

How Company Secretaries Shape Corporate Governance Free

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A Company Secretary (“CS”) is key managerial personnel, as defined in Section 2(51) of Companies Act, 2013^[1] (“CA 2013 / the Act”), playing a crucial role in the corporate governance of organizations by ensuring adherence to statutory and regulatory requirements. This position is integral to the efficient functioning of corporations, particularly in common law jurisdictions. A CS serves as a guardian of compliance, a facilitator of communication between the board of directors and other stakeholders, and a custodian of corporate records.

It is crucial for a CS or any governance professional advising an organization to assess whether specific practices and recommendations should be adopted or tailored in accordance with the organization’s governance framework. As a corporate governance expert, a CS must thoroughly understand and analyze these principles, giving careful consideration to how best to adapt and implement them to serve the organization’s needs and those of its stakeholders.

A company’s reputation is one of its most prized possessions in pursuit of sustained growth. It is essential that this asset is not undermined by breach of law or failure to follow best practices. CS as a compliance officer ensures that applicable legislations are not infringed, various regulations are adhered to, and the areas of potential risks are identified and dealt with. A CS plays a major role in encouraging and monitoring best practices. Role of a CS requires him to keep up to date with changes and new developments to understand their implications across a wide range of business activities. To remain a distinct professional, he fulfills his role and duties assiduously.

A CS in India is a qualified member of the Institute of Company Secretaries of India (“ICSI”). Every listed public company, unlisted public company and private company having a paid-up share capital of INR 10 crore or more must have a whole-time CS^[2]. On the other hand, currently there is no such specific requirement for appointment of a whole-time CS, which has been specifically carved out in the Limited Liability Partnership Act, 2008. Further, since CS is considered as a Key Managerial Personnel (“KMP”) by virtue of KMP definition read along with Section 203 of CA 2013, CS may also be considered as Officer in Default as defined under Section 2 (60) of CA 2013.

FUNCTIONS/DUTIES OF A CS:

Over a period of time, the role of CS has become very crucial from the governance perspective. While CS are required to perform duties as prescribed by ICSI and the Board of Directors as may be given from time to time. However, the Companies Act, 2013^[3] defines the functions/duties of a CS:

1. To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
2. To ensure that the company complies with the applicable secretarial standards^[4];
3. To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
4. To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
5. To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
6. To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
7. To assist the Board in the conduct of the affairs of the company;
8. To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
9. To discharge such other duties as have been specified under the Act or rules; and
10. Such other duties as may be assigned by the Board from time to time.

IMPORTANCE OF CS IN CORPORATE GOVERNANCE:

The original Cadbury Report, back in 1992, suggested that “the company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged. All directors should have access to

the advice and services of the company secretary and should recognize that the chairman is entitled to the strong support of the company secretary in ensuring the effective functioning of the board.” However, practices vary between countries. In many jurisdictions, a CS is formally a company officer with specific duties determined by company law. But, in some countries, the CS need not be a company employee, he or she may work for an outside agency or partnership, and in others the post can be held by a company. Following the 2006 Companies Act in the UK, private companies there can decide not to have a CS.

In the United States, a CS is typically known as the corporate secretary. The American Society of Corporate Secretaries & Governance Professionals suggests that their duties and responsibilities include organizing meetings of the board, board committees, and shareholders; maintaining the corporate records and stock/share holder records; and, liaising with the securities markets. Significantly, it further states that the CS should be “the primary liaison between the corporation’s directors and management.”

Within companies, practices also vary. In some, a CS is a full-time, highly influential company officer; in others, the role may be undertaken by the accounting or legal function; and, in yet others an external professional firm or company registrar agency is used to meet the minimum filing requirements. Research has shown^[5] that, predictably, the effectiveness of the CS’s work is much dependent on the core competencies and personal characteristics of the incumbent.

The demands and opportunities for better corporate governance, following the global financial crisis, reinforce the important contribution that the cs can make to the company and the board. Clearly, the company (corporate) secretary can play a significant part in taking many of the steps to better corporate governance just discussed: in advising the board on its structure, membership, and processes; in improving directors’ access to the information they need, in exploring relations between the company and its shareholders, regulators, auditors, and other stakeholders; and, in developing business ethics. Boards might consider the role currently played by their corporate secretary and whether it should be expanded.

Dr John Carver^[6], writing for a report says that, “it seems to me that corporate secretaries have more

opportunity to influence corporate governance in a modernizing direction than academics and lone voices.”

The opportunity is there for the CS to be responsible for ensuring sound corporate governance practice, to be the repository of governance knowledge and advice, and to be the source of the company’s conscience ensuring corporate integrity takes precedence over short term gain and personal benefit. But the company secretarial function is developing in many companies.

Moreover, the professional bodies that represent company secretaries around the world tend to qualify and regulate their members, oversee the practice of the profession, and ensure that standards are maintained. But not all these professional bodies recognize a responsibility to develop corporate governance at the societal level. In some jurisdictions the legal and accounting professions have taken the lead in advising corporate regulators, governments, and society on developments to corporate governance practices. But the corporate secretarial professional bodies could be, and in some countries are, recognized as the leading profession in the practice of corporate governance and lead governance reform.

In the modern era of globalization, corporate governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management of the company and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders of the company. Corporate governance rests with the vision and perception of the leadership and a leader need to adopt a vision for corporate governance.

Today’s business faces multitude of challenges, increasing business pressure on all the fronts, globalization, shorter product life cycles, cyber security, over capacity, complex rules and regulations by the government, currency volatility, and value migration etc. These challenges will bring about economic discontinuities that are unprecedented in scale and scope and would require highly innovative approaches. To overcome these challenges, a dynamic CS who has knowledge on application of law, tackling the challenges by virtue of diligence and experience becomes more crucial.

ORDERS PASSED BY VARIOUS AUTHORITIES ON THE ROLE OF CS:

This term CS may seem to be an old fashioned concept from the last century, but significant decisions of various courts demonstrates the important role played by a CS in ensuring good corporate governance.

1. United Bank of India v. Naresh Kumar and Others OA/463/2014

In this order, importance was given to the CS being an officer under Order 29, Rule 1 of the Code of Civil Procedure, 1908 wherein it has been clarified that CS by virtue of being an officer under Order 29, Rule 1 of the Code of Civil Procedure, 1908 has the authority to enter into pleadings on behalf of the Company in the absence of a formal authorization from the Board of the company more significantly to ensure compliance by or behalf of the company in which he has been appointed in that capacity.

2. NCLT in [Mayank Agarwal v. Technology Frontiers \(India\) Private Limited](#)

Similar to the aforesaid order, in this order, Hon’ble NCLT has emphasized on the importance of role of CS. The NCLT Bench observed that the CS is the secretary of the Company and not the Secretary of the shareholders. He is appointed under the Companies Act, 2013 pursuant to a board resolution in respect of which appointment is given effect by filing the prescribed form with the Registrar of Companies so as to ensure statutory compliances failing which he is the only Officer who receives the Show Cause notice from the Registrar of Companies so also the Company. He would be required to face the penal consequences in the event of failure of compliances. He is answerable to the violations of the compliance requirement.

CS are the watchdog of protecting corporate governance principles and ensuring the interest of all stakeholders and not a bloodhound. He has to ensure that the company complies with all regulations, and in case of any failure on the part of the board, he should approach the competent authority.

The NCLT Bench further stated that the era in which the CS occupied the position of a glorified clerk in Companies has expired consequent upon evolution of corporate governance and the various compliance requirement in a complex regime so as to protect the interest of the company as well as its various stakeholders. The bench also noted that the CS acted diligently by approaching the appropriate authority.

Conclusion:

From the aforesaid orders and the provisions, it is clear that the role of CS is not restricted to be only considered as a clerk, it has evolved over a period of time with dynamic changes in the corporate scenarios with the laws being updated on real time basis. The role of CS is at the pace of growth in Indian companies; with an increase in number of compliances the need and responsibilities of CS cannot be neglected. If a company does not comply with the advent procedures of Companies Act and other authoritative laws; it may run into a number of penalties to which only a CS counters. In real sense, various authorities have acknowledged the importance of the role of a CS as a 'watchdog' of governance in a company.

CS profession is moving into an era of specialization and there is a constant need to upskill by adapting to technology and exploring new avenues opening up for the profession.

Artificial intelligence and machine learning in business will change the role of the CS by making the role more interesting and challenging. Governance professionals will still need to have a solid understanding of financial, legal and IT issues including keeping themselves updated with all the changes that may impact the working of business, but will also require a greater range of soft skills i.e., good communication skills, time management, multi-tasking, give attention to details, diligent, meticulous, have an open mindset to continuous learning etc. CS also needs to inculcate the art of learning and re-learning so as to be able to withstand the dynamic changes expected in future. A new study on the future of the governance will increasingly face more complexity, increase in reporting requirement from stakeholders and demand for higher transparency and accountability.

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[1] <https://www.mca.gov.in/content/mca/global/en/actsrules/ebooks/acts.html?act=NTk2MQ==#fn22>

[2] Section 203 of CA 2013 read along with Rule 8 & Rule 8A of The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014,

[3] Section 205 of CA 2013 read along with Rule 10 of Companies (Appointment and Remuneration of Managerial Personnel), Rules 2014,

[4] "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved and amended by the Central Government from time to time

[5] Bob Tricker, Jessica Leung, and Kelly Lee, The Company Secretary in Hong Kong's Listed Companies, The Hong Kong Institute of Company Secretaries, 1995.

[6] Carver is a US-based corporate governance consultant, originator of the Policy Governance model and author of Corporate Boards that Create Value, 2002 and many other related works. Policy Governance is a registered service mark