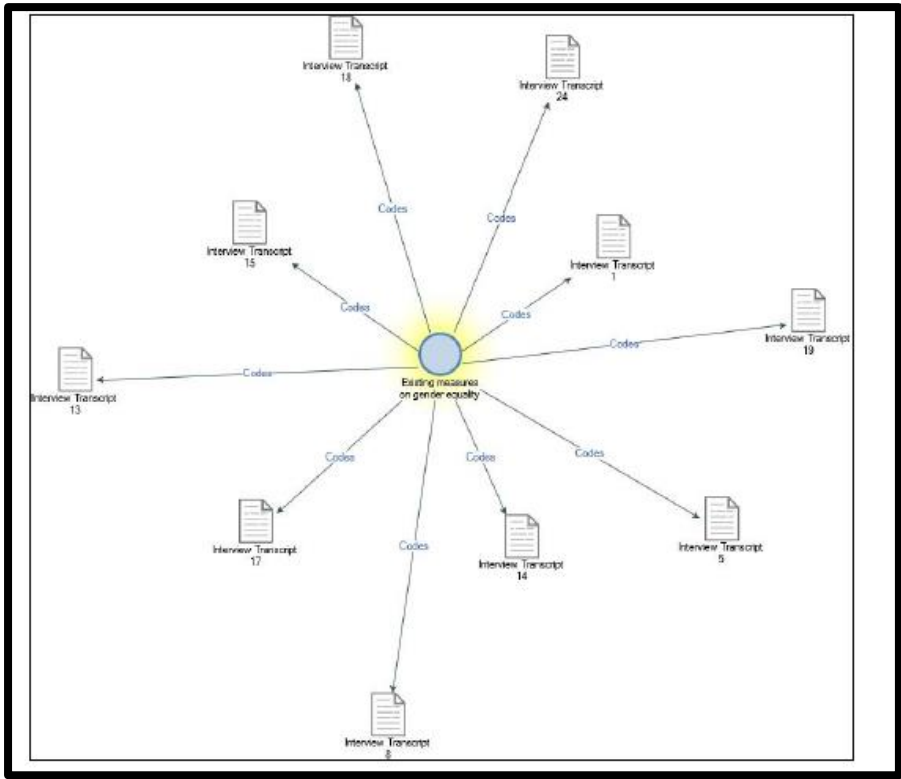
## 9. Traditional social and cultural norms in Sri Lanka concerning women



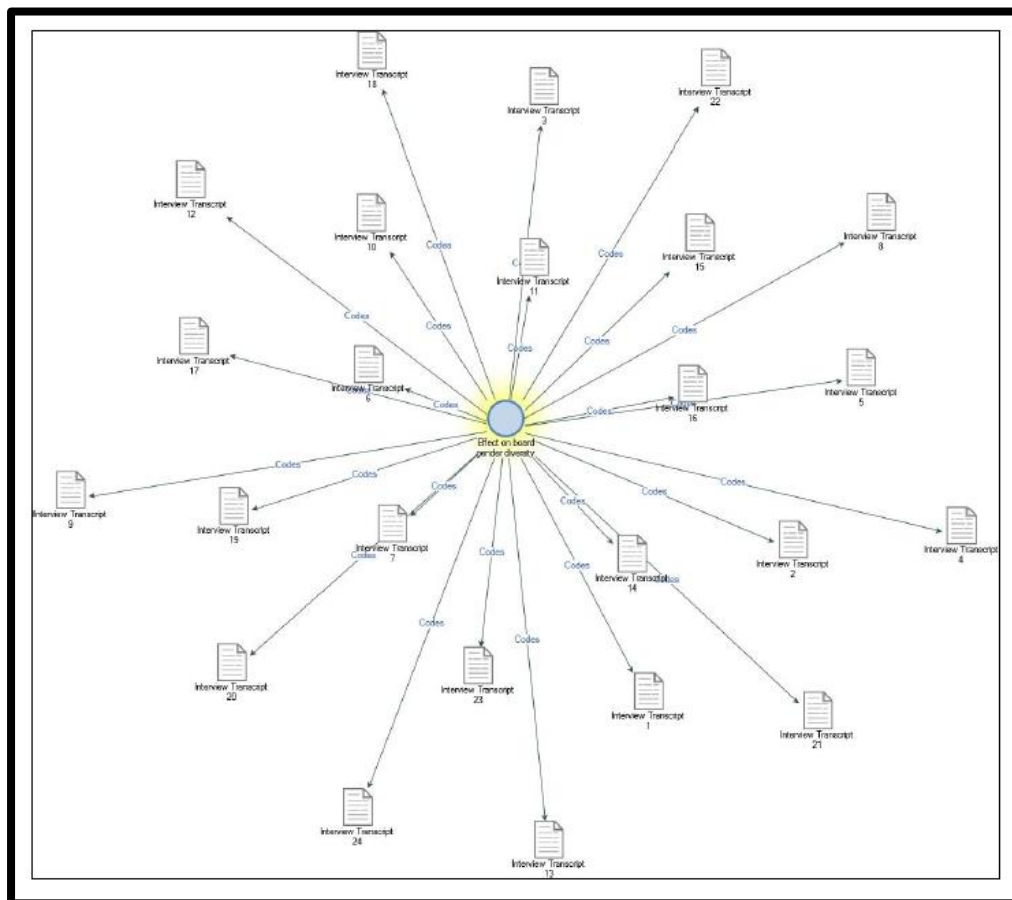
10. Current status of social and cultural norms in Sri Lanka concerning women



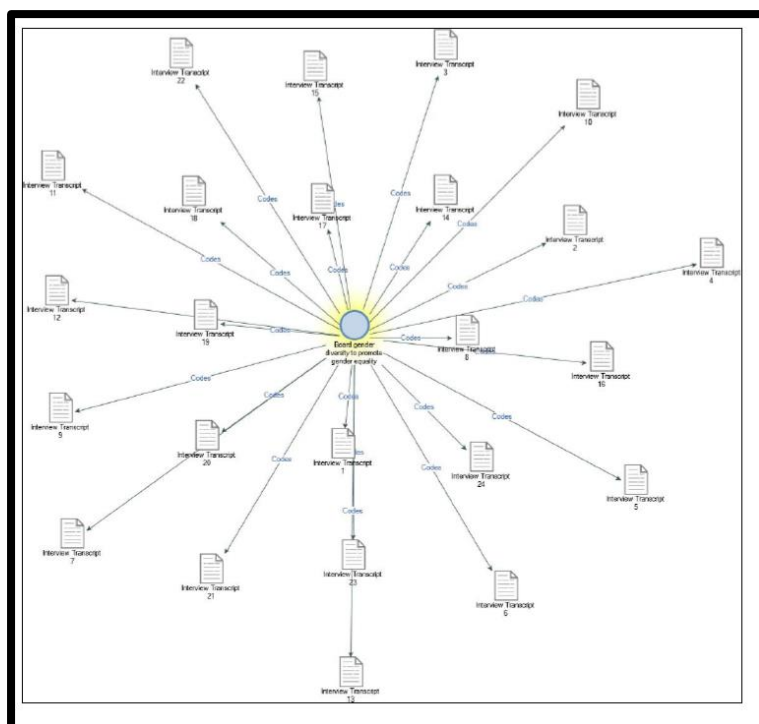
11. Existing measures to promote gender equality in Sri Lanka



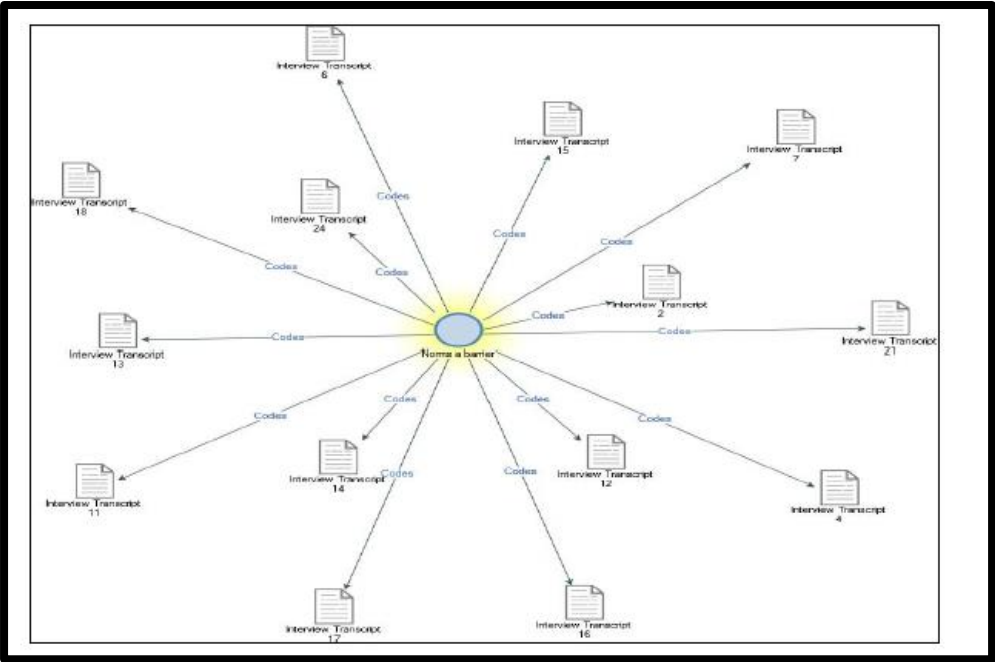
## 12. Effect of the social and cultural norms in Sri Lanka concerning women on introducing rules on board gender diversity



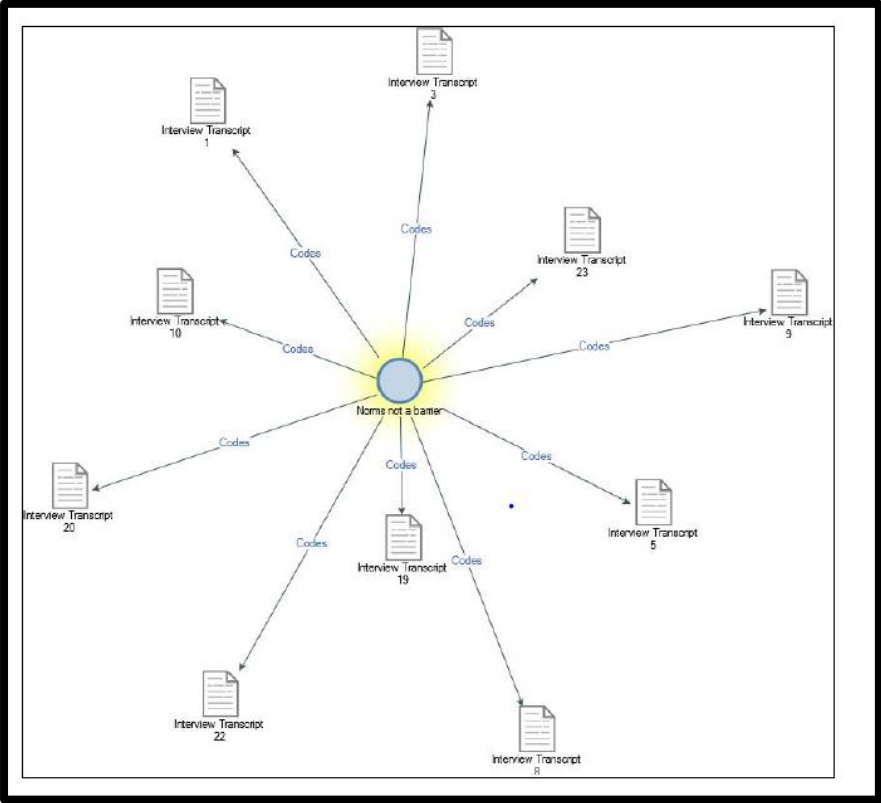
## 13. Rules on board gender diversity to promote gender equality



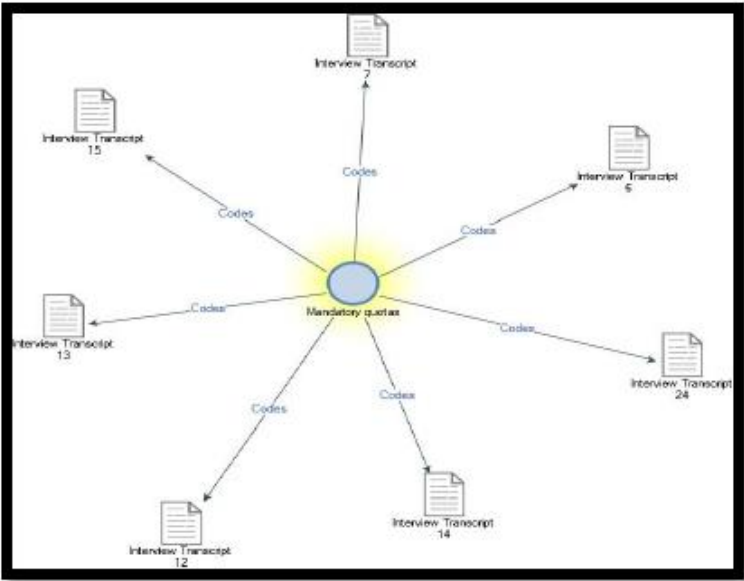
14. Social and cultural norms a barrier to implement rules on board gender diversity



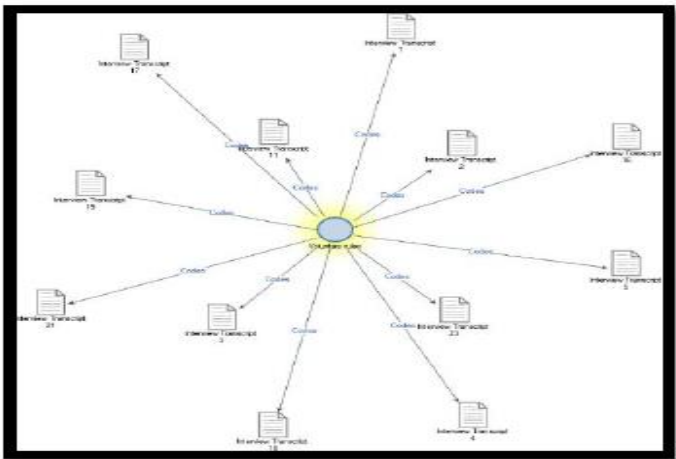
15. Social and cultural norms not a barrier to implement rules on board gender diversity



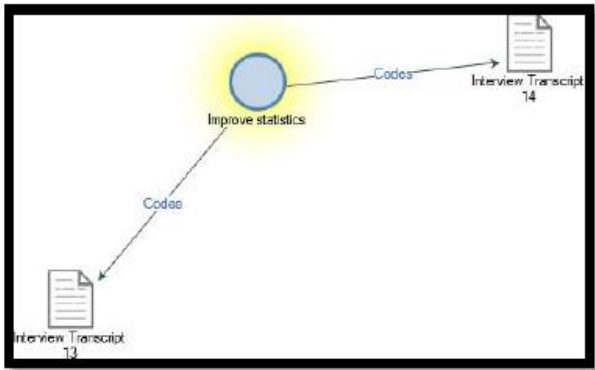
16. Mandatory quotas



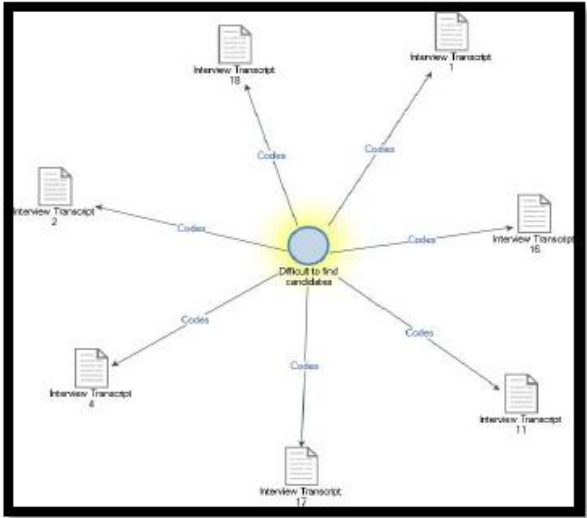
17. Voluntary disclosure rules



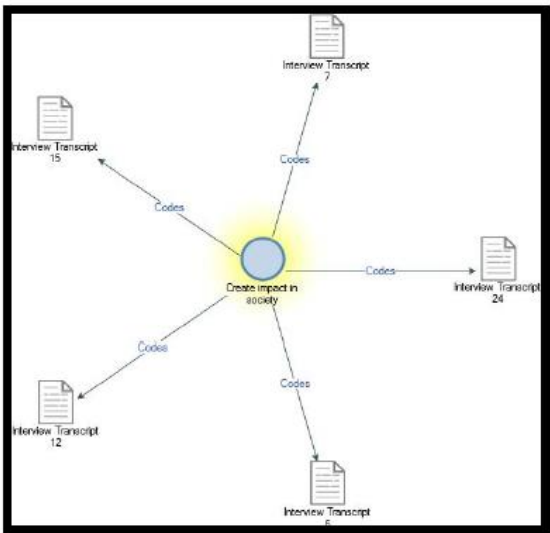
18. Mandatory quotas to bring statistical change



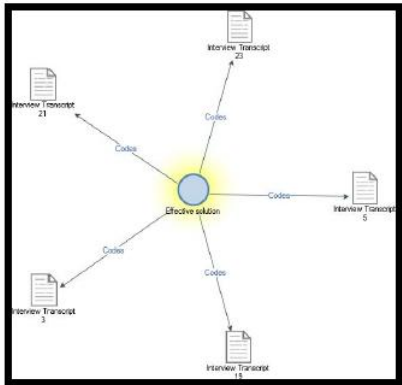
19. Insufficient number of suitable candidates



20. Mandatory quotas create an impact in society

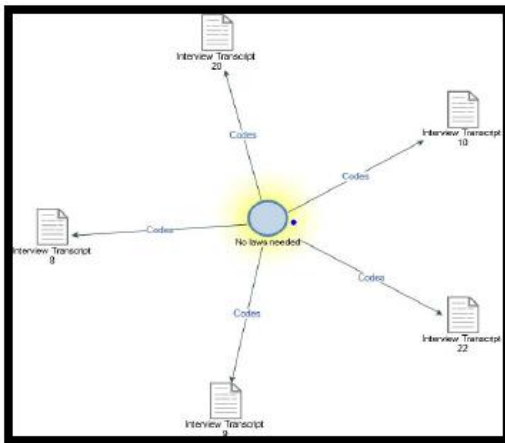


21. Voluntary disclosure rules are an effective solution in the Sri Lankan context

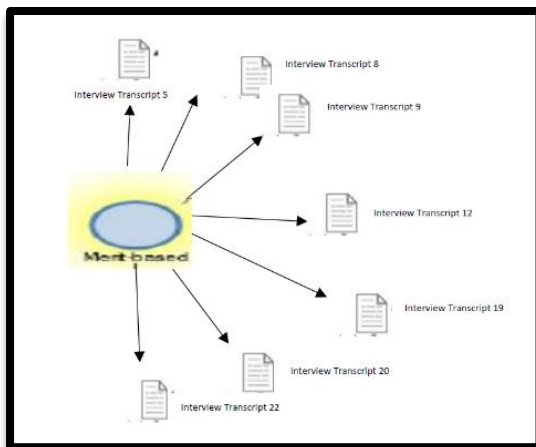




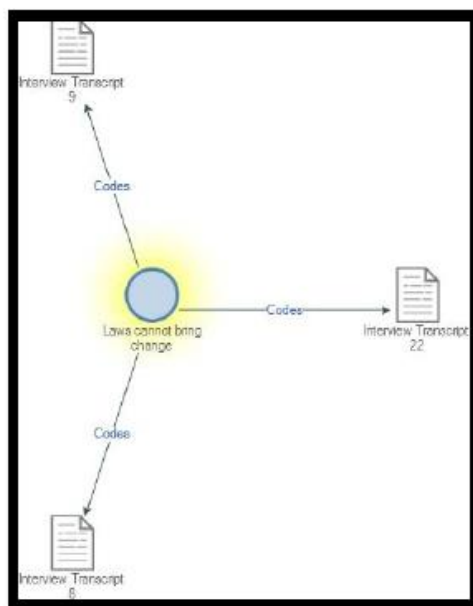
## 22. No laws are needed



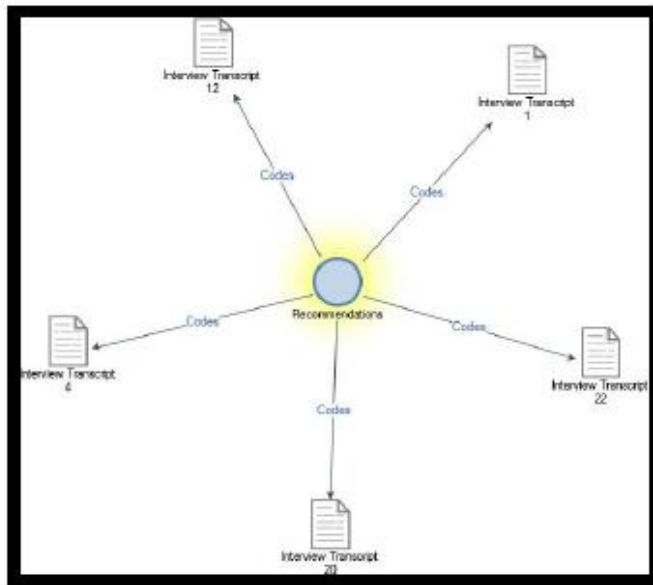
## 23. Board appointments should be merit-based



## 24. Laws cannot bring societal change

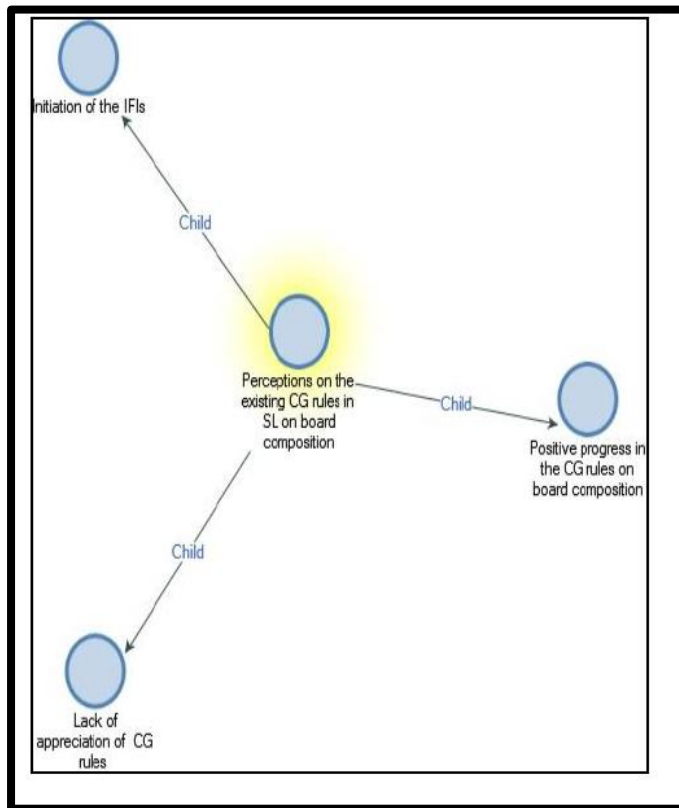


## 25. Recommendations

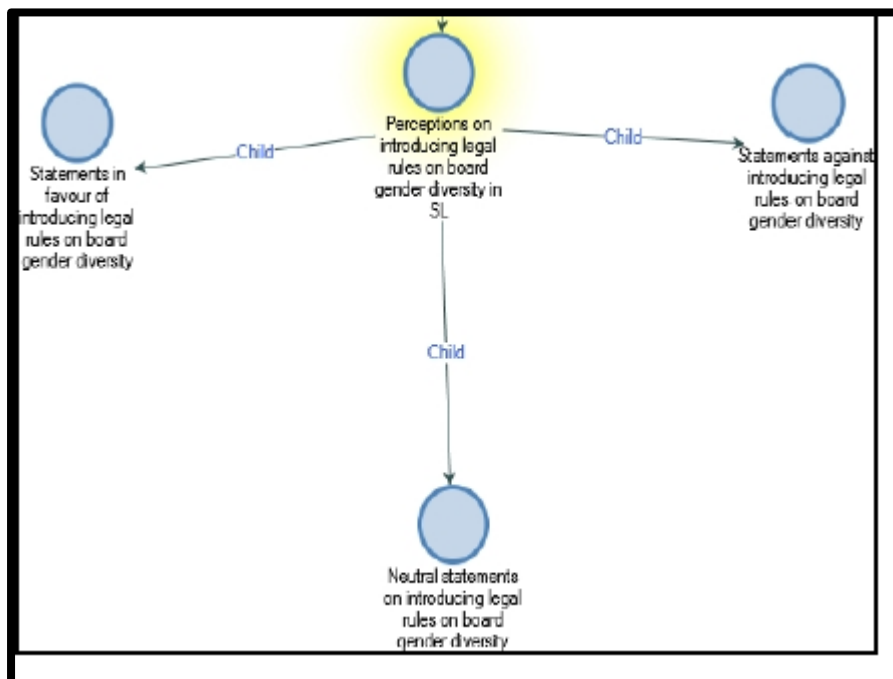


## Appendix 4

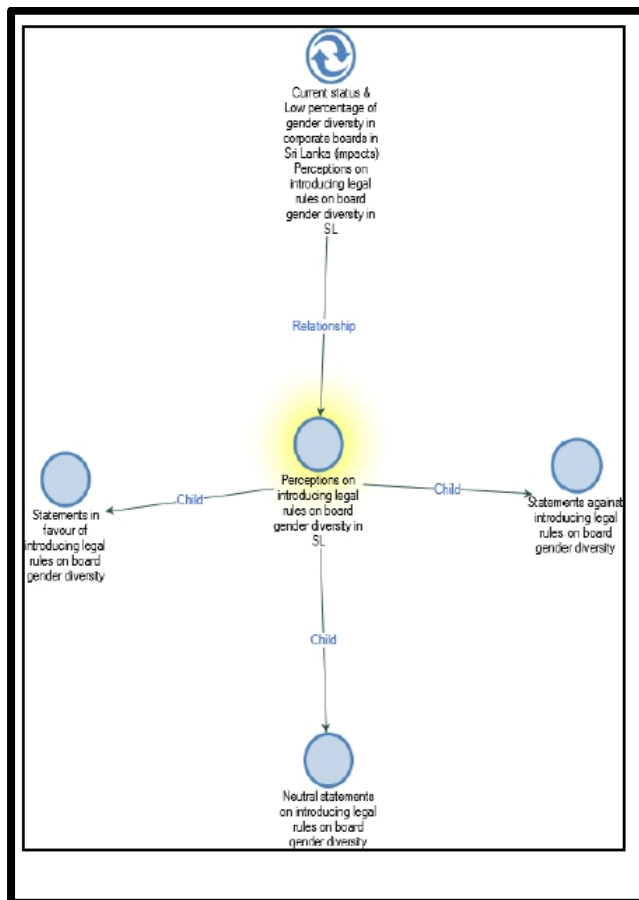
### 1. Perceptions on the existing corporate governance rules in Sri Lanka on board composition



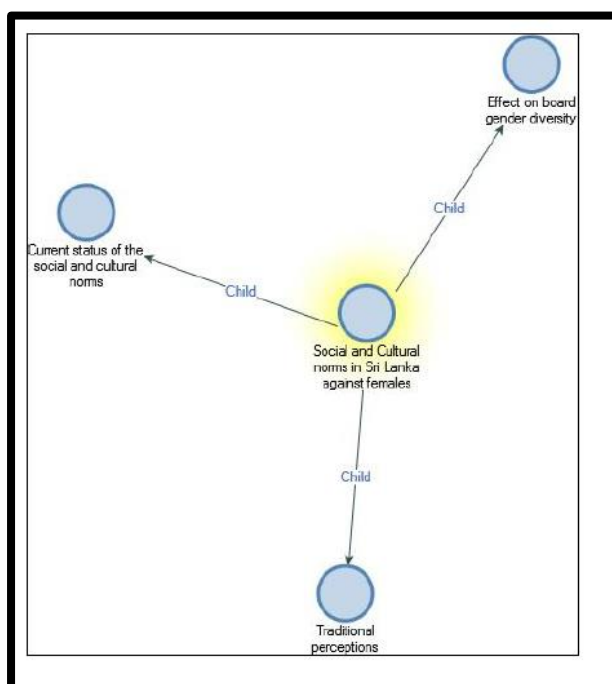
### 2. Perceptions on introducing legal rules on board gender diversity in Sri Lanka



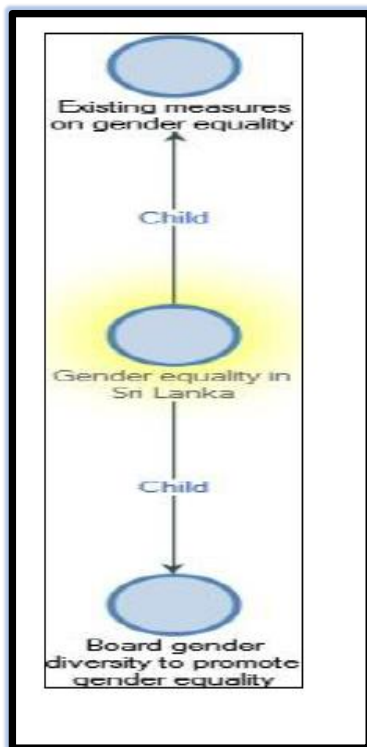
### 3. Current status and low percentage of gender diversity in corporate boards in Sri Lanka



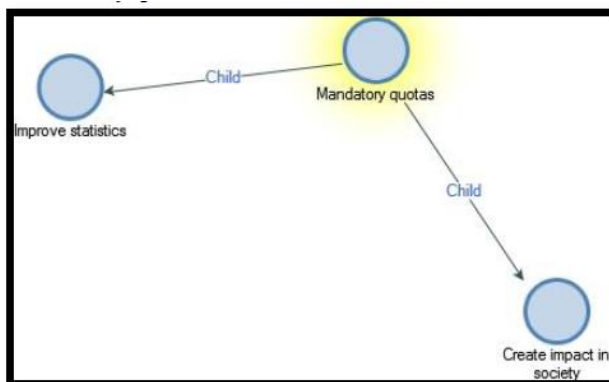
### 4. Perceptions on the social and cultural norms in Sri Lanka



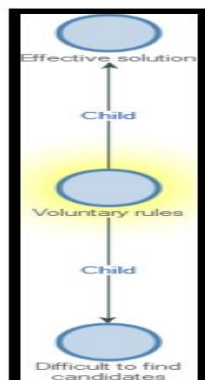
## 5. Perceptions on gender equality in Sri Lanka



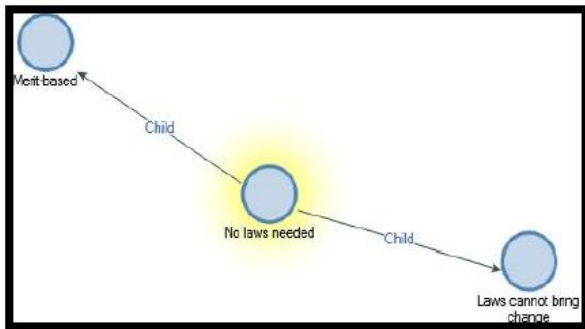
## 6. Mandatory quotas



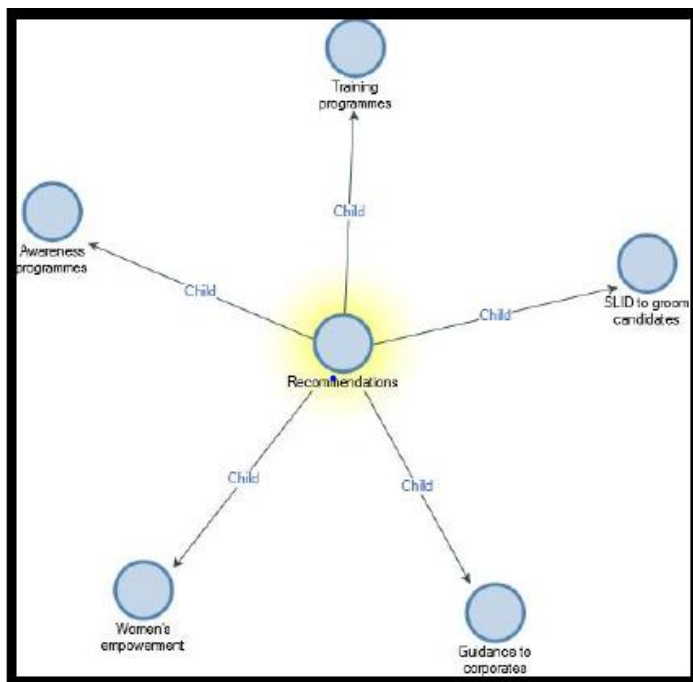
## 7. Voluntary rules



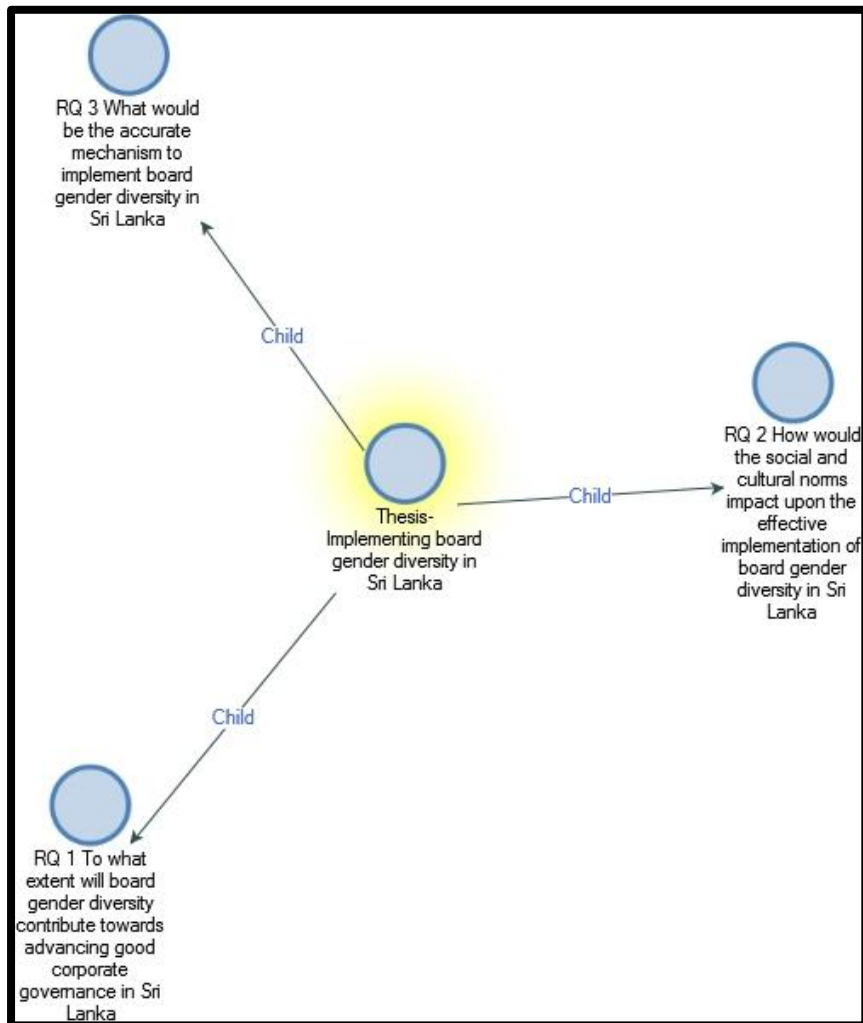
## 8. No laws needed



## 9. Recommendations



## Appendix 5



## Appendix 6

### Code Book

Name	Description
RQ 1	To what extent will board gender diversity contribute towards advancing good corporate governance in Sri Lanka?
1. Current status & Low percentage of gender diversity in corporate boards in Sri Lanka	This node depicts the responses which comment on the current status on board gender diversity in Sri Lanka. The responses reveal that currently there is a low percentage of female board representation in Sri Lanka.
2. Perceptions on introducing legal rules on board gender diversity in SL	This node details the positive, negative and neutral responses of the corporate community in Sri Lanka towards introducing legal rules on board gender diversity in Sri Lanka
2.1 Neutral statements on introducing legal rules on board gender diversity	This node contains the neutral statements made by the interview participants on introducing legal rules on board gender diversity to Sri Lanka
2.2 Statements against introducing legal rules on board gender diversity	This node contains all the responses against introducing legal rules on board gender diversity to Sri Lanka. Further, this node contains the reasons for objecting towards introducing legal rules on board gender diversity to Sri Lanka
2.2(a) Against legal transplantation	This node provides details which indicate that legal rules on board gender diversity need not be implemented merely because it is implemented in the developed countries



Name	Description
2.2(b) Changes in society	This node includes data which points out that rules on board gender diversity is not a necessity as the country is changing its perceptions on women in senior management and there are more female directors in the boardroom
2.2(c)Lack of suitable candidates	This node details that legal rules on board gender diversity should not be implemented because corporates cannot find suitable candidates.
2.2(d)Merit	This node includes explanations which point out that rules on board gender diversity should be based on merit.
2.3 Statements in favour of introducing legal rules on board gender diversity	This node contains all responses in favour of introducing legal rules on board gender diversity. Additionally, the node contains the reasons underlying the responses in favour.
2.3(a)board effectiveness	This node depicts the coding which explains that board gender diversity can improve board effectiveness.
2.3(b) corporate financial performance	This node contains the coding which explains that board gender diversity can improve corporate financial performance
2.3(c) overall CG	This node depicts the coding which explains that board gender diversity can improve overall corporate governance.
3. Perceptions on the existing CG rules in SL on board composition	This node contains details of the views of the corporate community in Sri Lanka towards the existing corporate government environment in Sri Lanka and efficacy of the corporate governance rules in Sri Lanka pertaining to board composition.
3.1 Initiation of the IFIs	This node contains data which indicates that corporate governance reforms in Sri Lanka were initiated by the international financial institutions.
3.2 Lack of appreciation of CG rules	This node contains data which indicates that the corporate community fails to appreciate the benefits of having effective corporate governance.
3.3 Positive progress in the CG rules on board composition	The node includes all responses which states that there is positive progress in the development of corporate governance rules in Sri Lanka on board composition.
3.3(a)Mandatory and Voluntary rules	This node indicates that as a measure towards improving corporate governance practices in Sri Lanka, the Sri Lankan regulators have introduced mandatory and voluntary corporate governance rules, particularly in relation to the board composition, which are in line with international standards.

Name	Description
RQ 2	How will the social and cultural norms in Sri Lanka impact on the effective implementation of rules on board gender diversity in Sri Lanka?
1. Gender equality in Sri Lanka	This node contains particulars about the status of gender equality in Sri Lanka.
1.1 Board gender diversity to promote gender equality	This node details the responses which indicate whether rules on board gender diversity could be used as a tool to promote gender equality.
1.1.1 Negative statements	This node contains the responses which indicate that there is no necessity to introduce rules on board gender diversity to promote gender equality.
(i) No existing gender inequality	This node details that rules on board gender diversity need not be introduced to promote gender equality in Sri Lanka because Sri Lankan society does not face any issues of gender equality.
(ii) Not a priority	This node details that gender equality is not a priority in Sri Lanka.
(iii) social upsetting	This node contains responses which indicate that introducing rules on board gender diversity to promote gender equality in Sri Lanka will create an upsetting of the social setting.

Name		Description
1.1.2 Positive statements		This node contains the responses which indicate that board gender diversity could be used as a tool to promote gender equality.
(i)	Change in societal perceptions	This node identifies that rules on board gender diversity will promote gender equality as it will change societal outlook on the role of women in the Sri Lankan society.
(ii)	Prevent female abuse	This node identifies that introducing rules on board gender diversity will create gender equality and reduce female abuse in Sri Lanka.
1.2 Existing measures on gender equality		This node contains details about the status of gender equality in Sri Lanka and the measures taken by the government to promote gender equality in Sri Lanka.
(i)	Awareness programmes	This node identifies that awareness programmes are conducted in Sri Lanka to educate women in Sri Lanka on the importance of building careers.
(ii)	Constitutional rights	The constitutional rights invoking gender equality is highlighted in this node.
(iii)	Corporate codes	Most corporate codes in companies in Sri Lanka have included provisions to promote gender equality.
(iv)	day cares	This node contains details of the introduction of child care systems in Sri Lanka.
(v)	Flexible working	Most governmental institutions have introduced flexible working hours to enable women manage both work and domestic responsibilities.
(vi)	Increase opportunities	Measures have been taken to increase the opportunities for women to enter the labour force.
(vii)	Indecent remarks	Legislation against indecent remarks and disciplinary action in corporates are introduced with an attempt to create gender equality.
(viii)	Parliamentary representation	The most recent attempt by the Sri Lankan government to create gender equality has been the introduction of rules requiring that each political party has to include at least one female in their parliamentary nomination lists.
2. Social and Cultural norms in Sri Lanka against females		This node contains details of the social and cultural norms in Sri Lanka against women.

Name		Description
2.1 Current status of the social and cultural norms		This node contains details which depict the current status and effect of the social and cultural norms in Sri Lanka against females.
2.2 Effect on board gender diversity		This node analyses the responses which depict whether the social and cultural norms will affect the effective implementation of rules on board gender diversity in Sri Lanka.
2.2.1 Norms a barrier		This node identifies the responses which indicate that still the social and cultural norms have a strong hold on societal views and would affect the implementation of rules on board gender diversity in Sri Lanka.
(i)	Abuse	This node identifies that norms will be a barrier for the implementation of rules on board gender diversity as evidenced by the cases of female abuse in Sri Lanka.
(ii)	Cultural stigma	This node identifies that norms will be a barrier for the effective implementation of rules on board gender diversity because of the cultural stigma which will vest upon women who neglect the household and due to the stigma upon men who is not the main bread-winner of the household.
(iii)	Domestic responsibilities	This node identifies that the social and cultural norms have required females to engage in domestic responsibilities. Despite females pursuing careers, females cannot neglect their domestic responsibilities.
(a)	Lack of child care facilities	The lack of proper child care facilities have increased the domestic responsibilities of women in Sri Lanka and hindered their progress in building careers.
(b)	Lack of part time and flexible work	Companies still fail to grant part time or flexible working hours to employees which severely affect women who have to multi-task between work and household responsibilities.
(iv)	Patriarchal society	This node details that the social and cultural norms dominate Sri Lanka because of the patriarchal society.
2.2.2 Norms not a barrier		This node details that the social and cultural norms in Sri Lanka against females limiting females to a domestic role no longer exists.
(i)	Changing perceptions	This node identifies that social and cultural norms existing in Sri Lanka against females are not a barrier

Name		Description
		to the implementation of rules on board gender diversity due to the changes in societal perceptions.
(ii)	Females building careers	The changes in societal perceptions are viewed through the amount of females building careers.
(iii)	Female role models	There are many female role models which is an indication of the disappearance of the social and cultural norms in Sri Lanka.
(iv)	Females limit themselves	Females do not build careers because Sri Lankan females are backward.
(v)	introduction of child care facilities	This node contains details that there are a few child care facilities introduced in Sri Lanka.
(vi)	Maternity laws	This node contains responses which depict that due to the maternity laws in the country women are encouraged to work. Therefore, the norms will not be a barrier.
(vii)	Part time & flexible working conditions	This node identifies that in some companies part time and flexible working hours are permitted. Hence, females are encouraged to work.
2.3. Traditional perceptions		This node defines the social and cultural norms existing in Sri Lanka against women. The social and cultural norms require females to be confined to a domestic role.

Node	Description
RQ 3	What would be the accurate mechanism to implement board gender diversity in Sri Lanka?
1. Mandatory quotas	This node contains the responses which depict whether mandatory quotas could be incorporated in Sri Lanka to implement rules on board gender diversity.
(i) Create impact in society	This node contains the responses which indicate that mandatory quotas are suited to implement board gender diversity in Sri Lanka because it is the only measure which can create an impact in Sri Lankan society.
(ii) Improve statistics	In this node the responses indicate that mandatory quotas can bring statistical change and improve board gender diversity in Sri Lanka.
2. No laws needed	The responses in this node state that laws need not be implemented to improve board gender diversity in Sri Lanka. Mainly, these respondents were of the view that laws on board gender diversity should not be implemented in Sri Lanka.
(i) Laws cannot bring change	The respondents indicated that laws on board gender diversity should not be implemented because, law and legal rules cannot effect societal change in Sri Lanka.
(ii) Merit-based	The respondents indicated that rules on board gender diversity should not be implemented because board appointments should be based on merit.
3. Recommendations	This node incorporates the recommendations by the respondents to improve board gender diversity in the future.

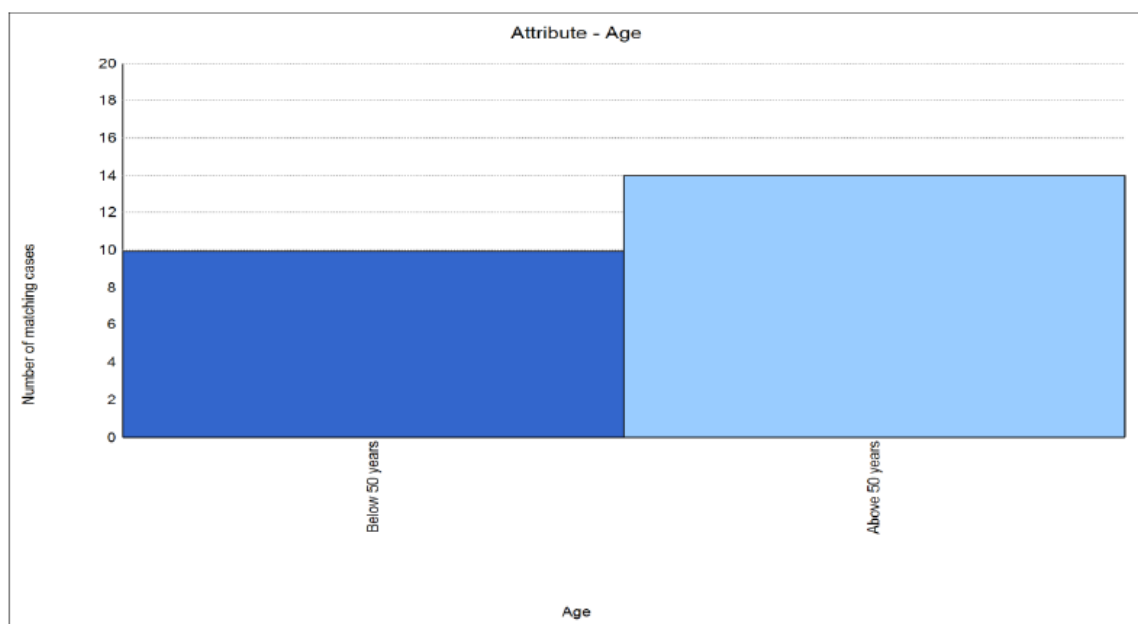
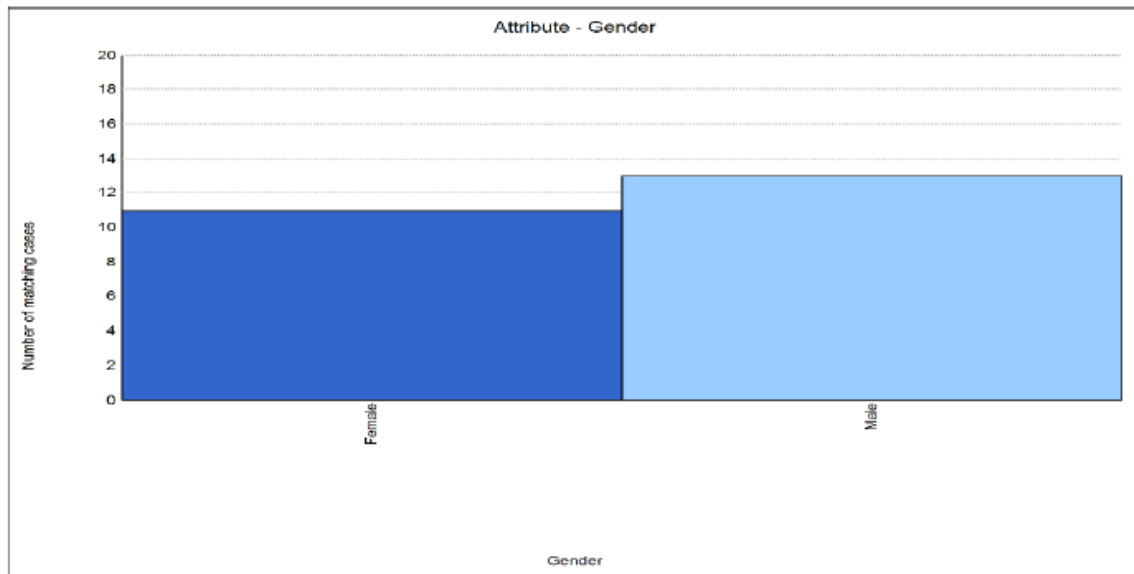
Node	Description
(i) Awareness programmes	The respondents identified that awareness programmes need to be conducted to encourage females to pursue careers, and to make society aware of the benefits of females in the boardroom.
(ii) Guidance to corporates	Programmes need to be conducted to guide corporates in Sri Lanka on improving gender diversity in the boardroom.
(iii) SLID to groom candidates	The respondents identified that the Sri Lanka Institute of Directors should groom female qualified candidates to become board-ready.
(iv) Training programmes	The responses noted that training programmes need to be conducted to groom females on corporate board matters.
(v) Women's empowerment	The interviewees noted that programmes should be conducted to empower women to pursue careers and reach board-level.
4. Voluntary disclosure rules	The responses in this node indicate that voluntary disclosure rules in codes of best practice need to be adopted as the legal rules on board gender diversity in Sri Lanka.
(i) Difficult to find candidates	According to the responses, voluntary disclosure rules need to be adopted in Sri Lanka to implement board gender diversity because there is a weak percentage of female candidates.
(ii) Effective solution	The respondents are of the view that voluntary disclosure rules are the most effective method of introducing board gender diversity in Sri Lanka.



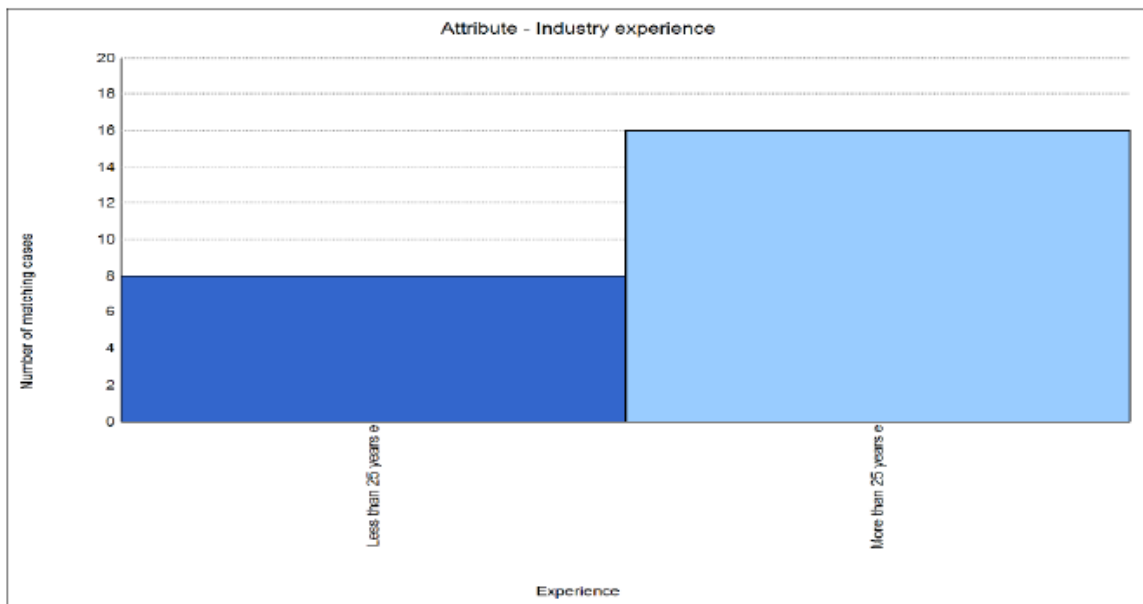
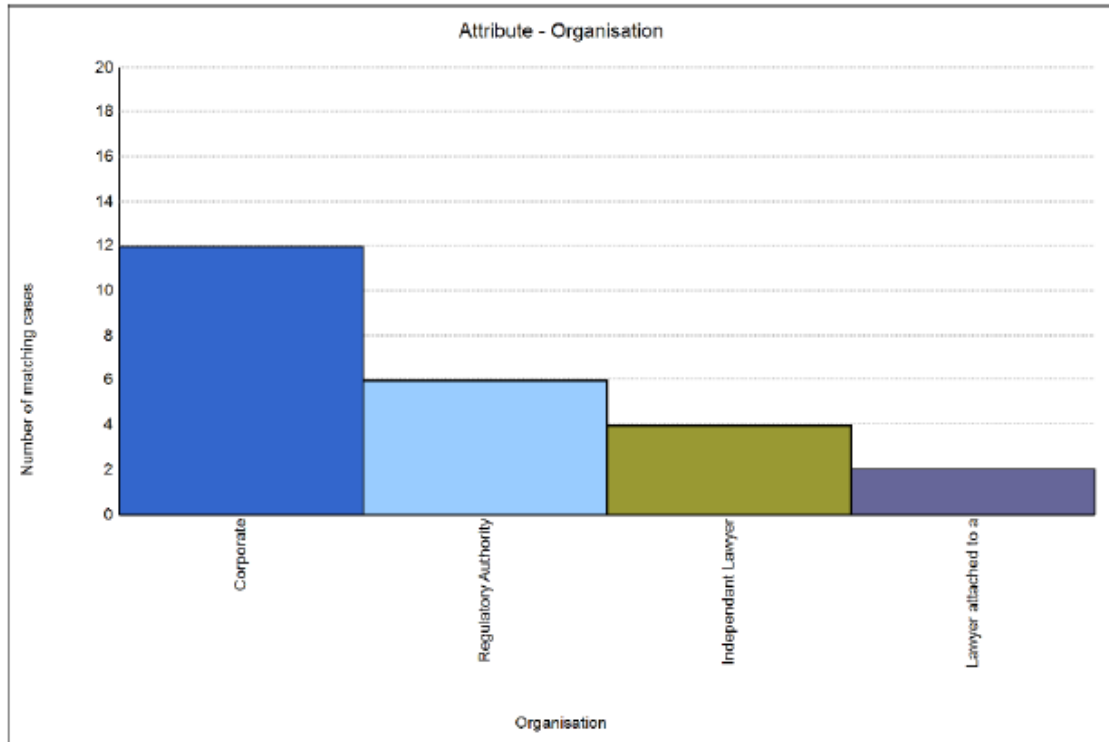
## Appendix 7

Interview Transcript No.	Gender	Age	Organisation	Experience
Interview Transcript 1	Male	Below 50 years	Corporate	Less than 25 years' experience
Interview Transcript 2	Female	Below 50 years	Corporate	Less than 25 years' experience
Interview Transcript 3	Male	Above 50 years	Regulatory authority	More than 25 years' experience
Interview Transcript 4	Male	Above 50 years	Regulatory authority	More than 25 years' experience
Interview Transcript 5	Male	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 6	Male	Below 50 years	Regulatory authority	More than 25 years' experience
Interview Transcript 7	Female	Below 50 years	Independent lawyer	Less than 25 years' experience
Interview Transcript 8	Male	Above 50 years	Lawyer attached to a firm	More than 25 years' experience
Interview Transcript 9	Male	Above 50 years	Lawyer attached to a firm	More than 25 years' experience
Interview Transcript 10	Male	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 11	Female	Below 50 years	Independent lawyer	Less than 25 years' experience
Interview Transcript 12	Female	Below 50 years	Corporate	Less than 25 years' experience
Interview Transcript 13	Female	Below 50 years	Corporate	More than 25 years' experience
Interview Transcript 14	Female	Below 50 years	Corporate	Less than 25 years' experience
Interview Transcript 15	Male	Below 50 years	Independent lawyer	Less than 25 years' experience
Interview Transcript 16	Female	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 17	Female	Below 50 years	Regulatory authority	Less than 25 years' experience
Interview Transcript 18	Female	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 19	Male	Above 50 years	Independent lawyer	More than 25 years' experience
Interview Transcript 20	Male	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 21	Female	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 22	Female	Above 50 years	Corporate	More than 25 years' experience
Interview Transcript 23	Male	Above 50 years	Regulatory authority	More than 25 years' experience
Interview Transcript 24	Male	Above 50 years	Regulatory authority	More than 25 years' experience

## Appendix 8







## Appendix 9

Interview Transcript No.	Experience	Progress in corporate governance in Sri Lanka	Initiation by the IFIs
Interview Transcript 3	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 4	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 5	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 6	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 8	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 9	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 10	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 13	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 16	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 18	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 19	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 20	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 21	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 22	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 23	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 24	More than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 1	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 2	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 7	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 11	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 12	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 14	Less than 25 years	No comments	Initiation by the IFIs
Interview Transcript 15	Less than 25 years	Positive progress	Initiation by the IFIs
Interview Transcript 17	Less than 25 years	Positive progress	Initiation by the IFIs

## Appendix 10

Interview Transcript No.	In favour or against	Reason
Interview Transcript 2	In favour	Board effectiveness
Interview Transcript 3	In favour	Board effectiveness
Interview Transcript 4	In favour	Board effectiveness
Interview Transcript 6	In favour	Board effectiveness and Corporate financial performance
Interview Transcript 7	In favour	Board effectiveness
Interview Transcript 11	In favour	Board effectiveness
Interview Transcript 13	In favour	Board effectiveness
Interview Transcript 14	In favour	Board effectiveness
Interview Transcript 15	In favour	Board effectiveness
Interview Transcript 16	In favour	Board effectiveness
Interview Transcript 17	In favour	Board effectiveness
Interview Transcript 18	In favour	Board effectiveness
Interview Transcript 21	In favour	Board effectiveness
Interview Transcript 23	In favour	Board effectiveness and Corporate financial performance
Interview Transcript 24	In favour	Corporate financial performance
Interview Transcript 1	In favour	Corporate financial performance
Interview Transcript 5	Against	Merit
Interview Transcript 8	Against	Merit / Legal Transplantation
Interview Transcript 9	Against	Merit
Interview Transcript 10	Against	Changes in society
Interview Transcript 12	Against	Merit / Lack of candidates
Interview Transcript 19	Against	Merit
Interview Transcript 20	Against	Merit
Interview Transcript 22	Against	Merit

## Appendix 11

Interview Transcript No.	Gender	In favour or against	Reason	Explanation
Interview Transcript 2	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 7	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 11	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>

Interview Transcript 13	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 14	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 16	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>

Interview Transcript 17	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 18	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 21	Female	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic Control (leadership style/corporate social responsibility)</li> <li>(iii) Operational control (CEO accountability and risk mitigation)</li> <li>(iv) Board cohesiveness (style of engagement)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation/ evaluation/ timely decisions)</li> <li>(vii) Diligence (inquisitiveness)</li> <li>(viii) Intellectual diversity</li> </ul>

Interview Transcript 3	Male	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic control (leadership style/Corporate social responsibility)</li> <li>(iii) Operational control (risk mitigation)</li> <li>(iv) Board cohesiveness (gender diversification)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation)</li> <li>(vii) Diligence</li> <li>(viii) Intellectual diversity</li> </ul>
Interview Transcript 4	Male	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic control (leadership style/Corporate social responsibility)</li> <li>(iii) Operational control (risk mitigation)</li> <li>(iv) Board cohesiveness (gender diversification)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation)</li> <li>(vii) Diligence</li> </ul>
Interview Transcript 6	Male	In favour	Board effectiveness and corporate financial performance	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic control (leadership style/Corporate social responsibility)</li> <li>(iii) Operational control (risk mitigation)</li> <li>(iv) Board cohesiveness (gender diversification)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation)</li> <li>(vii) Diligence</li> </ul>
Interview Transcript 15	Male	In favour	Board effectiveness	<ul style="list-style-type: none"> <li>(i) Task performance</li> <li>(ii) Strategic control (leadership style/Corporate social responsibility)</li> <li>(iii) Operational control (risk mitigation)</li> <li>(iv) Board cohesiveness (gender diversification)</li> <li>(v) Board processes</li> <li>(vi) Participation and efforts (extensive preparation)</li> <li>(vii) Diligence</li> </ul>

Interview Transcript 23	Male	In favour	Board effectiveness and corporate financial performance	(i) Operational control (risk mitigation) (ii) Board cohesiveness (gender diversification) (iii) Board processes (iv) Diligence
Interview Transcript 24	Male	In favour	Corporate financial performance	
Interview Transcript 1	Male	In favour	Corporate financial performance	
Interview Transcript 5	Male	Against	Merit	
Interview Transcript 8	Male	Against	Merit/ Legal Transplantation	
Interview Transcript 9	Male	Against	Changes in society	
Interview Transcript 10	Male	Against	Merit	
Interview Transcript 12	Female	Against	Merit/ Lack of candidates	
Interview Transcript 19	Male	Against	Merit	
Interview Transcript 20	Male	Against	Merit	
Interview Transcript 22	Female	Against	Merit	



## Appendix 12

<b>Interview Transcript No.</b>	<b>Gender</b>	<b>Experience</b>	<b>Reason</b>	<b>Explanation</b>
Interview Transcript 3	Male	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 4	Male	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 6	Male	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 13	Female	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 16	Female	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 18	Female	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 21	Female	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 23	Male	More than 25 years	In favour - Board effectiveness	Experiential diversity
Interview Transcript 24	Male	More than 25 years	In favour - Corporate financial performance	Experiential diversity
Interview Transcript 5	Male	More than 25 years	Against	Merit
Interview Transcript 8	Male	More than 25 years	Against	Merit / Legal Transplantation
Interview Transcript 9	Male	More than 25 years	Against	Merit
Interview Transcript 10	Male	More than 25 years	Against	Changes in society
Interview Transcript 19	Male	More than 25 years	Against	Merit
Interview Transcript 20	Male	More than 25 years	Against	Merit
Interview Transcript 22	Female	More than 25 years	Against	Merit

## Appendix 13

Interview Transcript No.	Gender	Effect of traditional norms
Interview Transcript 2	Female	Acts as a barrier
Interview Transcript 4	Male	Acts as a barrier
Interview Transcript 6	Male	Acts as a barrier
Interview Transcript 7	Female	Acts as a barrier
Interview Transcript 11	Female	Acts as a barrier
Interview Transcript 12	Female	Acts as a barrier
Interview Transcript 13	Female	Acts as a barrier
Interview Transcript 14	Female	Acts as a barrier
Interview Transcript 15	Male	Acts as a barrier
Interview Transcript 16	Female	Acts as a barrier
Interview Transcript 17	Female	Acts as a barrier
Interview Transcript 18	Female	Acts as a barrier
Interview Transcript 21	Female	Acts as a barrier
Interview Transcript 24	Male	Acts as a barrier
Interview Transcript 1	Male	Not act as a barrier
Interview Transcript 3	Male	Not act as a barrier
Interview Transcript 5	Male	Not act as a barrier
Interview Transcript 8	Male	Not act as a barrier
Interview Transcript 9	Male	Not act as a barrier
Interview Transcript 10	Male	Not act as a barrier
Interview Transcript 19	Male	Not act as a barrier
Interview Transcript 20	Male	Not act as a barrier
Interview Transcript 22	Female	Not act as a barrier
Interview Transcript 23	Male	Not act as a barrier

## Appendix 14

Interview Transcript No.	Gender	Changes	
Interview Transcript 2	Female	free education , political representation	
Interview Transcript 4	Male	free education , political representation	
Interview Transcript 6	Male	free education , political representation	
Interview Transcript 7	Female	free education , political representation	
Interview Transcript 11	Female	free education , political representation	
Interview Transcript 12	Female	free education , political representation	
Interview Transcript 13	Female	free education , political representation	
Interview Transcript 14	Female	free education , political representation	
Interview Transcript 15	Male	free education , political representation	
Interview Transcript 16	Female	free education , political representation	
Interview Transcript 17	Female	free education , political representation	
Interview Transcript 18	Female	free education , political representation	
Interview Transcript 21	Female	free education , political representation	
Interview Transcript 24	Male	free education , political representation	
Interview Transcript 1	Male	free education , political representation	
Interview Transcript 3	Male	free education , political representation	
Interview Transcript 5	Male	The bandaranaike family was an inspiration	
Interview Transcript 8	Male	free education , political representation	
Interview Transcript 9	Male	free education , political representation	
Interview Transcript 10	Male	free education , political representation	
Interview Transcript 19	Male	free education , political representation	
Interview Transcript 20	Male	The bandaranaike family was an inspiration	
Interview Transcript 22	Female	free education , political representation	
Interview Transcript 23	Male	free education , political representation	

## Appendix 15

Interview Transcript No.	Gender	Barriers	
Interview Transcript 2	Female	Domestic responsibilities	
Interview Transcript 4	Male	Domestic responsibilities	
Interview Transcript 6	Male	Domestic responsibilities	
Interview Transcript 7	Female	Domestic responsibilities	
Interview Transcript 11	Female	Domestic responsibilities	
Interview Transcript 12	Female	Domestic responsibilities	
Interview Transcript 13	Female	Domestic responsibilities	
Interview Transcript 14	Female	Domestic responsibilities	
Interview Transcript 15	Male	Domestic responsibilities	
Interview Transcript 16	Female	Domestic responsibilities	
Interview Transcript 17	Female	Domestic responsibilities	
Interview Transcript 18	Female	Domestic responsibilities	
Interview Transcript 21	Female	Domestic responsibilities	
Interview Transcript 24	Male	Domestic responsibilities	
Interview Transcript 1	Male	No barrier. Perceptions are changing	
Interview Transcript 3	Male	No barrier. Perceptions are changing	
Interview Transcript 5	Male	No barrier. Perceptions are changing	
Interview Transcript 8	Male	No barrier. Perceptions are changing	
Interview Transcript 9	Male	No barrier. Perceptions are changing	
Interview Transcript 10	Male	No barrier. Perceptions are changing	
Interview Transcript 19	Male	No barrier. Perceptions are changing	
Interview Transcript 20	Male	No barrier. Perceptions are changing	
Interview Transcript 22	Female	No barrier. Perceptions are changing	
Interview Transcript 23	Male	No barrier. Perceptions are changing	

## Appendix 16

Interview Transcript No.	Gender	Barriers	Patriarchy
Interview Transcript 2	Female	Domestic responsibilities	Still exists
Interview Transcript 4	Male	Domestic responsibilities	Still exists
Interview Transcript 6	Male	Domestic responsibilities	Still exists
Interview Transcript 7	Female	Domestic responsibilities	Still exists
Interview Transcript 11	Female	Domestic responsibilities	Still exists
Interview Transcript 12	Female	Domestic responsibilities	Still exists
Interview Transcript 13	Female	Domestic responsibilities	Still exists
Interview Transcript 14	Female	Domestic responsibilities	Still exists
Interview Transcript 15	Male	Domestic responsibilities	Still exists
Interview Transcript 16	Female	Domestic responsibilities	Still exists
Interview Transcript 17	Female	Domestic responsibilities	Still exists
Interview Transcript 18	Female	Domestic responsibilities	Still exists
Interview Transcript 21	Female	Domestic responsibilities	Still exists
Interview Transcript 24	Male	Domestic responsibilities	Still exists
Interview Transcript 1	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 3	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 5	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 8	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 9	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 10	Male	No barrier. Perceptions are changing	Still exists
Interview Transcript 19	Male	No barrier. Perceptions are changing	No comment
Interview Transcript 20	Male	No barrier. Perceptions are changing	No comment
Interview Transcript 22	Female	No barrier. Perceptions are changing	No comment
Interview Transcript 23	Male	No barrier. Perceptions are changing	No comment

## Appendix 17

Interview Transcript No.	Gender	Type of rule	Reason
Interview Transcript 1	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 2	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 3	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 4	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 5	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 8	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 11	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 16	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 17	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 18	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 19	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 21	Female	Voluntary	Tokenism through mandatory rules
Interview Transcript 23	Male	Voluntary	Tokenism through mandatory rules
Interview Transcript 6	Male	Mandatory	Statistical change
Interview Transcript 7	Female	Mandatory	Statistical change
Interview Transcript 12	Female	Mandatory	Statistical change
Interview Transcript 13	Female	Mandatory	Statistical change
Interview Transcript 14	Female	Mandatory	Statistical change
Interview Transcript 15	Male	Mandatory	Statistical change
Interview Transcript 24	Male	Mandatory	Statistical change
Interview Transcript 9	Male	No laws	Merit
Interview Transcript 10	Male	No laws	Changes in society
Interview Transcript 20	Male	No laws	Merit
Interview Transcript 22	Female	No laws	Merit

## Appendix 18

Transcript No.	Statistical or substantial change
Transcript 1	Substantial
Transcript 2	Substantial
Transcript 3	Substantial
Transcript 4	Substantial
Transcript 5	Substantial
Transcript 8	Substantial
Transcript 11	Substantial
Transcript 16	Substantial
Transcript 17	Substantial
Transcript 18	Substantial
Transcript 19	Substantial
Transcript 21	Substantial
Transcript 23	Substantial
Transcript 6	Statistical
Transcript 7	Statistical
Transcript 12	Statistical
Transcript 13	Statistical
Transcript 14	Statistical
Transcript 15	Statistical
Transcript 24	Statistical
Transcript 9	-
Transcript 10	-
Transcript 20	-
Transcript 22	-

## Appendix 19

Transcript No.	Age	Statistical or substantial change
Transcript 1	Below 50	Substantial
Transcript 2	Below 50	Substantial
Transcript 6	Below 50	Statistical
Transcript 7	Below 50	Statistical
Transcript 11	Below 50	Substantial
Transcript 12	Below 50	Statistical
Transcript 13	Below 50	Statistical
Transcript 14	Below 50	Statistical
Transcript 15	Below 50	Statistical
Transcript 17	Below 50	Substantial
Transcript 3	Above 50	Substantial
Transcript 4	Above 50	Substantial
Transcript 5	Above 50	Substantial
Transcript 8	Above 50	Substantial
Transcript 16	Above 50	Substantial
Transcript 18	Above 50	Substantial
Transcript 19	Above 50	Substantial
Transcript 21	Above 50	Substantial
Transcript 23	Above 50	Substantial
Transcript 24	Above 50	Statistical
Transcript 9	Above 50	-
Transcript 10	Above 50	-
Transcript 20	Above 50	-
Transcript 22	Above 50	-



## Appendix 20

Interview Transcript No.	Gender	Patriarchy	Empowerment initiatives
Interview Transcript 2	Female	Still exists	Necessary
Interview Transcript 4	Male	Still exists	Necessary
Interview Transcript 6	Male	Still exists	Necessary
Interview Transcript 7	Female	Still exists	Necessary
Interview Transcript 11	Female	Still exists	Necessary
Interview Transcript 12	Female	Still exists	Necessary
Interview Transcript 13	Female	Still exists	Necessary
Interview Transcript 14	Female	Still exists	Necessary
Interview Transcript 15	Male	Still exists	Necessary
Interview Transcript 16	Female	Still exists	Necessary
Interview Transcript 17	Female	Still exists	Necessary
Interview Transcript 18	Female	Still exists	Necessary
Interview Transcript 21	Female	Still exists	Necessary
Interview Transcript 24	Male	Still exists	Necessary
Interview Transcript 1	Male	Still exists	Necessary
Interview Transcript 3	Male	Still exists	Necessary
Interview Transcript 5	Male	Still exists	Necessary
Interview Transcript 8	Male	Still exists	Necessary
Interview Transcript 9	Male	Still exists	Necessary
Interview Transcript 10	Male	Still exists	Necessary
Interview Transcript 19	Male	No comment	No comment
Interview Transcript 20	Male	No comment	No comment
Interview Transcript 22	Female	No comment	No comment
Interview Transcript 23	Male	No comment	No comment

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