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REPOSITIONING THE PROFESSION AS COMPETITIVE DIFFERENTIATOR

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It is interesting to notice how some minds seem almost to create themselves, springing up under every disadvantage and working their solitary but irresistible way through a thousand obstacles.

Washington Irving

HISTORICAL PERSPECTIVE

According to Webster's New World Dictionary, the term "Profession" has been described as an occupation requiring advanced education and involving intellectual skills, as medicine, law, theology, engineering, teaching etc. Another definition of "Profession" is that it is the body of persons in any such occupation. The Random House Dictionary defines "Profession" as a vocation requiring knowledge of some department of learning or science. As we all know, Professions such as Law, Medicine, Accountancy and Architecture have existed since the early times, and over the years newer occupations have graduated to attain professional status. It is interesting to know that different countries have different parameters for deciding whether a particular occupation is a profession or not. For example, in Germany, public relation experts and advertising agents are regarded as professionals. Similarly, in France, there are more than a 100 occupations, which are considered to be professions.

So also under the Belgium Tax Laws, Journalists are treated as professionals. In other words, the terms like 'profession' or 'professional' could have different connotations in different countries even while referring to the same occupations. However, there are certain professions like law, medicines, engineering, etc., which are recognised as such amongst various countries.

Which are those characteristics or attributes or features that distinguish a profession from an occupation? According to the Monopolies Commission in the United Kingdom, an occupation may be considered to be a profession if it has the following seven characteristics:

- (i) practitioners apply a specialized skill enabling them to offer a specialised service;
- (ii) the skill has been acquired by intellectual and practical training in a well-defined area of study;

- (iii) the service calls for a high degree of detachment and integrity on the part of the practitioner in exercising his personal judgment on behalf of his client;
- (iv) the service involves direct, personal and fiduciary relations with the client;
- (v) the practitioners collectively have a particular sense of responsibility for maintaining the competence and integrity of the occupation as a whole;
- (vi) the practitioners tend to or are required to avoid certain methods of attracting business; and
- (vii) the practitioners are organised in bodies which, with or without State intervention, are concerned to provide machinery for testing competence and regulating standards of competence and conduct.

The Corporate scene in India has witnessed several developments since independence of the country. Apart from the tremendous economic changes the country has undergone during the last five and half decades, during that period various professions have also experienced great changes.

The profession of Company Secretaries is perhaps the youngest of all the professions in the country. The history of this profession makes for some interesting reading and dates back to the early years after independence. It was during the debate on the Companies Bill, 1953 (before it became the famous Act of 1956) that the then Finance Minister of India, the Late Mr. C.D. Deshmukh, assured the Parliament of the Government's endeavour to develop a group of professionals to assist company managements in the compliance of various corporate laws. The profession of company secretaries called "chartered secretaries" in the United Kingdom was very well established there and it was not surprising that the Government thought of having a similar profession for our country. At that time, the secretarial work was handled by UK qualified Chartered Secretaries.

The then Secretary of the Government of India, Late Shri D.L. Muzumdar, ICS, can be rightfully acknowledged as the real architect of the Secretarial profession in the country. It was he who was largely responsible for laying the foundation for the emergence of the profession of Company Secretaries as an independent and viable profession for catering

to the needs of the corporate sector. Mr. Muzumdar took the initiative of organizing the very first National Conference of Company Secretaries and others connected with the field at Calcutta way back in October, 1956. It was no wonder that the first such conference was organized at Calcutta as it was at that time in the industrial forefront of the country.

In view of Late Mr. Muzumdar's vision and the missionary zeal displayed coupled with his commitment to the cause of the profession of company secretaries, strong steps were initiated for development of the profession. He had stated that "Just as the modern Government cannot be run without the secretariat, similarly no modern company management can be carried on without a company secretary, that is our conviction and I take it that there is a justification for striving to evolve for an all India Institution of Company Secretaries on sound lines." So those were the stirring words uttered at a time when hardly anybody could have even dreamt about the profession of company secretaries.

Unfortunately, the initial burst of enthusiasm displayed by the Government did not last long and fizzled out in no time. Interestingly, the Institute of Company Secretaries was registered as a Section 25 Company on 5th November, 1956, with its Registered Office and Head Quarters at Calcutta, but the Institute failed to take off and was lost in its formative years itself.

Thereafter, the Government of India itself took direct control of the situation by virtue of its resolution dated 14th April, 1960. In terms of the said resolution, the Government gave power to itself to set up an Advisory Board for formulating a proper plan for the conducting of the Company Secretarial Course in the country. This resulted in the creation of a course in Company Secretaryship called "Government Diploma in Company Secretaryship" i.e. "GDSCS". It was a three part diploma comprising of preliminary, intermediate and final examination. After passing the final examination and undergoing the requisite practical training, the qualified company secretaries were awarded the Government Diploma in Company Secretaryship. The examinations were conducted by the officials of the Company Law Department.

It was a few years later, that the realization dawned upon the Government that the growth and

development of the profession could be speeded up only if the same was entrusted to an autonomous organisation without being a part of the Government. This change in the thinking of the Government came about as a result of the efforts of several senior professionals in the field of Company Secretaryship and that resulted in the birth of the Institute of Company Secretaries of India on 4th October, 1968. The Institute was created as a Company limited by guarantee under Section 25 of the Companies Act, 1956, with its headquarters in New Delhi.

Since then the constant efforts of the Institute and its office bearers have been to develop the profession of Company Secretaries rapidly throughout the country. In that direction, the Institute opened the regional offices in all the four regions, namely, Eastern, Western, Southern and Northern. This was later followed by the opening of Chapters in various important cities of the country. Though the Institute was doing a commendable job and was active in creating awareness about the profession, there was no statutory recognition as such for the profession of company secretaries. The tireless efforts of the Institute bore fruit when the Companies Act, 1956 was amended so as to provide for the compulsory appointment of a company secretary by every company having a paid up capital of Rs.25 lakhs and above. This provision, which had a tremendous impact on corporate managements, became effective from 1st February, 1975. New vistas of employment opened up for the profession and that resulted in greater rush for the company secretaries course.

Simultaneously, the Institute and its office bearers were working ceaselessly towards the task of getting the Institute converted into a statutory body. After years of efforts, this dream was realized with the enactment of the Company Secretaries Act, 1980, which came into force with effect from 1st January, 1981.

Later, the Companies Act, 1956 was further amended whereby companies having a paid up capital of Rs. 50 lakhs or more, were required to appoint a full time company secretary. This limit has now recently been raised to Rs. 2 crores.

The profession of company secretaries in India has witnessed a continuous growth during the last three decades. From 760 associate members as on 31st October, 1971, the profession has grown

manifold and today the Institute has around 16,500 members on its rolls, including about 4,000 fellow members.

ROLE OF A COMPANY SECRETARY

Before one can discuss the role of a Company Secretary, it is pertinent to note that unlike in various other countries, the profession of Company Secretaries in India comprises of two branches namely, those who are in employment and those in practice. It is also pertinent to note that in no other country the profession of company secretaries has a practicing side of the profession. It is only recently that in the United Kingdom, where Chartered Secretaries have always been in employment, that the Institute of Chartered Secretaries and Administrators, London has started granting certificates of practice to enable Chartered Secretaries to service small companies. In the United States of America, the Corporate Secretaries, as the Company Secretaries are called in the U.S., are qualified attorneys. The attorneys may either opt for practice as lawyers in a Court of Law or may take up an appointment as the Secretary of a Corporation. However, unlike in India, there is no statutory body conducting examinations for Company Secretaryship in the US.

In Employment

The Company Secretary in employment has been primarily handling twin nature of duties, viz., statutory and non-statutory. The position of a Secretary, his powers and functions have been very well summarized in Halsbury's Laws of England (Fourth Edition Vol. III, Paras 546, 547).

"546. Nature of employment of secretary. - The Secretary, being an agent only, is in the same position as any other agent of a company. If his dealings are such that his company is not bound by them, he may himself be liable, either as principal or on the ground of breach of warranty of authority. Whereas it has formerly been held that he had no authority by virtue of his position to make representations to induce persons to contract with the company, his functions being ministerial only, his status has now greatly increased. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day-to-day running of the company's business, he signs contracts connected with the administrative side of a company's affairs; and all these matters are now

within his ostensible authority. But he is not, whilst merely performing the duties appropriate to his office, a party to the carrying on of the business of the company, so as to make him responsible without more for fraudulent trading.

He has no power, without the resolution of the directors, to call a meeting of the company or to commence proceedings on behalf of the company, nor can he alter the register of members; but any such act may be ratified by the directors.

A secretary may not make a secret profit in connection with the affairs of the company.

A secretary may be a clerk or employee so as to be entitled to preferential payment in a winding up.

547. Statutory duties of secretary. - Among the statutory duties which must be, can be or usually are, discharged by a secretary, are signing the annual return and certifying the documents annexed to it; delivering for registration returns of allotments, and contracts for the allotment of shares paid up otherwise than in cash; making the statutory declaration required before the commencement of business; giving notice to any proposed director that his liability is to be unlimited; issuing certificates of shares, debentures and debenture stock; delivering particulars of mortgages or charges for registration, when these duties have not already been performed by some other officer; allowing inspection of the debenture register to debenture holders; giving notice to the Registrar of an increase of share capital; allowing inspection of and sending copies of the register of members; allowing inspection of the register of directors and secretaries; and, in the case of winding-up by the court, assisting in making out the statement of the affairs of the company.”

Over the years, though the primary role of Company Secretary has not undergone much of a change, there has been an expansion in the functions and responsibilities expected to be handled by a Company Secretary. In the words of Mr. Man Mohan Singh, the then Labour & Employment Advisor, Government of India, “Company Secretary is a watchdog of the national economy, a custodian of public interest in large scale enterprises, a prime-mover of the organisations’ activities, a representative of employees and a crucial link between those who finally decide and those who actually perform.”

Interestingly, the actual role of a Company

Secretary varies from company to company. While a Company Secretary is expected to handle matters concerning the Board of Directors and General Meetings, the various other functions handled by him depend upon the type and size of the company and the nature of its management. In some companies, a Company Secretary is also in charge of General Administration, while in others he may be in charge of Finance and still in some others it could be Legal or Human Resources Development. The very fact that Company Secretaries in different companies have been handling multiple and diverse functions has also resulted in the lack of a cohesive identity for the profession. As a result, for some companies, a Company Secretary is a mere professional who is qualified to handle only company law related matters, while in some companies Company Secretaries are members of the Board and are also involved in strategic planning and in business development of the company. However, the reality is that a large number of members of the profession, besides handling company law matters, also handle multiple professional tasks assigned to them by their respective company managements.

In Practice

The Practising side of the profession is of relatively recent origin. Practising Company Secretaries were granted statutory recognition vide the Company Secretaries Act, 1980, which became effective from 1st January, 1981. In other words, the Practising side of the profession is little over two decades old. In the initial years, after the statutory recognition was granted, there were no exclusive areas of practice reserved under the Companies Act, and as such a Practising Company Secretary had to carve out his own niche. Being qualified and trained in various corporate and economic laws, practicing company secretaries were able to make a mark on the corporate world. At the same time, it needs to be mentioned that a profession needs an exclusive area of practice to enable it to flourish. This is not something unique or unusual, in fact, every profession be it medicine, law or accountancy, each of these professions have thrived due to certain areas being strictly reserved for the members of that particular profession.

There are several grey areas in the corporate sector which can do with the expertise available at the disposal of practicing company secretaries. Therefore, the Institute continued its efforts to

convince the Government of the advantages that would accrue if certain areas were earmarked exclusively for the profession of practising company secretaries. It was only in 1988 that for the first time a small area was carved out for practising company secretaries. The signing of the Annual Return of a listed company was required to be done by a Company Secretary in practice. Though that was a welcome gesture on the part of the Government, but a company secretary in practice was capable of doing much more. Hence, the efforts of the Institute continued to impress upon the Government as also to convince the corporate sector about the utility and advantages of secretarial audit.

The need for such an audit was apparent as according to the Government's own records, there was default by almost half of the 5,50,000 companies in the country. So it was apparent that something was seriously amiss with a very large number of companies. Consequently, as a first step in that direction, the Government introduced the concept of Compliance Certificate for companies enjoying certain size of paid up capital. Initially, it was decided to make this requirement of compliance certificate applicable to only such companies whose paid up capital was Rs.10.00 lacs and above but less than 50.00 lacs and were not required to appoint a company secretary under section 383A of the Companies Act, 1956. Recently, the capital criteria for employment of a whole time secretary by a company under section 383A was revised. As a result, with effect from 11th June, 2002, the Rs.50.00 lacs paid up capital limit has been raised to Rs. 200.00 lacs. Therefore, now companies falling in the range of paid up capital of Rs.10.00 lacs or above but less than Rs. 200.00 lacs are required to obtain a Compliance Certificate from a Practising Company Secretary. The Compliance Certificate has to cover the prescribed items mentioned in the rules stipulated by the Government in this regard and this also includes various registers and records required to be maintained by such a company under the Companies Act.

CONFUSED IDENTITY

The profession of Company Secretaries, unlike some other professions like medicine or architecture, has suffered from confused identity. While one may not call it as identity crisis, there cannot be much doubt about the fact that 'company secretary' means different things to different persons. In fact, in the

early years of the profession there used to be much greater confusion, not in the least caused by the description 'company secretary'. The profession was not able to create a very distinct identity for itself, this was particularly true in the initial years of the profession, when there used to be great deal of confusion in the minds of persons in various fields about the exact role or function of a Company Secretary.

As mentioned earlier, one of the major reasons for this confusion has been the designation "Company Secretary". The expression "Company Secretary" implies or creates a presumption that a concerned professional is a Secretary of a Company, leaving no room for a company secretary in practice. At the same time, the law being silent about the role of a Company Secretary in employment, his exact role or the functions performed by him during the course of his employment vary from company to company. Except for the fact that all Company Secretaries in employment are concerned or involved with the holding of Board Meetings and General Meetings and the documentation therewith, including drafting of resolutions and minutes, there is no other distinct function or activity of a Company Secretary. It is left to the respective companies and the competence and other qualifications of the company secretary for deciding the functions to be handled by him. The confusion about identity has also arisen due to the fact that other leading professions, be they law or medicine, are mainly practice based and unlike the profession of Company Secretaries, there is no statutory requirement of employment of professionals in their respective fields.

Till recently, even company secretaries in practice were under legal obligation to address themselves 'Company Secretary', thereby further adding to the already prevailing confusion. Hence, a practicing company secretary would be invariably asked the question as to which company he was working for or was associated with. For a lay person it is difficult to understand as to why a professional is called a company secretary when he is not working or attached to any particular company. However, recently the Council of the Institute has opined that the use of designation "Practising Company Secretary", "Company Secretary in Practice" or "Company Secretary in Whole-time Practice" by members in Practice would not offend Section 7 of the Company Secretaries Act, 1980. Hopefully, this change in the nomenclature should help in clearing

some confusion if not all. As no substantial areas of practice have been earmarked for practising Company Secretaries, even the practicing side of the profession has not been able to acquire a distinct identity. There is no doubt that this is a transitory phase and in the years to come, with greater development of the profession, the practicing side of the profession will also acquire a separate and distinct identity of its own.

PRESENT STATUS

Presently, so far as the law is concerned, it provides for the appointment of a Company Secretary by every company having a paid up share capital of Rs.200 lakhs and above. So far as practising Company Secretaries are concerned, as stated earlier, the certification of Annual Returns of listed companies and Compliance Certificate by the specified companies have been earmarked as exclusive areas for them.

Company Secretaries in employment invariably handle multiple functions in the course of their normal duties. There are several examples of Company Secretaries excelling in their fields and have been elevated to the board as Whole time directors / Executive directors. In a large number of cases, the Company Secretaries in employment also act as General Counsels / Legal Counsels, to their management and advise the company and the directors on various legal issues concerning the operations of that company.

Similarly, many practising Company Secretaries perform the role of Corporate Advisors in as much as they assist entrepreneurs, in setting up companies, putting up projects and complying with the applicable laws. They also provide guidance and support to existing companies to enable them to comply with the various laws. In several cases, practicing company secretaries also help in business development and strategic planning, thereby rendering yeoman services to the small and medium sized companies in the country.

WINDS OF CHANGE

After Independence, for over four decades the country had followed the socialistic pattern of economic development resulting in the near bankruptcy of the country. The Indian economy was in the throes of a serious crisis as the country was on the verge of defaulting in its commitment to international financial institutions thereby forcing

the Indian authorities to initiate the liberalization of the Indian Economy. As a result a new Economic Policy was announced in July, 1991, a new era was ushered on the economic horizon of the Indian economy with the simplification of some of the most important laws affecting the business world viz. MRTP, IDRA, FERA, etc. The virtual abolition of the licensing system and doing away with the monopoly laws directly affected the functioning of Company Secretaries, particularly those in employment.

It is interesting to note that prior to the liberalization of the economy and simplification of various laws, a major portion of a Company Secretary's time was spent on making applications to different Government authorities for obtaining licenses, quotas, permissions and approvals. However, with the dilution of legal provisions and virtual elimination of licensing processes, suddenly, the scenario underwent a dramatic change, making the system of working redundant. This had a direct impact on the functioning of many a company secretary as he found that there was a substantial change in his work profile. Until then the company secretary was more involved with procedural and co-ordination matters with various Government departments, which was now no longer required.

Another important systemic change that took place and directly impacted the functioning of a company secretary was the advent of Registrars and Transfer Agents, popularly called R&T agents. Suddenly, the secretarial department of a listed company became small with reduced work load as companies started appointing R&T agents who were given the responsibility of handling share transfer work. Even in the case of public issues or rights issues, R&T agents were asked to perform the job, the number of companies doing this work in house went down drastically.

The next phase was much more dramatic in nature and wide in its reach and that was the dematerialisation of shares. With the enactment of Depositories Act, 1996, a new era dawned on the functioning of companies so far as it related to shares and other securities. With the virtual elimination of the physical share certificates, at least in the case of listed companies, one major job that used to consume a substantial part of the time of a company secretary in employment was eliminated. However, the demat system has its own demands which a company secretary has to take cognizance of.

At the same time there has been a change in disclosure norms as listed companies have to declare quarterly results duly approved by the board. With the coming of audit committees, the responsibilities of a company secretary has also increased manifold. In addition, listed companies would have some more committees as well and these all would eventually be the baby of the secretary of that company.

The opening up of the economy has also resulted in the development of a new breed of entrepreneurs venturing in setting up various projects, particularly service oriented. This has resulted in the demand for the services of company secretaries in practice, who have been acting as Corporate Advisors to such ventures.

EMERGING AREAS

Impact of WTO

The onset of the World Trade Organisation (WTO) has already started impacting the international trade relations between various countries. Following are the various agreements concerning the WTO which are going to impact all the countries:

- (1) Agreement establishing the WTO;
- (2) General Agreement on tariffs and trade 1994;
- (3) Uruguay round protocol GATT : 1944;
- (4) Agreement on agriculture;
- (5) Agreement on sanitary and phytosanitary measures;
- (6) Decision on measures concerning the possible negative effects of the reform program on least-developed and net food-importing developing countries;
- (7) Agreement on Textiles and clothing;
- (8) Agreement on Technical Barriers to trade;
- (9) Agreement on Trade-Related Investment measures;
- (10) Agreement on implementation of article VI (Anti-dumping);
- (11) Agreement on implementation of article VII (Customs Valuation);
- (12) Agreement on Pre-shipment Inspection;
- (13) Agreement on Rules of Origin;
- (14) Agreement on Import Licensing Procedures;
- (15) Agreement on subsidies and countervailing measures;
- (16) Agreement on safeguards;
- (17) General Agreement on Trade in services
- (18) Agreement on Trade-Related Aspects of Intellectual Property Rights, including trade in counterfeit goods.

However, so far as the profession of company secretaries is concerned as such it is not directly concerned with any of the agreements, but still it needs to take cognizance of the General Agreement on Trade in Services.

General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services can be broadly divided into three parts. The first part of the agreement contains basic obligations which apply to all member countries. The second part is concerned with national schedules of commitments containing specific additional national commitments which will be subject to a continuing process of liberalisation. Finally, the third part of the agreement comprises of a number of annexures that address the special situations of individual service sectors.

The general obligations apply to all areas of service notably tourism, banking, construction projects, consultancy, and they require MFN treatment. There are a limited number of general principles, similar to parts of the GATT, relating to transparency, domestic regulation, recognition of licenses, economic integration and dispute settlement mechanism. While unconditional MFN treatment is a general obligation if one country considers another's offer to be inadequate. National treatment and market provisions will be applied only to sectors and modes of supply listed in each country's schedule. Reservations may be entered allowing for the denial for certain types of national treatment or market access.

The GATS is a significant step towards subjecting international trade in the services to multilateral rules. At this stage, as is evident from the contents of the agreement, over all the GATS does not impose a tremendous amount of obligations on developing countries.

Trade in Services and the Movement of "Natural Persons"

The signing of the Final Document at Marrakesh and the subsequent negotiations in Geneva in 1995 led to the Agreement on Trade in Services. The deal, in nutshell, opens most of the developing countries'

financial markets to foreign banks, securities firms, insurance and telecommunication companies. It contains provision of asset management and other financial services wholly or partially foreign owned companies. It is pertinent to note that the developing countries failed to achieve much progress about the movement of natural service providers (persons) where they have gained a considerable edge in recent years. In the coming years, the developing countries will have to fight during the course of WTO negotiations and try and obtain concessions from developed countries.

The international development during the last few years clearly indicates that the economies of most of the developed countries are transforming from manufacturing to service-based economies. There has been a tremendous growth in the economies of these countries as well as the world trade of services. Today the total membership of WTO stands at 142 and the membership of several other countries is in the process. The services sector is going to play a predominant role in the coming years and all the member countries are expected to have the final agreements in place before 1st January, 2005. Services include services like legal, financial and accountancy.

The United States of America has submitted a proposal to WTO in respect of legal services. The highlights of that proposal are as under:

Importance of Legal Services

With the acceleration of world economic integration, law firms have become increasingly involved in advising clients on international transactions covering a variety of business matters, including mergers and acquisitions with foreign companies and contractual arrangements for franchises, dealerships, and product sales. Increasingly businesses are requesting advice from law firms on transactions involving multiple jurisdictions. In many respects, lawyers and law firms pave the way for international trade and investment and are regarded as part of the infrastructure of commerce.

Purpose

The purpose of this proposal is to make it easier for lawyers and law firms to provide services to clients involved in international transactions, enabling those clients to conduct business successfully and in

compliance with applicable laws and regulations, thereby contributing to economic and social progress in various countries.

Lawyers often encounter difficulties becoming licensed in other countries, or in providing advice to clients in foreign countries. A basic problem stems from the national character of each country's legal system and the need to demonstrate knowledge and competence in the law of that jurisdiction in order to become licensed there. In some cases, licensing is limited to citizens of the country.

Sector Coverage

The WTO services classification list (W/120) does not specifically define legal services. The United States suggests that the classification should be understood to include the provision of legal advice or legal representation in such capacities as counselling in business transactions, participation in the governance of business organizations, mediation, arbitration and similar non-judicial dispute resolution services, public advocacy, and lobbying.

Proposal

An important goal for negotiations on legal services should be for WTO Members to examine liberalization opportunities with regard to market access and national treatment barriers as those terms are understood in the GATS. The specific focus of such liberalization would be most beneficial in the context of mode 3 (commercial presence, including citizenship and residency requirements for licensing, scope of practice, and association of foreign-qualified lawyers with local lawyers and association of foreign-partner law firms with local law firms). Discussions should include other relevant modes of supply, including mode 4 (movement of personnel).

Proposed Reference Paper

A reference paper could be drafted to address problems faced by lawyers and law firms in serving clients internationally. The United States looks forward to working with all Members to develop an appropriate reference paper, elaborating on these matters and expects to present a proposed text in the near future.

The US is keen that its proposal relating to legal services finds acceptance amongst the members of WTO. It believes that the member countries should agree for free flow of lawyers and law firms to enable them to render legal advice and other legal services to their clients in various countries.

It is evident that, since the advent of the profession of Company Secretaries, there has been a virtual metamorphosis in the role of Company Secretaries. From performing purely ministerial duties a century ago, Company Secretaries are now higher qualified professionals with multi disciplinary skills and are capable of handling multifarious functions. In the coming years, particularly after the advent of WTO regime i.e. after 1st June, 2005, the international trade transactions between countries relating to services will be governed by the WTO regulations. Hence, it would be imperative for every company secretary, irrespective of the fact whether he is in employment or practice, he should be not just familiar but well versed in the WTO related laws and regulations. Every Company Secretary will have to make himself aware of the provisions of various WTO agreements entered into by the countries from time to time. The manufacturing sector as well as the trading and services sectors will be governed by the WTO regulations.

The advent of the WTO regime implies a new world business order. There is no doubt that several WTO related disputes are going to arise between various countries on issues governed by WTO. This will also offer a very good area of practice as it will include issues relating to GATT, rules, and origin, trade related agreements, GATS, TRIPS, SPS, anti-dumping and anti-subsiding laws, etc.

Securities laws

The most important change that has taken place in the regulation of the capital markets in India during the 1990's has been the growing role of the statutory regulator i.e. Securities Exchange Board of India (SEBI). It is evident that since the passing of SEBI Act, 1992, more and more powers for investigation and enforcement are being given to SEBI. At one time SEBI used to be referred to as a toothless tiger, but that is all in the past. Today, SEBI is the most powerful regulator in the country charged with the responsibility of orderly functioning of the capital market in the country and at the same time, protecting the interests of investors throughout the country.

While there can be no two opinions about the growing importance of SEBI, but still as the recent experience of SEBI during episodes of market misconduct has revealed, it suffers from many limitations in the legal provisions of the SEBI Act. In addition, growing importance of the securities

markets in the economy has placed new demands upon SEBI in terms of organisational structure and institutional capacity.

In response to these difficulties, and given the urgency of rapidly addressing these problems so as to obtain a vibrant capital market, the Government of India issued an Ordinance on 28th October, 2002. Some of the major highlights of this ordinance are:

1. The Ordinance will result in organisational strengthening of SEBI. The SEBI Board will be expanded by raising the number of board members (including the chairman) from six to nine. At least three of them would be whole-time members, not counting the Chairman devoting themselves fully to the policies and problems at SEBI.
2. Under the new provisions, all sums realised by SEBI by way of penalties or fines would go into the Consolidated Fund of India.
3. The major thrust of the Ordinance lies in strengthening the mechanisms of investigation and enforcement. As a consequence, SEBI will be better equipped in investigating and enforcing against market malpractice.
4. The judicial mechanisms surrounding this enforcement process will also be strengthened.
5. The Ordinance involves modifying the SEBI Act to better clarify and define offences such as insider trading, fraudulent and manipulative trade practices, and market manipulation.
6. The Securities Appellate Tribunal (SAT) would be made a three member Tribunal. The Presiding Officer of SAT would be a serving or retired judge of the Supreme Court or serving or retired Chief Justice of a High Court, to be appointed in consultation with the Chief Justice of the Supreme Court. It is proposed to empower SAT and courts to compound offences. In addition, appeals against SAT orders would lie before the Supreme Court on points of law.
7. The penal provisions have been strengthened by enhancing the limit of maximum amount that can be imposed as penalty to Rs.25 Crores.

As a result, SEBI is expected to be quicker in its investigation proceedings and prosecution of the defaulting parties. Moreover, there is no doubt that in the coming years, SEBI will be much more stricter in its dealings with companies / exchanges as well as various market intermediaries.

A direct fall out of the vigorous implementation of regulations by SEBI will result in fresh opportunities for practising Company Secretaries as competent professionals would be required for making effective representations on behalf of the persons charged by SEBI. Therefore, it is imperative that Company Secretaries enhance their knowledge and develop expertise in securities laws and SEBI laws and acquire skills for making effective representations.

Insurance

Insurance is the sunrise industry, which has just been liberalised by the Government. As noted earlier, insurance is one of the most important areas of service which the developed countries are keen to promote through the WTO route. Presently, several companies have ventured in the field of insurance by entering into joint ventures with leading foreign companies and this is just the beginning. The coming years are going to witness a tremendous growth in this field and in the process opening up new vistas for professionals. Areas like risk management, re-insurance, insurance planning etc., will offer opportunities to Company Secretaries in practice. However, this presupposes the existence of requisite knowledge and skill among practising Company Secretaries. Hence, they will have to acquire the knowledge of insurance related laws as also the technical and practical aspects of insurance along with the skills necessary to do justice in this field. While this may not be a field for everybody's liking, there is no doubt that some of the enterprising company secretaries will be able to take advantage of the opportunities being thrown up in the insurance field.

Intellectual Property Rights and Cyber Laws

Recent years have witnessed dramatic changes in the economic environment of the world, particularly in the context of the growing significance of WTO and the world becoming a global village. Economies are experiencing a total change with increasing emphasis on intangible assets as compared to tangible assets. Intellectual Property

Rights are becoming the focus of each and every country that intends to move with the times. Although countries will continue to have political boundaries, businesswise they are becoming one large market.

However, at the same time the countries have to protect their own interest and ensure that there are laws in place to that effect. The world has entered the knowledge era where intangibles are going to outweigh the tangibles by many times over. As the intangibles will play an increasingly important role in the development of economies, countries will have to enact proper legislations to take care of patents, trade marks, copyrights, designs, etc. After all, issues relating to intellectual property rights are becoming matters of great importance with wide financial and economic implications for companies as well as countries. It is evident that in the WTO regime, IPR related issues are going to be in the forefront and every country will be affected by this.

In the words of Dr. Mashelkar, (Director General, Council of Scientific and Industrial Research) "TWENTY first century will be the century of knowledge, indeed the century of mind. Innovation is the key for the production as well as processing of knowledge. A nation's ability to convert knowledge into wealth and social good through the process of innovation will determine its future. In this context, issues of generation, valuation, protection and exploitation of intellectual property (IP) are going to become critically important all around the world. Exponential growth of scientific knowledge, increasing demands for new forms of intellectual property protection as well as access of IP related information, increasing dominance of the new knowledge economy over the old 'brick and mortar' economy, complexities linked to IP in traditional knowledge, community knowledge and animate objects, will pose a challenge in setting the new 21st century IP agenda".

Similarly, with the advent of Internet, cyber laws will play a decisive role in net related disputes. E-commerce, which is yet to take roots in India, will in a matter of years become a normal mode of transacting business. In due course, even trade related payments, as also banking operations through the net would become a routine affair. In such a scenario, there are bound to be disputes which would require the services of qualified professionals like practising Company Secretaries. Therefore, it is imperative for company secretaries to develop

expertise in these laws and acquire practical exposure in the field so to enable them to offer their services in the area of IPR and cyber laws.

Transnational mergers and amalgamation

With the globalisation of trade and with the world becoming a global village, there is bound to be a greater impetus to mergers and acquisitions of companies across the continents. Businesses will change hands much faster in the coming years than it has been during the last several decades. This change would not be restricted to one or two countries but would span across all the major countries. More and more companies in one country would acquire companies in another country or even at times may acquire more than one company at the same time though located in different countries. To handle such transactions would require knowledge of international laws and country specific laws. In addition, it would also demand a great degree of tact and skill in handling international business transactions. Company Secretaries by virtue of their qualifications and background should be able to equip themselves for handling such transnational transactions involving mergers / amalgamation of companies located in different countries.

Alternative Dispute Resolution (ADR)

The clogging of the judicial system in India is a well known and well documented fact. Hence, there is an imperative need to resort to alternative dispute resolution system comprising of conciliation, mediation, arbitration, etc. While certain bodies like the stock exchanges have a well established machinery for conducting arbitration proceedings, still the country has to go a long way before the ADR becomes a way of life. This is a field where company secretaries have great opportunity to use their knowledge and skills about the laws and procedure. Of course, they would need to be trained in the field of ADR to successfully represent their clients, but the field offers tremendous opportunities to company secretaries.

Corporate Governance

The recent collapse of leading companies like Enron, Worldcom, etc, has brought Corporate Governance into sharp focus. Greater accountability and more transparency in the operation of a company are being demanded by investors in various countries. Even in India after the Birla Committee Report, SEBI has made Corporate Governance a very important

issue for the companies. In terms of the listing agreement as also the Companies Act, companies in India are required to practice Corporate Governance of high order.

Accountability to stakeholders is a continuing topic of divergent views in corporate governance debates. In line with the developing trends towards an integrated model of governance, the government appointed Task Force has recommended greater emphasis on corporate social responsiveness and ethical business practices. The Task Force believes that it might turn out to be not only the first small step for better governance but also the promise of a more transparent and internationally respected Corporate India of the future. A Company Secretary by virtue of his position and by the nature of his job is directly involved in assisting the board in practising Corporate Governance norms as expected of any reputed company.

Company Secretaries will have to be prepared to accept the challenge and play an effective role in providing proper guidance and support to the board in improving accountability standards and complying with all the disclosure requirements. Company Secretaries will also have to work to ensure ethical functioning of the company with which they are associated. It is necessary that the statutory regulator i.e. SEBI also recognizes the importance of the role of a company secretary as being capable of ensuring practice of corporate governance norms by the company.

HOW SHOULD THE PROFESSION FACE THE COMPETITION

The winds of liberalisation and globalisation have been sweeping across the corridors of various professions, be they law, medicine, accountancy or legal. With the exponential growth in the availability of data and information, professionals have to constantly acquire new skills and enhance their knowledge to meet newer challenges.

As mentioned at the beginning of this paper, the profession of company secretaries has been facing one of the major challenges so far as its identity is concerned. Even otherwise also to stand out from the clutter it is necessary to enjoy a distinct identity to enable it to be different from the crowd. Whether it is a product or a service, to be successful in the market place it is necessary for it to win the support of the users. In fact, in the case of company

secretaries it is not just they should have a distinct identity, but the identity should be such that it brings to the fore the special qualifications and skills enjoyed by a company secretary. This will not be possible unless the Institute and the members jointly work in that direction. It is imperative for each and every company secretary to realize that he or she is the ambassador of the profession and their interaction with others automatically means interaction of the profession. What ever impression a particular company secretary conveys is taken to be that of the profession. Each member of the profession has to strive for excellence.

There is no doubt there will always be several obstacles on the way to excellence. But then what are obstacles? Obstacles are those frightful things you see when you take your eyes off the goal (Hannah More). Like the legendary Arjuna, company secretaries have to be goal centric and totally focused in their approach. As Frank A. Clark said, "If you find a path with no obstacles, it probably doesn't lead anywhere". In a way obstacles are as natural a part of the process of achieving excellence as several other factors. Mankind is replete with instances of ordeals and obstacles overcome by determined persons in pursuit of their goal. Braving obstacles and hardships is nobler than retreat to tranquility. One should remember that the butterfly that hovers round the lamp until it dies is more admirable than the mole that lives in the dark tunnel (Kahlil Gibran).

Hence, company secretaries will have to be focused in their approach with dedication and determination as their foundation. Company Secretaries have to stand for quality and not mediocrity. It is well to remember that the world has no time for mediocre people and certainly not for those who claim to be professionals. The moment it is claimed that company secretaries are professionals, which they are indeed, they cannot expect any leeway of concession from the society, otherwise they will be like many others in the crowd.

The world has already entered the knowledge era, the quality and quantity of knowledge coupled with the requisite skills is going to be the distinguishing feature between different category of professionals. The basic qualification and the basic skill would only be the starting point for a professional like company secretary, the real challenge is in keeping abreast with the changes that are virtually taking place at the speed of light. There

is a bombardment of information from all sides and with change being a constant factor, acquiring adequate skills to meet the newer challenges that keep on coming up will be something that every company secretary will have to reckon with. It is the response to such challenges that would determine the success or otherwise of the profession at large.

After all it is not few exceptions who make the profession, but it is the average member who is the bullwark of any profession. Therefore, it is imperative for the Institute to play the role of a leader in its widest sense so as to lead the profession and it is the bounden duty of every company secretary to ensure that apart from basic qualifications, he also acquires necessary skills required to meet the challenges and that would mean greater stress and focus on long term goals based on certain fundamentally sound principles.

Apart from knowledge and skills, ethical conduct is going to be a very important differentiator. It would do well for every company secretary to remember the collapse of Enron and other leading corporations and realize the value of ethical conduct. In the coming years, there is bound to be much greater stress on ethics in business and professional conduct. One may add that ethical conduct also makes excellent business or should one say professional sense. In the long run the ethical conduct stands out in the market place and people are willing to pay some extra price for that and this is no where as true as in the case of a profession.

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