

Company Secretary - A Preferred Professional*

Introduction

Company Secretary (CS) professionals are recognized as Key Managerial Personnel (KMP) under the Companies Act, 2013, wherein they are entrusted with a senior-level position in the management and are an intrinsic part of the Board of corporate entity. Since past five decades, Professionals have witnessed a substantial and spectacular growth and development made by Institute of Company Secretaries of India (ICSI) especially in the areas of recognitions obtained from various Agencies/ Government for the benefit of its members. The ICSI provides top-quality education to the students of Company Secretaryship (CS) Course and has set best quality standards at each level. CS as hardcore professionals have developed core competence in compliances and corporate governance. They are specialized professionals in the matter of compliance enjoined under various statutes and rules, regulations, bye-laws, guidelines made thereunder.

The dynamics of an emerging eco-system, the complexities of modern business, the expectation of the multifarious stakeholders that a Corporate Entity should discharge its societal obligations responsibility, the collapses of large Corporations in jurisdictions on account of governance failures have all contributed to the Company Secretary playing a structural role in the echelons of corporate hierarchy. That the fraternity has acquitted itself well in such an environment bears testimony to its resilience and its constant endeavor towards being a torch - bearer to the corporate governance movement. As the opportunities are getting increased on account of changed economic, commercial, legal and digitalised environment, among various professions, CS is a preferred Professional.

Recognition of Company Secretary Profession-A fascinating journey

In 1887, Lord Justice Esher made the remarks on the duties of the Company Secretary while writing out his judgment in The Court of Appeal in *Barnett Hoares & Co. v South London Tramways Co. (18 QBD 1887)* that, company secretaries could not be assumed to have authority for anything. A Secretary is a mere servant, his position is that he is to do what he is told.

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Views expressed in the Article may not express the views of the Institute.

It took 90 years for the Judiciary to take note of the emergence of the Company Secretary in the Corporate World. The remarks made by the celebrated Lord Denning, M.R in *Panorama Developments (Gilford) Ltd v. Fidelis Furnishing Fabrics Limited (1971) (3 All ER 16) (CA)* observed as under:

“..... times have changed. A Company Secretary is a much more important person nowadays than he was in 1887. He is an Officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Act but also by the role which he plays in the day to day businesses of companies. He is no longer a mere clerk. 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. So much so that he may be regarded as held out as having authority to do such things on behalf of the company.....”.

The above acknowledgement in the status of the company secretary coming as it did from no less a person of the stature of His Lordship was most definitely a defining moment announcing his arrival as an important cog in the wheel where a corporation was concerned. The growth in his stature was in keeping with the greater and wider acceptance of the corporate form of business, the emergence of corporate laws, bringing in its wake, the requirements of a host of compliances.

The Corporate Governance movement which was in its embryotic stages of growth around that point in time was also given a major fillip in the UK through the recommendations of the Report of the Committee headed by Sir. Adrain Cadbury. The UK Companies Act also made it necessary for every company to appoint a Company Secretary. This was a shot in the arm for the profession –the grant of its legitimate legal status.

The Companies Act-Growth Saga for Profession

- Section 383A of the Companies Act, 1956 was introduced by the Companies (Amendment) Act, 1974 with effect from 1.2.1975 to provide, inter alia, that companies having the prescribed threshold capital shall appoint a whole time Secretary and in cases where the Board of a company comprised of only two directors, neither of them could be the Secretary. Further sub-section (1A) imposed a penalty on the company and its officers in default in case of failure which was of a continuing nature to comply with the above requirements.
- Another major development which took place after the insert of Section 383A was, the requirement to provide for the issue of a Secretarial Compliance Certificate to be issued by a Company Secretary in Practice in respect of those companies which had a paid-up share capital exceeding rupees ten lacs but not in excess of rupees fifty lacs which did not have a Secretary on its rolls.

The Constitution of the Institute of Company Secretaries of India as a statutory body under an Act of Parliament was another positive development which provided a further impetus to the growth of the profession. It is more than five decades, when on 4th October, 1968 the profession of Company Secretaries (CS) was born, being the date on which Institute of Company Secretaries of India (ICSI) was incorporated.

- Section 2(45) was introduced by the Companies (Amendment) Act, 1988 effective from 1.12.1988 to define a Secretary as a Company Secretary within the meaning of section 2(1)(c) of The Company Secretaries Act, 1980. The duties of the Secretary, apart from ministerial or administrative duties, were left open-ended to cover such areas as are identified under the Companies Act, 1956.
- The Companies Act, 2013 largely captures the nuances of the changes that were recommended by the Dr. J. J. Irani Expert Committee on Company Law. The new Act recognizes the company Secretary as a Key Managerial Personnel (KMP) under Section 2(51). The Company secretary stands shoulder to shoulder to other senior personnel in the corporate echelons. For the first time in the statute, the functions and responsibilities of the Company Secretary have been identified under Section 205 of the Act.
- The statutory recognition accorded to the Secretarial standards-1 and 2 under the Act helped standardize Board practices in the matter of holding meetings of the Board and general meetings of members, set up new benchmarks for furthering the cause of corporate governance and made the presence of the company secretary in the Board room incredible.

Positive Game Changer Committees for Profession

SEBI set up under the Chairmanship of the Kumar Mangalam Birla, a Committee to promote and raise the standards of corporate governance. This marked the first and comprehensive endeavor to evolve a Code of Corporate Governance in Indian Companies as also in the growing capital markets. The recommendations of the Committee culminated in the inclusion of Clause 49 in the Listing agreement which listed companies had to enter into, in the year 2000. Clause 49, inter alia, provided for an optimum composition of the Board comprising of both independent and non-independent directors. That apart, the company secretary's role was recognized in the form of his acceptance as the Compliance Officer.

The requirements relating to Corporate Governance were spruced up and elevated further in the wake of recommendations contained in the Naresh Chandra Committee which revisited issues such as auditors' independence, conflicts of interest, and enhanced financial disclosures—all of which were areas in which the company secretary had a key and proactive role to play. The Report embraced substantially the issues addressed in the Sarbanes-Oxley Bill (Popularly referred to as SOX) which was the immediate fallout of Enron bankruptcy and other colossal corporate failures.

The Narayana Murthy Committee submitted its Report in February 2003 and the main thrust in the Report were in the areas of strengthening the areas of responsibility of the Audit Committee, improving the quality of financial disclosures, including disclosures on related party transactions, etc. Each time an endeavor was initiated to up the ante in so far as corporate governance was concerned, the company Secretary's position and role became more and more significant since he had to be the prime mover and carry forward the agenda of change.

SEBI regulations-Recognitions to Profession

SEBI as the market regulator has acted as the bulwark against corporate indiscretions and misfeasance for a long and has been the torchbearer crusading the cause of corporate governance. The Regulations recognize the company Secretary as the Compliance Officer. He is also now considered as part of the Senior Management and is responsible inter alia, for timely and truthfully disseminating information on material issues concerning the company, apart from being the guide to the Board.

The Secretarial Audit Report as also the Certificate on compliance and on Corporate Governance issued by the Company Secretary in Practice have provided to the Board, the much needed assurance as regards statutory compliances by companies. The Secretary also has to ensure that there is no abusive use of price-sensitive information and has lately been taken to task by the Judiciary for acts of indiscretion.

MULTI-SKILLED AND MULTIFACETED ROLE OF A CS PROFESSIONAL



A Company Secretary can engage himself in the areas such as:

- i) **CS as a Governance Professional:** The Company Secretary ensures the Company complies with company law, maintains specific statutory registers and makes the necessary filings with the Registrar of Companies, such as annual returns, financial statements and certain forms concerning changes to share capital. But now, the position and status of a Company Secretary are enhanced to that of a Governance Professional
- ii) **CS as a GST Professional:** A Company Secretary can provide guidance and advisory services to business entities to interpret GST laws. He can assist in discharging various compliances under GST while undertaking activities like tax planning, maintaining GST records, and drafting legal documents like replying to show cause notices.
- iii) **CS as a Corporate Law Advisor:** Company Secretary's role also includes advising companies on compliance with legal and procedural aspects, particularly under the SEBI Act, Securities Contracts (Regulation) Act 1956 and rules and regulations made thereunder Foreign Exchange Management Act, Consumer Protection Act, Depositories Act, Environment and Pollution Control Laws, Labour and Industrial Laws, Co-operative Societies Act, Mergers and Amalgamations and Strategic Alliances, Foreign

Collaborations and Joint Ventures, Setting up subsidiaries abroad, Competition Policy and Competition Law Compliances, IPR Protection, Management, Valuation and IPR Audit and Drafting of Legal Documents.

- iv) **CS as an Authorized Representative before various Boards and Tribunals:** Company Secretaries have been representing before various Boards and Tribunals on behalf of a company and other persons, including Company Law Board, National Company Law Tribunal, Competition Commission of India, Securities Appellate Tribunal, Registrar of Companies, Consumer Forums, Telecom Disputes Settlement and Appellate Tribunal, Tax Tribunals and, other quasi-judicial bodies and Tribunals.
- v) **CS as an Insolvency Professional:** A Company Secretary can enroll with a professional insolvency agency and register with the Insolvency and Bankruptcy Board of India (IBBI) as an insolvency professional.
- vi) **CS as Compliance Officer of Listed Company:** As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the Company Secretary to act as 'Compliance Officer
- vii) **CS as a Registered Valuer :** A Company Secretary can do practice as Registered Valuer. Where a valuation is required to be made regarding any stocks, shares, debentures, securities, etc. of a company, the Company Secretary can act as a registered valuer.

CS PROFESSION-PARADIGM SHIFT

The expectations from the Company Secretaries, as they are increasingly being referred to as “governance professionals” now also extend to the areas of Corporate Social Responsibility (CSR), Business Responsibility and Sustainability Reporting (BRSR) and Environment Social Governance (ESG), all of which put together highlights the focus on sustainability, where the CS has infinite opportunities to excel as a preferred professional.

In the Indian context, some of the initiatives where the CS, whether in practice or in employment, is the ideal professional to advise the corporates, investors, social enterprises etc. as also the stakeholders, are in the areas such as:

1. Environment, Social and Governance (ESG) and CS

Environment, Social and Governance (ESG) are important non-financial metrics. Investors nowadays analyse the risks and opportunities giving due weightage to the non-financial metrics as well in addition to the financial metrics before taking investment decisions.

The disclosure requirements in the wake of emerging ESG landscape are rapidly as well as dynamically changing and these are quite challenging for any company. CS being at the centre-stage with respect to reporting to the Board and their committees on various non-financial metrics as part of his / her responsibilities towards governance is in an ideal position to provide internal support to the various sustainability initiatives.

2. Business Responsibility and Sustainability Reporting (BRSR) and CS

Securities and Exchange Board of India (SEBI) prescribed the Business Responsibility Report (BRR) with effect from the Financial Years Ending on or after 31st December, 2012. Currently, the BRR framework is mandatorily applicable to Top 1000 Listed Entities by Market Capitalisation. The intention of the BRSR framework is to link the performance of a listed entity on business, financial and economic parameters with its ESG performance so that the stakeholders such as the regulators, investors, suppliers, creditors and others have the necessary information to be able to make an assessment and evaluation of the progress made by the listed entity in terms of growth and sustainability in totality considering all parameters wherein financial parameter is one of them.

The scenario promises good prospects in the form of exciting opportunities to a new generation of ESG professionals where a CS (both in employment and in practice) may well find themselves to be “the preferred professionals” considering their exposure to Governance and Compliance Management systems in the corporate world, which will give them a definite edge over other professional.

3. Social Stock Exchange (SSE) and CS

The Concept of Social Stock Exchange (SSE) was floated in the early part of this century with a view to provide a platform for channelising investments focussing on social objectives. In India, the proposal for setting up an electronic fund-raising platform in the form of SSE under the regulatory framework of SEBI was announced in the Union Budget presented in July 2019. The role of SSE as a platform that allows investors to buy shares in a social enterprise. A SSE, could perform the following functions such as serving as a mediator between social enterprises that need funding and investors who are willing to invest their money, providing investors with procedures for simpler investment in social projects and providing investors with procedures for simpler investment in social projects etc.

CS is better equipped on structuring of enterprises, registration procedures with the SSE, listing procedures and compliances and will naturally be the preferred professional, as these new opportunities come up in the emerging scenario. Though areas such as impact analysis and social audit are new areas for the CS, the ability of the profession to network and co-ordinate / lead a multidisciplinary team should motivate the CS.

4. Corporate Social Responsibility (CSR) and CS

Though some large corporate houses in India were voluntarily spending a portion of their profits towards social causes, given the gaps in the needs of the social sector, these initiatives were far too insufficient vis-à-vis the needs. Section 135 of the Companies Act, 2013 read with Schedule VII thereto along with the Companies (Corporate Social Responsibility Policy) Rules, 2014 contain the framework for CSR, which becomes applicable to a company (listed as well as unlisted) based on thresholds of Profits, Turnover and Net Worth.

The CS (both in employment and practice) is already actively involved in the compliances related to CSR. CS in employment being a KMP has to ensure that the provisions of Section 135 along with Schedule VII of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 are complied in letter and spirit. He / She plays an active role in the conduct of the proceedings of the CSR committee, in the evolving of the CSR policy, in its implementation and co-ordination of the various aspects

of the compliances with different departments of the company. Companies not required to employ a whole time CS invariably look to a CS in practice for advisory and consultancy services relating to CSR compliances.

Way Forward

The complexities of modern business have given rise to the growth of newer areas of specialization for the fraternity. Apart from the provisions of the Companies Act, 2013, which has substantially increased the scope of practice for a CS and expectations of the regulator from Company Secretaries, both in employment and in practice, considering the impact created by the profession in guiding the corporates in governance and compliances as also shaping the regulatory framework beyond the boundaries of Company Law in areas such as FEMA, Competition Law, Securities Law, Insolvency, Valuation, Taxation Laws, Arbitration etc., it can be said that CS is the preferred professional with multi-disciplinary focus in the field of Corporate Laws.

The demand for CS professionals continues to grow with increasing expectations from the Corporates and the Regulator. The expectations from the Company Secretaries, as they are increasingly being referred to as “governance professionals” now also extend to the areas of Corporate Social Responsibility (CSR), Business Responsibility and Sustainability Reporting (BRSR) and Environment Social Governance (ESG), all of which put together highlights the focus on sustainability, where the CS has infinite opportunities to excel as a preferred professional.

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