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**SOUVENIR**

# 27<sup>TH</sup> NATIONAL CONFERENCE OF PRACTICING COMPANY SECRETARIES

**June 13-14, 2026**  
(Saturday & Sunday)

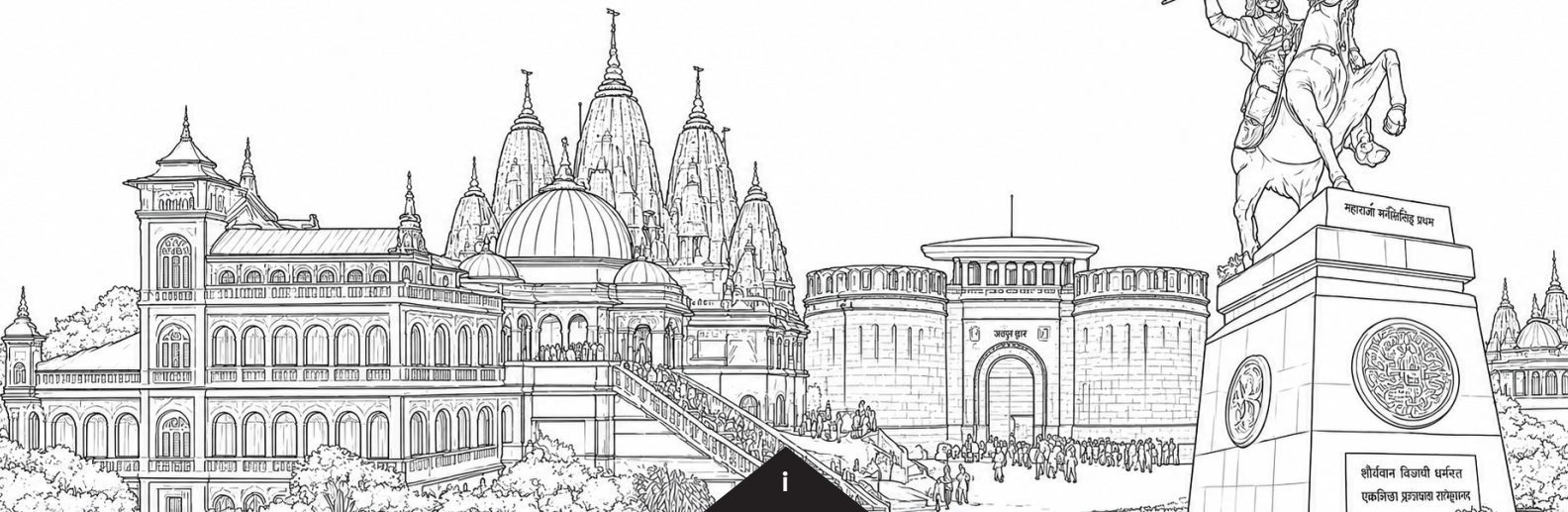
*Theme :*

**Company Secretaries as Leaders : AI, ESG & Stewardship**

*At:*

**Hotel Conrad, Pune**

7 Mangaldas Road, Sangamwadi,  
Pune, Maharashtra- 411001



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June, 2026

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Edited, published and printed by

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## THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

The Institute of Company Secretaries of India (ICSI) is a premier professional body, established under an Act of Parliament (The Company Secretaries Act, 1980), to regulate and develop the profession of Company Secretaries. The ICSI functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India. The Institute provides top-quality education to the students of Company Secretaries (CS) Course and has set and maintains best quality standards for CS Members.

With over 80,000 members including 11,500 members in practice and around 2,50,000 students, the ICSI has the largest membership and student base of Company Secretaries in the world.

As an inclusive body on the global governance map, the ICSI has been taking various initiatives for the growth and development of the profession. The ICSI has been contributing to the initiatives of Government of India that have potential to excel the social-economic growth of India.

### *Motto*

सत्यं वद। धर्मं चर।  
इष्टकारे त्रिष्ट त्रुति, पुराण्डुए गेष्ट्रो.दठुपइनइइ

### *Vision*

**"To be a global leader in promoting good corporate governance"**

### *Mission*

**"To develop high calibre professionals facilitating good corporate governance"**

## **ICSI NETWORK**

**Head Office:**

New Delhi

**Regional Offices:**

EIRC (Kolkata), NIRC (New Delhi), SIRC (Chennai), WIRC (Mumbai)

**Chapters:**

73

**Research Centres:**

Mumbai, Hyderabad, Kolkata and Manesar

**Study Centres:**

35

**Examination Centres:**

232

**ICSI Study Circles:**

16

**International Footprints**

**Overseas Centres:**

UAE, USA, UK, Singapore, Australia & Canada

# FUNCTIONS OF THE INSTITUTE

- Provides postal/oral/web-based coaching and training enabling students to qualify as Company Secretaries;
- Conducts Company Secretaryship Examination twice a year in June and December at centres spread all over India and at an overseas centre at Dubai;
- Arranges for practical training of Executive/Professional Programme qualified Students with Companies/Practicing Company Secretaries etc. empanelled with the Institute for the purpose;
- Enrols qualified persons as Associate/Fellow Members of the Institute and issues Certificate of Practice to Members taking up practice;
- Conducts Post Membership Qualification (PMQ)/Certificate/Crash Courses for Members of the Institute;
- Formulates Secretarial Standards, Auditing Standards and brings out Guidance Notes thereon;
- Conducts elections to the Council of the Institute;
- Maintains library and publishes books and periodicals relating to management of companies and allied subjects.

## **Initiatives to achieve these objectives**

- Publishes widely read and highly acclaimed monthly peer-reviewed Journal 'Chartered Secretary' widely circulated amongst Ministries, Regulators, Academicians, Industry, Professionals etc.
- Brings out daily info-capsules, case digest series for Members and students, theme-based e-journal 'Student Company Secretary' and module-wise/chapter wise monthly updates for Executive and Professional level students, CS Executive Entrance Test (CSEET) e-bulletin and conducts mock tests for CSEET students;
- Grants ICSI Signature Award (Gold Plated Medal & Certificate) to the toppers of B.Com. Examinations of reputed Universities and selected programmes of IIMs as per the MoUs with the respective Universities/Institutions;
- ICSI Academic Collaboration with Universities & Academic Institutions for learning & development of students, professionals and academicians;
- Ties up with reputed Colleges for establishment of Study Centres for providing basic services to the students;
- Organises Career Awareness Programmes (CAPs) for the benefit of prospective students;
- Exercises supervision over the Members of the Institute both in practice and in employment in matters pertaining to Professional Ethics and Code of Conduct;

- Undertakes research in Corporate Laws, Corporate Governance, Management, Finance and Capital Market disciplines and brings out research publications of its own accord and on behalf of Government and its agencies/Institutions;
- Undertakes initiatives for enhancing self-governance;
- Organises Professional Development and Continuing Education Programmes, National Convention of Company Secretaries, National Conference of Practicing Company Secretaries, International/National/Regional Conferences directly or through its Regional Councils and Chapters, Chambers of Commerce, Department of Public Enterprises, Sister Professional Institutes and other Professional Development/Management Bodies;
- Interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations;
- Interacts with various international, multi-lateral bodies/Institutions with regard to issues relating to Corporate Governance, Business Ethics, Sustainability and Corporate Social Responsibility;
- Interacts with Centre and State Governments on various issues concerning the profession;
- Undertakes benevolence of Members;
- Interacts with Members of Corporate Secretaries International Association (CSIA) and Company Secretaries Institutes in other jurisdictions;
- Bestows ICSI National Award for Excellence in Corporate Governance to best governed companies;
- Bestows ICSI CSR Excellence Awards;
- Bestows Best Secretarial Audit Report Award;
- Bestows Best PCS Firm Award;
- Bestows ICSI Business Responsibility & Sustainability Awards;
- Bestows ICSI Lifetime Achievement Award to eminent corporate personalities for translating Excellence in Corporate Governance into reality.

## **BUILDING FUTURE PROFESSIONALS TO GUIDE CORPORATE INDIA**

The ICSI conducts the Company Secretaryship examination to bring in high level professionals specialized in corporate laws, management and governance.

### **CSEET**

Students passed / appearing in Senior Secondary (10+2) Examination or equivalent thereto may appear in Company Secretary Executive Entrance Test (CSEET) and after qualifying the same, they are registered for Executive Programme of Company Secretaryship Course.

### **STAGES TO BECOME A COMPANY SECRETARY**

The Company Secretaryship Course is conducted in the following stages:

#### **EXECUTIVE PROGRAMME**

##### **ELIGIBILITY**

CSEET qualified students, who have passed the Senior Secondary Examination (10+2 pattern) and whose CSEET result is not older than one year

OR

CS Foundation (Prior to CSEET) pass students

OR

Graduates and Post-Graduates, ICMAI Final pass students, ICAI Intermediate pass students, Students appearing in the final year or final semester of undergraduate programmes of three years' duration (provisional registration), Students who have passed the Sixth semester of any recognized Integrated Programme of five years' duration, Students appearing in the Sixth semester of any recognized Integrated Programme of five years' duration (provisional registration)

#### **PROFESSIONAL PROGRAMME**

A registered student is admitted to the Professional Programme on passing the Executive Programme.

### **ICSI MEMBERSHIP**

A Company Secretary is defined under the Company Secretaries Act, 1980 to mean a person who is a member of the ICSI.

### **ASSOCIATE MEMBERSHIP**

After successful completion of examination and training, a candidate is conferred with Associate Membership of the ICSI.

### **FELLOW MEMBERSHIP**

A member of the Institute is entitled to get himself enrolled as a Fellow, if he is an Associate Member for at least five years.

### **CODE OF CONDUCT FOR MEMBERS**

The members of the Institute of Company Secretaries of India are subject to Code of Conduct as provided under the Company Secretaries Act, 1980.

## THE COUNCIL OF THE INSTITUTE

**CS Pawan G. Chandak**

President, *The ICSI*

---

**CS Dwarakanath Chennur**

Vice-President, *The ICSI*

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CS Venkata Ramana R.

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Secretary, *The ICSI*

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CS B. Narasimhan, Member

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CS Venkata Ramana R., Member

**ICSI - CENTRES AND SECTION 8 COMPANIES****ICSI - CENTRE FOR CORPORATE GOVERNANCE RESEARCH & TRAINING  
(ICSI-CCGRT), MUMBAI**

ICSI-CCGRT, Mumbai was established with the sole purpose of conducting high end research and training programmes for the CS fraternity on the contemporary issues concerning the profession. The Centre was inaugurated and dedicated to the nation in the worthy hands of Dr A S Anand, then Chief Justice of India on 16<sup>th</sup> May 1999. Since then, the Centre has been performing as an organ of the Institute in the domain of research, governance and training.

The primary objective of the Centre is to act as a catalyst organisation in the professional development of the Indian corporate sector through qualitative research and high-level corporate training with 'Corporate Governance' as the thrust area. Since its inception, the Centre has undertaken a number of activities aimed towards fostering qualitative research.

**ICSI - CENTRE FOR CORPORATE GOVERNANCE RESEARCH & TRAINING  
(ICSI-CCGRT), HYDERABAD**

The ICSI in its candid endeavours to foster good corporate governance and inculcating analytical approach through research and training among CS fraternity and other vital segments of society, has initiated to set up learning and knowledge centres across India. The ICSI-CCGRT being the first of its kind located in Mumbai, the Institute has set up its second Research & Training centre in Hyderabad which has commenced its activities effective from June 2018.

The ICSI-CCGRT, Hyderabad sprawling in a lush green area of 4166 square meters is located in Uppal area of Hyderabad, the Capital of Telangana State which is best known as "City of Pearls" and located on the banks of Musi River. The Centre is at a walkable distance from NGRI Metro Station.

The vast campus of the Centre comprises 200-seater Auditorium, Training Halls of different seating capacity, Boardroom, Computer Room, Library, Yoga Room & Institutional Blocks equipped with ultra-modern and state of the art audio visual aids to facilitate high end training programmes and undertaking research of topical interests to the Institute. The campus has also 24 self-content dwelling units on twin sharing basis catering to the residential projects of the Institute.

**ICSI - CENTRE FOR CORPORATE GOVERNANCE RESEARCH & TRAINING  
(ICSI-CCGRT), KOLKATA**

ICSI-CCGRT Kolkata is the 3<sup>rd</sup> Training and Research Facility, inaugurated by Dr C.V. Ananda Bose, Hon'ble Governor of West Bengal, on 6<sup>th</sup> December 2023, with the vision to promote and develop research and training for students, professionals and public at large. The CCGRT-Kolkata is located in Action Area II, Newtown Kolkata near Amity University which is well connected to Airport and major Railway Stations (Sealdah and Kolkata). Located in the smart Green City of Kolkata, the ICSI-CCGRT has an Educational Block of 27,494 sq. ft. area and a Hostel Block of 21,708 sq. ft. area. The Educational Wing houses classrooms, a library, two moot courts, a conference room, and an auditorium with a capacity of 300 people. The CCGRT-Kolkata Campus is having an exclusive hostel facility with air-conditioned rooms and recreation facilities.

### **ICSI - CENTRE FOR CORPORATE GOVERNANCE RESEARCH & TRAINING (ICSI-CCGRT), MANESAR**

In its endeavour to further strengthen its presence and facilitate research, training and consultancy, the Institute of Company Secretaries of India, set up its 4<sup>th</sup> Centre for Corporate Governance, Research and Training (CCGRT), at IMT Manesar, Haryana.

The 4<sup>th</sup> in its league, CCGRT Manesar, aims to expand the ICSI's resolve towards building better governance structures in India Inc. through its research-based orientation in the northern region and beyond. It will also provide the required support to the Government, Regulators, Statutory Bodies and the Industry at large, through its varied activities.

CCGRT Manesar with a proposed built-up area of 31,049 Sq. ft. houses classrooms, library, Multipurpose Rooms, Hostel, IT Lab, Dining Hall and Recreation Room in the Basement + Ground + 4 Floor facility.

### **INSTITUTE OF GOVERNANCE PROFESSIONALS OF INDIA (IGPI)**

Institute of Governance Professionals of India (IGPI) - a Section 8 Company promoted by the ICSI is entrusted with the task of taking forward its purpose to generate, spread and impart knowledge, directly or in association with person(s) having similar objects or engaged in similar activities by way of Research, Publications, Training and Education. The areas of focus of these activities include Corporate Laws, Governance, Management, Business Sustainability and CSR, Capital and Financial Markets, Economic Laws and Policies, Information and Control Systems and Allied Disciplines.

With the intent of honing the members of Board room and corporate decision makers on matters of governance and sustainability, the ICSI through IGPI, launched the ICSI Board Mentorship Programme. The intent of the Programme is to bring directors together to share an experiential thought process, the individual challenges faced in the line of decision making, all while developing financial acumen and ESG capabilities. Till date 6 Board Mentorship Programmes have been conducted at various locations across India to strengthen various stakeholders of governance and more importantly to enrich present and future Board Members, Directors, decision makers and senior leaders.

### **ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS (ICSI IIP)**

The ICSI – Institute of Insolvency Professionals (ICSI IIP) is a Section 8 Company incorporated under the Companies Act, 2013 and a wholly owned subsidiary of the ICSI. The Company is registered as an Insolvency Professional Agency with Insolvency and Bankruptcy Board of India (IBBI) to enrol and regulate the members practicing as Insolvency Professionals (IPs) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with rules and regulations made thereunder.

### **ICSI REGISTERED VALUERS' ORGANISATION (ICSI RVO)**

The ICSI Registered Valuers Organization (ICSI RVO) is a Section 8 Company incorporated under the Companies Act, 2013. The Company is recognised as Registered Valuers Organisation with Insolvency and Bankruptcy Board of India, formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers as per the Registered Valuers Rules, while establishing and promoting high standards of practice and professional conduct and promote good professionalism, ethical conduct and competency ensuring quality of valuation work.

### **ICSI INSTITUTE OF SOCIAL AUDITORS (ICSI ISA)**

India's social enterprises ecosystem is growing on a fast pace, but the access to debt or equity was a huge barrier to growth and sustainability. To overcome this barrier, there was a need to bring social enterprises and investors on a single platform and which paved the idea of Social Stock exchange. The Government of India in the budget speech for the financial year 2019-20 proposed the creation of a Social Stock Exchange (SSE). In this regard, based upon various reports and public consultation, the governing framework for a Social Stock Exchange was brought in by SEBI and SEBI (ICDR) Regulations, 2018 were amended wherein the concept of Social Impact Assessor evolved.

In this regard, the Institute of Company Secretaries of India incorporated the 'ICSI Institute of Social Auditors or the ICSI-ISA' a Section 8 Company under the Companies Act, 2013 with the objective to register Social Impact Assessor, lay down criteria/ norms for empanelment as well as standards of professional conduct for the registered Social Impact Assessor. The ICSI-ISA commenced the empanelment of Social Impact Assessors (SIAs) who have obtained the requisite NISM Certification. The ICSI-ISA commenced the empanelment of Social Impact Assessors from May 12, 2023. Further, SEBI vide circular, SEBI/HO/CFD/PoD-1/P/CIR/2024/0060 dated May 27, 2024 has specified the ICSI Institute of Social Auditors (ICSI-ISA) as a Self-Regulatory Organization (SRO) for the Social Impact Assessors and Social Impact Assessment Entities registered with ICSI-ISA.

### **ICSI INTERNATIONAL ADR CENTRE**

With the intent to facilitate Arbitration, Mediation and Conciliation at National and International level, the Institute of Company Secretaries of India (ICSI) established its first ICSI International ADR Centre at Noida (U.P.).

The ICSI International ADR Centre at Noida is a state-of-the-art facility with world class infrastructure, advance video conferencing facility, top notch administrative facilities etc.

The objective of the ICSI International ADR Centre is to promote Alternate Dispute Resolution (ADR) methods including Mediation, Conciliation and Arbitration to assist and educate all sections of Society, Individuals, Corporates, Firms, Institutions and Establishments (Local or International).

### **ICSI NCLT PRACTITIONERS ASSOCIATION**

The ICSI NCLT Practitioners Association is a Section 8 Company, established under the Companies Act, 2013, specifically for Practicing Company Secretaries who appears before the National Company Law Tribunal (NCLT).

Formed as a non-profit, non-political and non-governmental organization, the association aims to serve as a leading body representing the interests of Practicing Company Secretaries. Its mission is to promote and uphold the highest standards of professionalism within the community and safeguard the rights and privileges of its members.

The association seeks to offer opportunities for legal and corporate education, organize seminars, foster networking and camaraderie and create avenues for making meaningful contributions to the corporate legal systems for practicing professionals.



## MESSAGE FROM THE PRESIDENT, ICSI



*Dear Professional Colleagues,*

It is a feeling of immense pride and a deep sense of responsibility that we share as members of this esteemed profession.

The profession of Company Secretaries has always stood as a pillar of governance, compliance, and ethical stewardship. Today, however, we find ourselves at a defining juncture—where the rapid rise of **Artificial Intelligence (AI)**, the imperatives of **Environmental, Social and Governance (ESG)** frameworks, and the growing expectations of **responsible leadership** demand that we transcend traditional boundaries and embrace a new vision of professional excellence.

The **National PCS Conference** has, over the years, evolved into the **premier annual congregation of practicing professionals**, serving as a platform for dialogue, learning, and collective vision-building. It is not merely an event—it is a tradition that embodies the spirit of our fraternity, a forum where ideas converge, challenges are addressed, and the future of our profession is charted. Each edition of the Conference has added new dimensions to our understanding of governance, compliance, and leadership, and this year's gathering promises to be no different.

The theme of this year's Conference, **“Company Secretaries as Leaders: AI, ESG & Stewardship”**, is both timely and transformative. It calls upon us to recognize our evolving role—not merely as compliance professionals, but as **strategic leaders and ethical custodians** of corporate India. In this new era, we must ensure that technological innovation is aligned with human accountability, that sustainability is embedded into governance codes, and that stewardship becomes the guiding principle of our collective professional journey.

The deliberations at this Conference—spanning **IPR Practices & Procedures, Compliance in the Age of AI, ESG Integration, and Catalysing Growth for MSMEs & Start-ups**—are designed to equip us with actionable insights and practical tools. They reaffirm our commitment to continuous learning, adaptability, and principled leadership.

And to complement our journey of learning, I present to you the **Souvenir of the 27th National Conference of Practicing Company Secretaries**, being held on **June 13–14, 2026 at Hotel Conrad, Pune**.

This Souvenir, containing theme-based articles, programme details, and reflections from distinguished contributors, is not merely a record of proceedings. It is a **knowledge repository** and a **testament to the collective wisdom of our fraternity**, serving as a reference point for future initiatives and professional growth.

I earnestly encourage each member of our fraternity to engage wholeheartedly in the deliberations, assimilate the insights shared, and translate the spirit of transformation into meaningful action within your respective domains of practice.

Together, let us renew our collective resolve to lead with vision, to innovate with responsibility, and to steward our profession toward a future anchored in **integrity, inclusivity, and sustainability**.

Yours sincerely,

**(CS Pawan G. Chandak)**

President

The Institute of Company Secretaries of India



## THEME

### **Company Secretaries as Leaders: AI, ESG & Stewardship**

The theme highlights the dynamic transformation of Company Secretaries into visionary leaders, where true excellence stems from knowledge, adaptability and a commitment to values. As John F. Kennedy once said, *“Leadership and learning are indispensable to each other.”* His words remind us that continuous growth is the foundation of true influence. In the era of rapid technological changes and shifting regulatory landscapes, professionals must embrace innovation through Artificial Intelligence, uphold responsibility through ESG principles and embody stewardship in governance. Echoing Peter Drucker's wisdom, *“The best way to predict the future is to create it”*, this Conference calls upon the Company Secretaries to redraw boundaries, challenge conventions and emerge as catalysts of transformation in corporate leadership.

## SUB-THEMES

### **IPR Practices & Procedures**

Intellectual Property Rights are becoming central to India's AI-driven digital transformation. In this era, protecting creative outputs and digital assets is no longer a legal formality, it is a strategic imperative for building competitiveness, fostering trust and ensuring responsible innovation. IPR provides clarity of ownership, safeguards innovation and minimizes disputes in a fast-evolving, technology driven landscape. Company Secretaries are uniquely positioned not only to understand procedures but also to actively practice in the IPR domain. Their expertise bridges governance with technology, securing intellectual capital while aligning it with ethical and sustainable standards. This sub-theme highlights IPR as a cornerstone of responsible innovation, positioning Company Secretaries as guardians of intellectual property in an era defined by AI and technological change.

### **Compliance in the Age of AI**

Artificial Intelligence (AI) is rapidly transforming the compliance landscape, presenting both unprecedented opportunities and complex regulatory challenges. As organizations integrate AI-driven systems into their operations, the need for robust governance frameworks, ethical safeguards and regulatory alignment becomes paramount. With the growing adoption of AI across various sectors, new regulatory expectations and operational challenges are emerging, requiring the Company Secretaries to stay agile and guide organizations in navigating a dynamic compliance environment and governance challenges. This sub-theme is particularly relevant for practicing professionals, equipping them with knowledge to navigate compliance complexities through AI tools, strengthen risk management, ensure responsible technology adoption and uphold transparency, accountability and trust in the digital corporate ecosystem.

### **Strengthening Stewardship through ESG Integration**

Stewardship is the art of safeguarding today while shaping tomorrow, a conscious commitment to manage resources as custodians for future generations. Integrating ESG principles into the Stewardship Code elevates investment decision-making, ensuring long-term value creation and accountability. By aligning corporate strategies with sustainability goals, organizations not only mitigate risks but also enhance resilience, foster trust among stakeholders and drive responsible growth. This sub-theme highlights stewardship as a proactive commitment to transparency, sustainability and enduring impact, ultimately positioning businesses as stewards of societal well-being.

### **Catalysing Growth for MSMEs & Start-ups**

MSMEs and Start-ups are not just business entities, they are the pulse of India's entrepreneurial spirit, shaping communities and redefining possibilities and it is evidenced by the data from Economic Survey 2025-2026, which states that MSMEs account for 35.4% of Manufacturing, 48.58% of Exports and 31.1% of GDP. Globally also, MSMEs make up about 90% of businesses and responsible for 50% of the total global employment. If founders ignite the spark of innovation, Company Secretaries stand as pillars of trust, shaping ambition, strengthening resilience and steering sustainable growth. The Union Budget's introduction of Corporate Mitras further strengthens this ecosystem, promising mentorship and guidance for MSMEs and Start-ups. This is a call to position governance as stewardship, where Company Secretaries become the bridge between vision and reality. By blending entrepreneurial energy with professional stewardship, India can transform MSMEs and Start-ups into engines of inclusive growth. This sub-theme celebrates that synergy, igniting discussions, insights and actionable strategies for collaborative success.



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## Who Could Sign, and Who Meant To

### A reflection on accountability in the age of the digital signature

– Rupesh Kuche, CS — Founder & Director, Digital Trust Infrastructure India Limited

For as long as our profession has existed, the value of a Company Secretary's signature was never simply that we signed. It was that the signature meant something. Behind it stood judgment, authority, and an accountability that an institution — a board, a regulator, a court — could rely upon. The signature was a promise that a competent person had looked, understood, and assented.

In the last fifteen years, the most consequential change in how we discharge that promise arrived without announcement, almost as a convenience. The signature of the Company Secretary moved from paper to silicon. The pen became a token. **The signature became a private key. And almost no one paused to decide that this should happen — it simply did, one filing at a time, because it was faster and the deadlines did not wait.**

What changed operationally, however, did not change the legal implications. Responsibility remained exactly where it always had.

I do not raise this to romanticise paper. The shift was, in most respects, progress. I raise it because of something the law has always known and our systems have quietly forgotten.

Under our framework, operational authority may be delegated. **The work of signing can be handed to another set of hands — an assistant, a colleague, a trusted member of the team. But statutory responsibility does not move.** It remains, precisely and unforgivingly, with the subscriber to whom the certificate was issued. The authority to sign can travel. The responsibility for the signature stays exactly where it began.

**That single principle governs much of India's digital institutional architecture today, and every Company Secretary already lives at its centre — usually without naming it.**

Here is the difficulty it creates. Our digital systems are extraordinarily good at answering one question: who could sign? They can prove that a valid certificate was used, that the right token was present, that the correct credentials were entered.

But the law actually asks: who meant to sign?

**Possession and consent are not the same thing, and the distance between them is where an honest professional can find themselves exposed.**

That distance does not surface on the ordinary day. It surfaces only later — when a filing is questioned, when a return is disputed, when a proceeding requires that one signature be explained. In that room, the certificate speaks first. The certificate signed; so, at the outset, the subscriber is taken to have signed.

Consider an ordinary compliance week. A filing is prepared close to midnight before a deadline. A junior team member accesses the token with prior operational understanding. Months later, the filing becomes part of a regulatory inquiry. The system can prove the certificate was used. What becomes harder is proving the scope of approval, consent, or instruction behind that use.

Whether the member can be heard over that certificate may depend almost entirely on records they kept in the moment — records that, on an unremarkable working day, almost no one keeps.

This is not a failure of any one firm or any one professional. It is a structural mismatch between how the law assigns responsibility and how the work is actually done.

Digital convenience evolved faster than evidentiary accountability. And it deserves to be named plainly, by us, rather than discovered painfully, one inquiry at a time.

Which returns me to dignity — a word that belongs in this conversation more than it usually appears.

**Dignity, in a digital society, is not only the right to privacy.** It is the right to be believed. It is the ability of an honest professional to stand before a proceeding and prove — not merely assert — what they approved and what they did not. A system that cannot preserve that proof has quietly shifted a burden onto the individual that the institution was meant to carry.

Let me be careful about what addressing this does not require. **It does not require rewriting the framework.**

The Information Technology Act, the Companies Act, and the structure of the Controller of Certifying Authorities are sound; they are not ours to redraw. Nor does it require disrupting the institutions that have built the professional trust the statute relies upon. One does not disrupt that trust. One strengthens the layer around it.

What it requires is narrower and more disciplined. **The moment of consent must return to the person the law holds responsible, before the key is used. The subscriber's secret remains the subscriber's alone.** And every approval must leave a contemporaneous, tamper-evident record that can be produced on the day it is questioned — independent of memory, independent of any portal. If those things hold, the ordinary day does not change. What changes is the day that accountability arises, because now the subscriber can finally be heard over the certificate.

**This is the work we have undertaken at DTII — not to prove possession more cleverly, but to help our systems evolve from proving possession toward preserving accountable consent.**

The enduring value of our profession has not changed. It was never the act of signing. It was that our signature meant something an institution could defend. **Our task now — yours and mine — is to ensure that the digital systems we sign through are worthy of the same trust.**





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# From Compliance Officers to Governance Architects: Company Secretaries Leveraging AI and ESG Integration for Transformative Stewardship in the Digital Age

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## ABSTRACT

*The confluence of Artificial Intelligence (AI), Environmental, Social and Governance (ESG) imperatives and the expanding mandate of stewardship is fundamentally reshaping the governance landscape in India. Company Secretaries (CS), long regarded as custodians of compliance, now stand at a pivotal crossroads – evolving from procedural compliance officers into visionary governance architects. This article examines how Company Secretaries can harness AI-driven tools to operationalise robust ESG frameworks, fulfil heightened stewardship responsibilities, and navigate an increasingly complex regulatory ecosystem encompassing SEBI's BRSR regime, IEPFA mandates, corporate sustainability disclosures, and MSME governance standards. Drawing on 15 years of frontline experience in public sector governance, municipal finance compliance, and investor grievance redressal, the author offers a practitioner's perspective on embedding AI and ESG at the core of the Company Secretary's professional identity.*

**Keywords:** *Company Secretary, AI in Governance, ESG Integration, Stewardship, BRSR, Compliance Leadership, Corporate Sustainability, Urban Governance*

## 1. INTRODUCTION: THE GRAMMAR OF A NEW GOVERNANCE ERA

The Indian corporate governance ecosystem has entered a phase of unprecedented transformation. The traditional mandate of a Company Secretary – filing returns, ensuring statutory compliance, conducting board meetings – while still foundational, no longer captures the full spectrum of responsibilities that the profession demands today. Three tectonic forces – Artificial Intelligence (AI), Environmental-Social-Governance (ESG) integration, and a redefined stewardship ethic – are converging to rewrite the grammar of corporate governance in India.

The theme of this 27<sup>th</sup> National Conference of Practicing Company Secretaries, 'Company Secretaries as Leaders: AI, ESG & Stewardship', is not merely aspirational; it is urgent and operational. As India accelerates towards its Viksit Bharat 2047 vision, the governance infrastructure supporting this journey must be equally visionary. Company Secretaries, positioned at the nexus of law, finance, technology, and ethics, are uniquely placed to lead this transformation.

This article argues that the future of the Company Secretary profession lies in embracing the triumvirate of AI, ESG, and stewardship, not as separate modules of professional development, but as a unified governance paradigm. The practicing Company Secretary of tomorrow must be a technology-literate governance professional who can translate ESG complexity into board-level action and steward stakeholder trust in a volatile, uncertain, complex, and ambiguous (VUCA) world.

## 2. THE EVOLUTION OF THE COMPANY SECRETARY: FROM REGISTRAR TO GOVERNANCE LEADER

The journey of Company Secretaries in India mirrors the evolution of corporate governance itself. From the era of the Companies Act, 1956, which positioned the CS primarily as a statutory officer responsible for maintaining registers and records, to the landmark Companies Act, 2013, which elevated the CS to a Key Managerial Personnel (KMP) with fiduciary responsibilities, the profession has undergone a quiet yet profound metamorphosis.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and subsequent amendments have further amplified this role, making the Compliance Officer function, predominantly led by CS professionals – central to market integrity, investor protection, and disclosure governance. The introduction of SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework in 2021, made mandatory for the top 1,000 listed entities by market capitalization from FY 2022-23, has placed ESG reporting squarely within the Company Secretary's domain.

Simultaneously, the rapid integration of AI tools – from board management platforms and compliance automation software to natural language processing for contract review – is creating both opportunity and disruption. The Company Secretary who embraces this technological shift will not merely survive the profession's evolution; they will lead it.

### 2.1 The Statutory Architecture Supporting This Evolution

Several legislative and regulatory developments have collectively strengthened the Company Secretary's governance mandate:

- The Companies Act, 2013 (Section 205): CS as KMP with explicit duties in compliance, governance, and board functioning.
- SEBI LODR (Amendment) Regulations, 2023: Enhanced obligations on compliance officers for timely disclosures, related party transactions, and digital governance.
- SEBI's BRSR Core Framework (2023): Mandatory ESG assurance for top 150 listed companies from FY 2023-24, expanding to top 1,000 by FY 2026-27.
- The Jan Vishwas (Amendment) Act, 2026: Decriminalisation of minor procedural violations reinforces a culture of substantive, risk-based compliance over mechanical tick-box adherence.
- IEPFA Guidelines: Investor education and protection mandates requiring CS-led engagement programmes.

## 3. ESG INTEGRATION: THE STEWARDSHIP IMPERATIVE

Environmental, Social, and Governance (ESG) is no longer a voluntary supplement to a company's annual report; it is the new currency of corporate credibility. Global institutional investors, rating agencies, lenders, and regulators have aligned around a singular expectation: organisations must demonstrate not just financial performance but sustainable, stakeholder-centric value creation.

For Company Secretaries, ESG integration presents a dual imperative – compliance and leadership. On the compliance side, SEBI's BRSR framework requires disclosure across nine ESG-linked principles drawn from the National Guidelines on Responsible Business Conduct (NGRBC). These principles span environmental stewardship (energy, emissions, water, biodiversity), social responsibility (employee welfare, supply chain ethics, community engagement), and governance quality (transparency, ethics, stakeholder responsiveness).

### 3.1 BRSR: Translating Principles into Practice

The BRSR framework's architecture places significant drafting, coordination, and disclosure responsibilities on the Company Secretary. The CS must liaise with cross-functional teams – sustainability, HR, operations, legal, finance – to compile, validate, and certify BRSR disclosures. This is not a clerical function; it demands governance intelligence, systems thinking, and professional judgment.

The BRSR Core, introduced by SEBI vide circular dated 12 July 2023, mandates assurance on select Key Performance Indicators (KPIs) including GHG emissions (Scope 1 and 2), water intensity, energy intensity, employee turnover, whistle-blower complaints, and corporate governance indicators. Company Secretaries must not only facilitate this disclosure but ensure its integrity – making them de facto ESG assurance champions within the organisation.

### 3.2 ESG in Public Sector and Municipal Governance: A Practitioner's View

The ESG paradigm is not confined to listed corporates. Urban Local Bodies (ULBs), public sector undertakings, and government enterprises are increasingly subject to ESG expectations from bond investors, multilateral lenders, and rating agencies. India's growing municipal bond market – exemplified by ULBs listing on BSE and NSE under SEBI's 2017 municipal bond regulations, has made ESG disclosure and investor communication a governance priority for public sector finance professionals.

From the author's experience as Dy. CAFO and Chief Compliance Officer at Pune Municipal Corporation – which has issued listed bonds and is engaged in blue bond structuring under MUWREP-IFC's blended finance framework – ESG governance extends to infrastructure projects, water tariff transparency, social equity in service delivery, and environmental accountability in urban development. Company Secretaries advising ULBs, PSUs, or infrastructure SPVs must therefore possess ESG literacy that transcends the listed entity context.

"ESG is not about what a company reports; it is about what a company does. The Company Secretary, uniquely positioned at the intersection of boardroom decision-making and statutory accountability, must ensure that ESG commitments translate into measurable governance outcomes – not merely disclosure documents."

## 4. AI AS A GOVERNANCE ENABLER: OPPORTUNITIES AND OBLIGATIONS

Artificial Intelligence is transforming every facet of professional practice, and corporate governance is no exception. For Company Secretaries, AI offers transformative possibilities across the compliance lifecycle – from real-time regulatory monitoring and automated disclosure drafting to board meeting management, shareholder analytics, and forensic governance reviews.

### 4.1 AI Applications in the CS Practice

The following AI-enabled capabilities are already reshaping how Company Secretaries discharge their professional responsibilities:

- **Regulatory Intelligence Platforms:** AI-powered RegTech tools continuously scan regulatory updates from MCA, SEBI, RBI, and sectoral regulators, flagging relevant amendments and mapping compliance obligations in real time. This eliminates the risk of inadvertent non-compliance arising from information gaps.
- **Contract and Document Review:** Large Language Models (LLMs) can review voluminous agreements, identify non-standard clauses, flag related party risks, and suggest governance-aligned modifications – a task traditionally consuming significant professional bandwidth.

- Board Governance Software: AI-driven board management platforms automate agenda preparation, minute recording, compliance calendar tracking, and director profile management, freeing Company Secretaries for higher-order governance advisory functions.
- ESG Data Analytics: AI enables the aggregation and analysis of non-financial data across organisational silos, facilitating accurate BRSR reporting, carbon footprint calculation, and stakeholder sentiment analysis.
- Forensic Governance Tools: AI-assisted pattern recognition in financial transactions, procurement data, and communication trails strengthens the Company Secretary's role in fraud prevention, whistle-blower analytics, and governance audit support.
- Shareholder Communication and IEPFA Compliance: Chatbots and automated grievance management systems streamline investor communication, IEPFA portal integration, and unclaimed dividend recovery workflows.

#### **4.2 Compliance in the Age of AI: Navigating New Risks**

The integration of AI in governance also introduces new compliance frontiers. The emerging AI governance landscape, reflected in India's National Strategy on AI (NASSCOM 2023), proposed Digital India Act provisions, and SEBI's consultations on AI in securities markets – requires Company Secretaries to develop competencies in AI risk oversight, algorithmic accountability, and data governance.

Key AI-related compliance obligations for CS professionals include ensuring that AI systems deployed in governance functions comply with the Digital Personal Data Protection (DPDP) Act, 2023; that algorithmic trading systems have board-approved risk frameworks; that AI-generated ESG reports are validated by qualified professionals before submission; and that the organisation's AI policy is periodically reviewed and disclosed to the board.

Company Secretaries must champion the principle of 'responsible AI' – ensuring that technology augments professional judgment rather than replacing it. The governance failures of the future may not be failures of intent, but failures of algorithmic oversight. The CS profession must be prepared to hold the line.

### **5. STEWARDSHIP: THE DEFINING CHARACTER OF CS LEADERSHIP**

Stewardship, in the governance context, transcends legal compliance. It represents a fiduciary commitment to long-term value creation for all stakeholders – shareholders, employees, creditors, communities, and the environment. The UK Stewardship Code (2020) and ICSI's own Stewardship Framework emphasise that governance professionals must exercise proactive oversight, engage meaningfully with boards, and hold management accountable for sustainable performance.

For practicing Company Secretaries in India, stewardship manifests across multiple dimensions:

#### **5.1 Board Stewardship: Quality Over Compliance**

The Company Secretary's proximity to the board positions them as the first guardian of board effectiveness. Stewardship here means going beyond the procedural, ensuring diversity in board composition, independence of judgment, quality of board deliberations, and alignment between board strategy and long-term stakeholder interests. In an era of AI-driven decision support and data-rich environments, the CS must ensure boards receive not just more information, but better intelligence.

## 5.2 Investor Stewardship: Transparent and Timely Communication

SEBI's regulatory architecture – encompassing LODR, IEPFA guidelines, SEBI (Prohibition of Insider Trading) Regulations, and the SCORES portal for investor grievance redressal – places the CS at the centre of investor stewardship. The author's experience as Investor Grievances Officer at PMC underscores the criticality of proactive investor communication, especially in the context of public bond issuances where retail investor protection is a paramount governance obligation.

SEBI's proposed reforms to democratise NCD (Non-Convertible Debenture) participation for retail investors – several of which were shaped by stakeholder inputs including from public sector practitioners – require Company Secretaries in listed debt entities to significantly upgrade their investor communication and grievance management capabilities.

## 5.3 Environmental and Social Stewardship

ESG stewardship requires Company Secretaries to champion the integration of environmental and social considerations into core business decisions. This is not merely about BRSR disclosures; it means ensuring that board minutes reflect genuine ESG deliberation, that sustainability KPIs are embedded in management performance frameworks, and that supply chain governance meets the standards expected under Principle 2 of the NGRBC.

## 5.4 Stewardship in the MSME and Start-up Ecosystem

The sub-theme of 'Catalysing Growth for MSMEs & Start-ups' at this Conference reflects an exciting frontier for the CS profession. As India's MSME sector – comprising over 63 million enterprises and contributing nearly 30% of GDP – increasingly engages with formal capital markets, private equity, and institutional credit, governance standards become a competitive differentiator rather than a regulatory burden.

Practicing Company Secretaries can play a transformative stewardship role in the MSME and start-up ecosystem by helping entrepreneurs build governance-ready boards, structure transparent financial reporting, navigate DPIIT startup certifications, operationalise ESOP frameworks, and prepare for IPOs or NCD issuances. The CS professional who understands both the spirit of governance and the practical constraints of growing enterprises becomes an indispensable adviser – a steward of entrepreneurial trust.

## 6. INTELLECTUAL PROPERTY RIGHTS: THE INVISIBLE GOVERNANCE ASSET

Intellectual Property Rights (IPR) constitute an increasingly significant dimension of corporate stewardship, particularly as India positions itself as a global innovation hub under the National IPR Policy 2016 and subsequent DPIIT initiatives. For technology companies, pharma innovators, fintech start-ups, and creative enterprises, the Company Secretary's role in IPR governance spans trademark and patent filings, licensing agreement oversight, IP portfolio disclosures, and protection of trade secrets under confidentiality governance frameworks.

AI has both complicated and enriched the IPR landscape. Generative AI raises fundamental questions about authorship, copyright ownership, and patentability of AI-assisted inventions – questions that governance professionals must engage with proactively. Company Secretaries advising technology-driven companies must ensure that IP governance policies are boardroom agenda items, that AI-generated outputs are appropriately categorised under copyright law, and that employee IP assignment agreements are robust in an era of remote work and AI-assisted creation.

The intersection of ESG and IPR is also noteworthy: green technology patents, climate-linked licensing frameworks, and open-innovation models aligned with SDG objectives represent

emerging governance territories where CS professionals with ESG literacy can add unique value.

## **7. THE WAY FORWARD: BUILDING THE GOVERNANCE ARCHITECT OF THE FUTURE**

The professional identity of the Company Secretary must evolve to meet the demands of the governance age. Several strategic imperatives define this evolution:

### **7.1 Mandatory ESG Literacy in CS Education and CPE**

ICSI must embed ESG governance – encompassing BRSR, TCFD, GRI standards, TNFD, and India's National Adaptation Plan compliance requirements, as a core component of the CS curriculum and Continuous Professional Education (CPE) programme. ESG certification, currently an elective, should become a professional benchmark for practicing Company Secretaries advising listed and large unlisted entities.

### **7.2 AI Governance Competency Framework**

The Institute should develop an AI Governance Competency Framework for CS professionals, covering: fundamentals of machine learning and algorithmic decision-making, AI risk governance and board oversight obligations, regulatory compliance in AI-mediated environments (DPDP Act, proposed Digital India Act), and practical applications in compliance automation, ESG data management, and investor communication.

### **7.3 Strengthening the Compliance Officer Function**

In the current regulatory environment – characterised by increasing SEBI scrutiny of listed entities, expanding LODR obligations, and the growing complexity of sustainability disclosures – the Compliance Officer function led by Company Secretaries must be adequately resourced, technologically supported, and organisationally empowered. Boards must recognise that the Compliance Officer is not merely a regulatory necessity, but a strategic risk manager.

### **7.4 CS as ESG Champions in Public Institutions**

The ESG governance mandate must extend beyond the listed corporate sector to public institutions, government enterprises, ULBs, development finance institutions, and cooperative entities. ICSI should advocate for the appointment of qualified CS professionals as Chief Sustainability Officers or ESG Compliance Officers in public sector bodies – leveraging the profession's multi-disciplinary expertise to institutionalise sustainable governance in the public interest.

### **7.5 Cross-Disciplinary Professional Development**

The governance challenges of the 21<sup>st</sup> century- climate risk, digital disruption, geopolitical uncertainty, demographic shifts – require professionals who can think across disciplinary boundaries. Company Secretaries must pursue cross-disciplinary learning in areas such as public policy, forensic accounting, behavioural governance, sustainability finance, and technology law. Programs such as IIM Calcutta's EPPM, ESG certifications from ICMAI and global bodies, and CISI's investment management modules equip CS professionals with the multi-dimensional intelligence that modern governance demands.

## **8. CONCLUSION: THE COMPANY SECRETARY AS GOVERNANCE CONSCIENCE**

The 27<sup>th</sup> National Conference of Practicing Company Secretaries convenes at a moment of profound significance for the profession. The convergence of AI-driven governance tools, the ESG disclosure revolution, and an expanded stewardship mandate is not a challenge to be managed rather, it is an opportunity to be seized.

Company Secretaries, by virtue of their unique positioning at the boardroom's conscience, possess an unmatched capacity to synthesise legal precision, governance wisdom, technological fluency, and ethical commitment. As the custodians of corporate integrity, they are not merely compliance officers; they are governance architects who design the institutional frameworks within which businesses, public enterprises, MSMEs, and start-ups can pursue sustainable, equitable, and accountable growth.

In this new era, the Company Secretary's professional creed must evolve: from ensuring compliance to embedding governance culture; from filing disclosures to shaping sustainability strategy; from managing board processes to elevating board effectiveness; from protecting institutional interests to stewarding societal trust. The governance conscience of India's corporate and public sector ecosystem deserves nothing less.

As India's Chairmanship of the G20 articulated so memorably: Vasudhaiva Kutumbakam 'the world is one family'. For Company Secretaries, this principle finds its governance expression in stewardship, the commitment to manage, protect, and enhance the shared institutional commons for generations yet to come. That is the truest calling of the profession in the age of AI, ESG, and transformative leadership.

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# From Compliance to Strategy: The Evolving Role of Company Secretaries in Trademark Protection, Prosecution and Dispute Resolution

**CS Bharat Hassani**

Practicing Company Secretary

## ABSTRACT

*In today's knowledge-driven economy, intangible assets – particularly trademarks – have emerged as the most critical drivers of corporate value. As Indian businesses increasingly recognise the strategic importance of brand and intellectual property, the role of the Company Secretary (CS) in trademark management is naturally evolving beyond routine compliance into a position of genuine strategic significance. Company Secretaries, by virtue of their multidisciplinary education and training, statutory recognition as Key Managerial Personnel, and proximity to board-level decision-making, are uniquely equipped to lead this transition with confidence and competence. Drawing from the Trade Marks Act, 1999, the IP India Annual Report 2024–25, WIPO data, this article explores the practical landscape of trademark prosecution and dispute resolution in India, and maps an exciting and well-founded opportunity: the CS as a strategic trademark advisor at the heart of corporate governance. A structured five-role framework for CS involvement in trademark lifecycle management is presented, and the article concludes with a forward-looking set of recommendations for strengthening and celebrating the professional contribution of Company Secretaries in India's growing IPR ecosystem.*

## 1. Introduction: Repositioning the Company Secretary in the IPR Ecosystem

### 1.1 The Rise of Intangible Assets – A Global Shift No Business Can Ignore

The traditional valuation models for Indian enterprises are undergoing a fundamental structural shift. The dominance of tangible assets—factories, plant, and machinery—is increasingly being eclipsed by a 'value migration' toward intangible capital, specifically brand equity and proprietary intellectual property. According to WIPO's Global Innovation Index (in collaboration with Brand Finance), the total value of corporate intangible assets globally crossed USD 97 trillion in 2025 – a growth that represents a 23-fold increase from USD 6 trillion recorded as recently as 1996. Intangible investment has been consistently outpacing tangible investment across major economies, growing at a compound annual rate of approximately 4% between 2008 and 2024, compared to just 1% for physical assets over the same period.

India is no longer an outlier in this global trajectory; it is an emerging leader in intangible asset intensity. Data from WIPO and recent corporate filings indicate that for Indian blue-chip entities, the 'brand-to-value' ratio has reached unprecedented levels—in some cases exceeding 90% of total enterprise value. This shift moves Trademarks from the periphery of the legal department directly into the Boardroom, transforming them from 'defensive compliance' items into 'core strategic assets'.

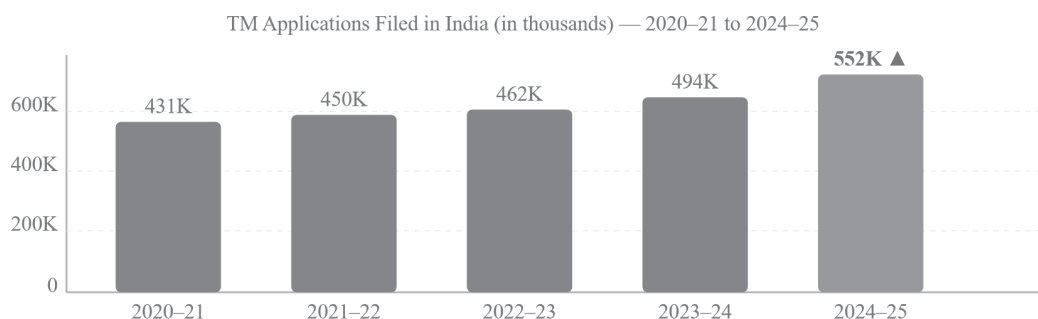
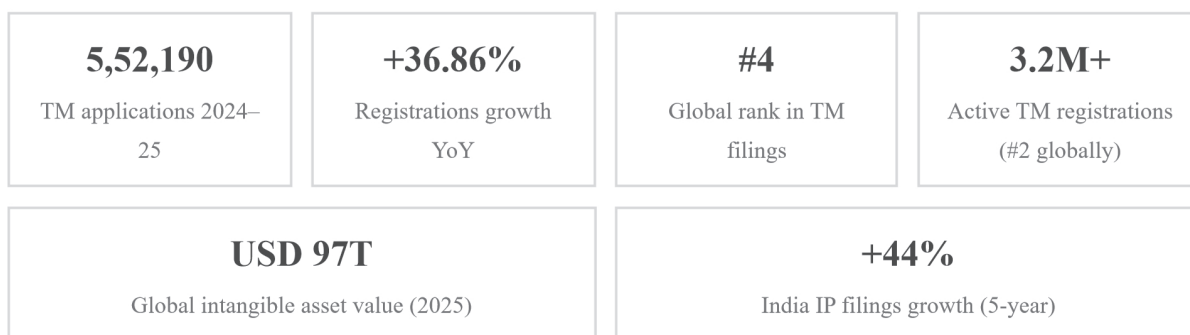
### 1.2 Trademarks at the Centre of India's IP Growth Story

Among all categories of intellectual property, trademarks occupy a uniquely commercial position. Unlike patents, which protect inventions for a limited term, a registered trademark is a perpetually

renewable asset that strengthens in value with every year of consistent, protected use. It is a business identity, a customer promise, and a competitive moat – all at once.

India's trademark landscape reflects this growing recognition in unmistakable numbers. The IP India Annual Report 2024–25 records a total of 5,52,190 trademark applications filed during the year, with the number of registrations rising by 36.86% compared to the previous year – the single highest annual jump in recent memory. Over the past five years, overall IP filings in India have grown by 44%, rising from 4,77,533 in 2020–21 to 6,89,991 in 2024–25. India now holds the second-largest number of active trademark registrations globally, with over 3.2 million trademarks in force, and ranked fourth worldwide in trademark filings in 2024.

**Figure 1: India Trademark Filing Growth & Global Intangible Asset Context**



Source: CGPDTM Annual Report 2024–25 | WIPO IP Facts & Figures 2025 | PIB, Government of India (July 2025)

Note: Green bar (2024–25) reflects record 36.86% YoY growth in registrations

### 1.3 The Persistent Gap: Compliance-First Thinking

Despite this volume of filings, a persistent and costly gap remains in how trademarks are actually managed within Indian organisations. In practice, trademark decisions are made after a brand is already in the market – sometimes even after a conflict has arisen. Searches are skipped or conducted superficially. Filing is treated as a one-time event rather than the beginning of a lifecycle. Examination objections are addressed reactively, often without adequate legal or commercial analysis. Oppositions, when they arise, frequently catch businesses underprepared – without organised evidence of prior use, without a coherent litigation strategy, and without anyone at the management level who has been thinking about brand risk at all.

## 1.4 The Case for Repositioning the Company Secretary

This is precisely where the Company Secretary steps into a position of remarkable opportunity – not merely as a filing agent, but as a strategic advisor who seamlessly bridges the worlds of law, governance, and business. Under the Companies Act, 2013, a CS is designated as a Key Managerial Personnel (KMP) under Section 2(51). The ICSI, through its Council Resolution passed in the 290<sup>th</sup> Meeting held on 14<sup>th</sup> October 2022, formally granted general permission to Practicing Company Secretaries to act as IPR agents. Rule 144(iii) of the Trade Marks Rules, 2017 explicitly recognises ICSI members as eligible to register and act as Trade Mark Agents without the need for any additional examination – a recognition that reflects the profession's inherent capabilities and the Institute's forward-looking vision.

What lies ahead is an exciting frontier. The IPR advisory space presents a natural and largely untapped avenue for CS professionals to extend the governance expertise they already bring to boardrooms and compliance functions into the equally critical domain of brand and intellectual property management. As Indian businesses grow more brand-conscious and IP-aware, the Company Secretary is well-positioned to become the trusted internal voice that connects trademark strategy with corporate governance – a role the profession is fully equipped and statutorily empowered to embrace.

## 2. Trademark Protection Framework in India: A CS Perspective

### 2.1 The Legal Foundation

While the Trade Marks Act, 1999 (read with the Trade Marks Rules, 2017) provides the statutory bedrock for brand protection, its practical application has evolved significantly. For a Company Secretary, navigating this framework is no longer about mere 'form-filing'; it is about managing a dynamic regulatory environment that harmonizes Indian IP standards with the TRIPS Agreement and global best practices under the Madrid Protocol. The Trade Marks Registry, functioning under the Office of the CGPDTM, administers the Act through offices at Mumbai, Delhi, Chennai, Kolkata, and Ahmedabad.

### 2.2 The Trademark Lifecycle: A CS-Embedded View

The trademark lifecycle, as mapped in Figure 2, reveals critical 'intervention points' where a CS can mitigate enterprise risk. The most potent opportunity for value creation lies in **Pre-adoption Clearance**. By identifying inherent registrability hurdles—such as descriptiveness or deceptive similarity—before a brand is commercially launched, the CS prevents the accumulation of 'toxic brand equity' that would otherwise result in costly litigation or forced rebranding.

FIGURE 2: TRADEMARK LIFECYCLE – EMBEDDED CS ROLE AT EACH STAGE

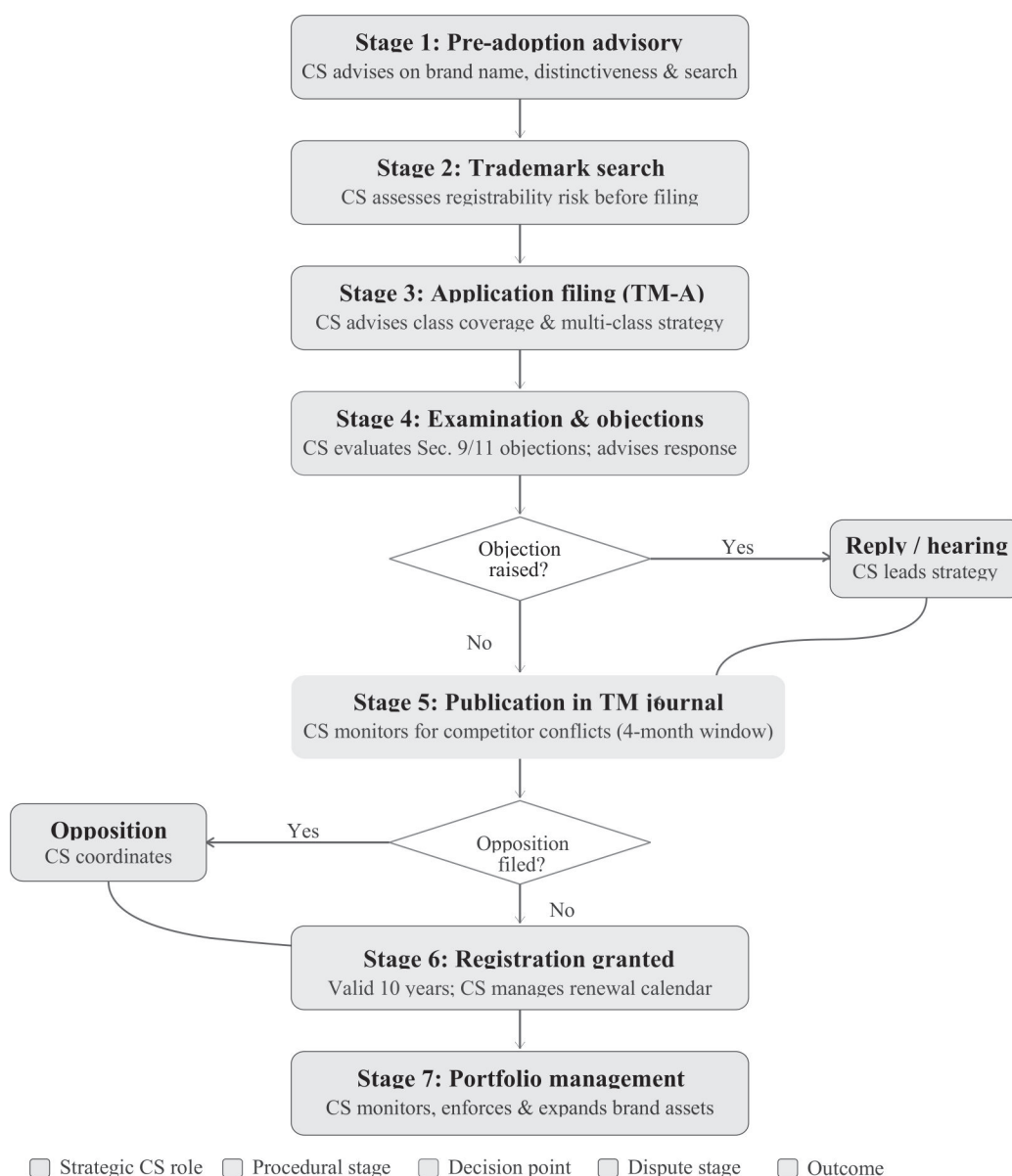


Figure 2: Author's own compilation based on Trade Marks Act, 1999 and Trade Marks Rules, 2017

### 3. Trademark Prosecution: Strategic Decision-Making by Company Secretaries

#### 3.1 The Reality of Examination Objections

Receiving an Examination Report is not a failure – it is a normal and common part of the trademark registration process in India. Objections raised in examination reports fall under two broad categories under the Trade Marks Act, 1999: Absolute Grounds under Section 9 (relating to the inherent nature of the mark – lack of distinctiveness, descriptiveness, deceptiveness) and Relative Grounds under Section 11 (arising from conflict with existing registered or pending marks – likelihood of confusion or association).

#### 3.2 The Strategic Decisions That Matter

Responding to an examination report is not a clerical exercise. Each objection calls for a genuine legal and business judgment. The key decisions available to an applicant include: defending the

mark as filed with legal arguments and evidence of use; amending the application by adding disclaimers or narrowing the class specification; seeking a show-cause hearing before the Registrar; withdrawing and refiling with a redesigned mark (though this forfeits the original filing date); or negotiating a consent or coexistence arrangement with the owner of the cited mark.

Most businesses, when they receive an examination report, simply forward it to external counsel and ask for a reply. What they rarely have is someone internally who can evaluate the commercial stakes – how much has been invested in this brand? Is it worth defending? Is a redesign more economical in the long run? These are not purely legal questions; they are business and governance questions – precisely the kind a well-positioned CS should be answering.

### 3.3 Common Mistakes in Trademark Prosecution

In practice, a trademark application is often lost not on its legal merits, but due to avoidable procedural slips. As a CS, you can move from being a 'filing agent' to a 'brand protector' by navigating these common field-level traps:

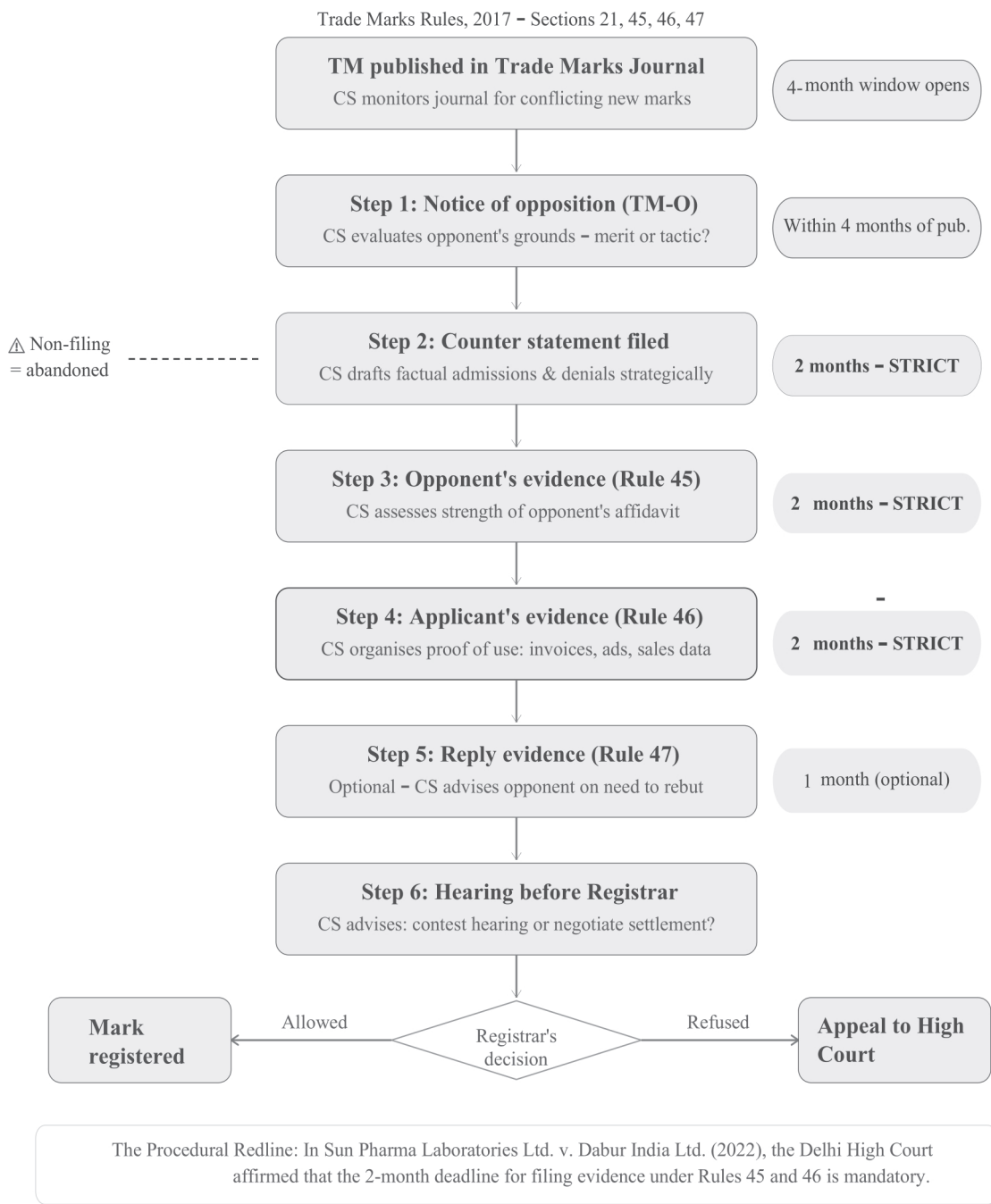
- **The 'Blind' Filing:** Proceeding with an application without a comprehensive public search, leading to immediate Section 11 conflicts that could have been identified in the pre-adoption phase.
- **Descriptive Traps:** Selecting brand names that are purely laudatory or descriptive of the goods/services, inviting rigorous Section 9 objections that are difficult to overcome without substantial 'evidence of use.'
- **Under-classification:** Limiting the application to a single class despite the business having cross-sectoral operations, thereby leaving the brand vulnerable to 'encroachment' in ancillary service categories.
- **The Fatal Timeline Lapse:** Treating the 30-day examination response window as flexible. Practitioners often fail to utilize Form TM-M (under Rule 109) to seek statutory extensions, resulting in the Registry marking the application as 'Abandoned'—a status that is notoriously difficult to reverse.
- **Boilerplate Responses:** Submitting 'cut-and-paste' replies to Examination Reports that fail to engage with the specific citations or lack the necessary Affidavit of Use, leading to a summary refusal at the hearing stage."---similarly do not change the content just want this in a more practical inferences, humanized and easy tone.

## 4. Opposition Proceedings and Dispute Resolution: The CS as Strategic Coordinator

### 4.1 The Opposition Process

Once a trademark is published in the Trade Marks Journal, any person may file an opposition within four months of publication – a window that is strict and non-extendable. The opposition procedure under the Trade Marks Rules, 2017 follows a structured sequence as illustrated in Figure 3 below.

**Figure 3: Opposition Proceedings – Process & CS Strategic Role (Trade Marks Rules, 2017)**



The Procedural Redline: In Sun Pharma Laboratories Ltd. v. Dabur India Ltd. (2022), the Delhi High Court affirmed that the 2-month deadline for filing evidence under Rules 45 and 46 is mandatory.

**4.2 Ground-Level Realities in Opposition Proceedings**

In a competitive market, opposition is a critical tool for **Market Clearance**. By proactively monitoring the Trade Marks Journal, a CS can initiate oppositions to block deceptive marks before they gain a foothold, effectively 'policing' the brand's territory. This proactive stance ensures that the company's distinctiveness is not diluted by bad-faith filers or 'look-alike' brands.

However, the ground reality also involves **Defensive Coordination**. Many oppositions are tactical

strikes by competitors intended to stall registration. Whether initiating or defending, the outcome hinges on 'Evidence Readiness.' A CS adds value by:

- **Commercial Filtering:** Assessing whether to pursue a full legal battle or negotiate a Co-existence Agreement based on business stakes.
- **Evidence Readiness:** Maintaining a proactive repository of invoices and ads; lack of "Proof of Use" is the primary reason strong cases fail.
- **Deadline Discipline:** Enforcing strict compliance with Sun Pharma timelines, where even a one-day lapse leads to automatic abandonment.

## 5. Core Functional Roles of Company Secretaries in Trademark Management

The role of a CS in trademark management can be structured across five distinct but interconnected functions, as illustrated in Figure 4 below.

**Figure 4: The CS Trademark Management Framework – Five Core Roles**

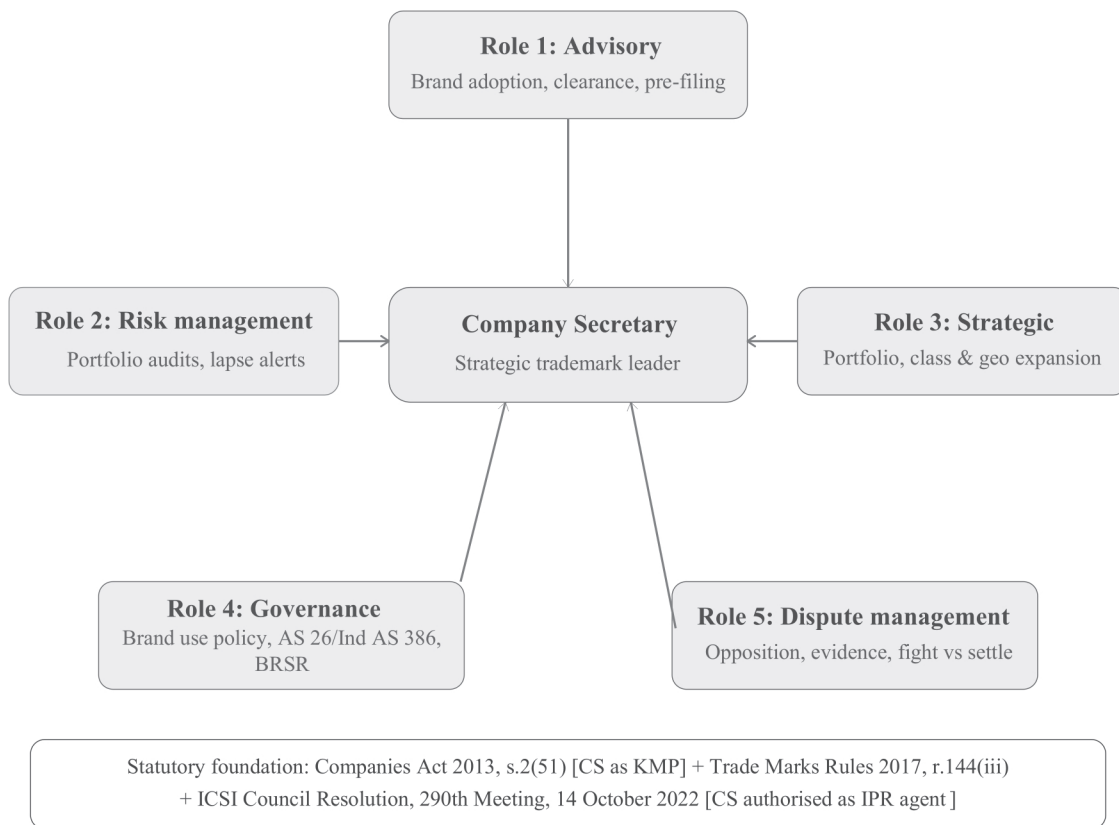


Figure 4: Author's own compilation based on, Companies Act 2013, and Trade Marks Rules 2017

### Role 1: Advisory – Before the Brand is Born

The most underutilised and arguably most valuable role a CS can play is at the brand adoption stage. At this stage, the CS can advise on conducting a thorough trademark clearance search; assessing the registrability of the proposed mark; identifying potential conflicts; evaluating geographic considerations for businesses planning expansion; and advising on naming strategy – choosing marks that are inherently distinctive rather than descriptive. This early-stage advisory function is the difference between a brand built on solid legal foundations and one that accumulates commercial goodwill on borrowed time.

## Role 2: Risk Management – Anticipating Problems

Trademark risk is business risk. The CS's risk management role encompasses: periodically auditing the company's trademark portfolio for gaps; monitoring newly published trademarks for potential conflicts; assessing legal exposure during acquisitions or mergers (trademark due diligence); and flagging situations where the company's marks may have become vulnerable through non-use (a mark unused continuously for five years is liable to cancellation under the Act).

## Role 3: Strategic – Building a Trademark Portfolio

Single-mark thinking is the most common limitation in how Indian businesses approach trademark management. The CS's strategic role involves: advising on class coverage across all relevant categories; advising on geographic coverage as the business expands; maintaining a renewal calendar; and integrating trademark strategy with business expansion decisions, including new product launches, brand extensions, and licensing arrangements.

## Role 4: Governance and Compliance

A trademark registration is not self-executing. The CS's governance role includes: ensuring that the company's use of marks is consistent with the registered form; advising on authorised user arrangements and proper documentation; overseeing compliance with AS 26/Ind AS 38 (Accounting for Intangibles); and ensuring that brand-related disclosures in annual reports and statutory filings accurately reflect the company's IP ownership position.

## Role 5: Dispute Management

When opposition or infringement disputes arise, the CS serves as the internal point of coordination between the business, its external legal counsel, and the management team. This role involves assessing the commercial merit of defending versus settling; managing timelines and ensuring deadlines under the Trade Marks Rules are met; overseeing the organisation of evidence; and ensuring that any settlement – consent arrangement, coexistence agreement, or licensing deal – is properly documented and governed.

## 6. Trademark as a Strategic Asset: Business Value and ESG Integration

### 6.1 Trademarks on the Balance Sheet

Under **AS 26 / Ind AS 38**, acquired trademarks are recognized as capital assets if they provide future economic benefits. Unlike most intangibles, trademarks with indefinite lives are not amortized; instead, they undergo annual **impairment testing**, making them high-value assets for investors and lenders.

### 6.2 Breaking Down the ESG-IP Link

**Governance (G) – Risk Oversight:** A messy trademark portfolio (lapsed marks or unprotected brands) signals poor internal controls. Proactive management shows the Board is protecting the company's most valuable intangible assets from legal "leakage" or theft, which is a key indicator of Risk Maturity.

**Social (S) – Ethical Branding:** Trademarks exist to prevent public confusion. By ensuring the company doesn't use "deceptive" or "copycat" marks, a CS protects the consumer's right to know the true origin and quality of a product. This aligns with the Social responsibility of honest business practices.

**ESG Reporting (BRSR):** SEBI's BRSR Core requires companies to report on their "Business Conduct." A CS integrates IP here by showing that the company's brand growth is backed by solid legal ownership and ethical naming, making "Brand Stewardship" a reportable governance success.

## 7. Challenges in Trademark Practice: A CS Perspective

### 7.1 Registry-Side Challenges

The Trade Marks Registry has made commendable progress – cloud migration, AI/ML-powered trademark search technology, the IP Saarthi chatbot, and online hearing infrastructure have all been deployed in recent years. Yet, despite the significant increase in disposals (4,71,719 applications disposed in 2024–25), the sheer volume of incoming applications – over 5.5 lakh in a single year – means that processing timelines continue to be stretched at certain stages. A portion of examination reports continue to raise formulaic objections that, upon closer examination, lack genuine merit, consuming applicant resources and adding to pendency.

### 7.2 Business-Side Challenges

Most businesses engage with their trademarks only when a problem arises – an examination objection, an opposition notice, or a cease-and-desist letter from a competitor. By the time the problem surfaces, the business has already invested heavily in the brand. In most firms, trademarks sit “between” marketing, legal department and external counsel – with no clear owner who has both the legal knowledge and the business context to manage it strategically.

### 7.3 The Professional Gap: Underutilisation of the CS in IPR

The structural path for the CS is already paved by **Rule 144(iii)** of the Trade Marks Rules. However, moving into the IPR space is less about ‘new territory’ and more about applying our existing governance DNA to a different asset class. Our training in corporate law and risk management allows us to see trademarks not just as ‘logos,’ but as high-stakes financial and legal instruments that belong in board-level discussions. As **BRSR** and board disclosures become more rigorous, the CS is the most logical ‘owner’ for brand governance. We aren’t just filing papers; we are protecting the enterprise’s most critical identity. The framework is there—it is now time for the practitioner to step in.

## 8. Recommendations: Strengthening the Strategic Role of Company Secretaries

**Early-stage involvement in brand decisions:** Businesses – and particularly their boards – should recognise trademark protection as a strategic governance function that begins at the brand adoption stage. The CS should be looped into any decision involving the launch of a new brand, product name, or logo, as a matter of protocol.

- **Capacity building for CS members in IPR:** The ICSI should expand its IPR-focused training programmes – including the existing Certificate Course on IPR – to provide deeper, practice-oriented training on trademark prosecution, opposition strategy, portfolio management, and IP valuation.
- **Proactive trademark portfolio audits:** Practicing CS members can offer trademark portfolio audits as a standalone service to client companies – reviewing existing registrations for gaps, lapses, and risks.
- **Integration of IPR into corporate governance frameworks:** Corporate governance checklists, board evaluation frameworks, and secretarial audit templates should incorporate trademark governance as a specific review parameter.
- **Leveraging the BRSR-IPR connection:** As ESG reporting under SEBI’s BRSR framework matures, CS members should advise listed companies on how their trademark governance practices contribute to governance disclosures and ESG ratings.
- **Advocating for CS recognition in trademark practice:** The ICSI should continue engaging

with the Trade Marks Registry and the CGPDTM to ensure that the CS community's eligibility as trademark agents is operationally respected.

## 9. Conclusion: From Facilitators to Strategic Leaders

The Indian trademark landscape has undergone a remarkable transformation over the past decade. With over 5.5 lakh trademark applications filed in a single year, a 44% surge in overall IP filings over five years, and one of the largest active trademark registries in the world, the message is clear: Indian businesses are steadily recognising the value of brand and identity. This surge is not just a statistic—it reflects a maturing economy where intangible assets are becoming central to business value.

But numbers alone do not make strategy. Filing a trademark application is not the same as managing a trademark asset. An application is merely a piece of paper unless it is backed by a strategy that treats the brand as a living asset rather than a one-time filing. And engaging a lawyer when a dispute arises is not the same as having a governance structure that prevents disputes from becoming crises.

This is where Company Secretaries are uniquely positioned to make a meaningful difference. Situated at the intersection of law, governance, risk, and business strategy, a CS brings a perspective that goes beyond procedural compliance. The statutory framework already recognises this potential—from their designation as Key Managerial Personnel under the Companies Act, 2013, to their eligibility as trademark agents under the Trade Marks Rules, 2017, reinforced by the 2022 resolution of the Institute.

The shift from compliance officer to strategic brand steward is not a departure from the traditional role of a Company Secretary—it is a natural extension of it. In an environment marked by increasing regulatory scrutiny, complex disputes, and growing emphasis on ESG-driven governance, trademark management can no longer remain a peripheral function.

Ultimately, the companies that will safeguard their brands most effectively will not be those with the largest legal budgets, but those with the strongest internal governance. And at the heart of that governance will be a Company Secretary who understands that a trademark is not merely a registration—it is a promise to the market. Protecting that promise is not just a legal obligation; it is a strategic responsibility.

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# Intellectual Property Rights Practices and Procedures: A Roadmap for Company Secretaries in the Digital Era

**CS Ishan M. Padhye**

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## Introduction

Intellectual property has emerged as the cornerstone of competitive advantage in the knowledge economy. For organizations across sectors, intangible assets like patents, trademarks, copyrights, trade secrets, and industrial designs often constitute the most valuable components of their enterprise worth. The World Intellectual Property Organization estimates that intangible assets now represent over 90% of the market value of S&P 500 companies, a dramatic shift from the tangible asset dominated valuations of previous decades.

Company Secretaries occupy a unique position at the intersection of governance, compliance, and strategic decision making. Their traditional role as guardians of corporate compliance has expanded to encompass intellectual property stewardship, requiring them to understand not only the legal frameworks surrounding IPR but also the commercial, ethical, and technological dimensions that shape contemporary practice.

This article explores the multifaceted responsibilities of Company Secretaries in IPR management, examining procedural frameworks, compliance mechanisms, emerging challenges, and best practices that define excellence in this domain.

## The Evolving IPR Landscape in India

### Legislative Framework

India's intellectual property regime has undergone substantial transformation since the country's accession to the Agreement on Trade -Related Aspects of Intellectual Property Rights (TRIPS) in 1995. The legislative architecture now comprises:

- The Patents Act, 1970 (amended significantly in 2005)
- The Trade Marks Act, 1999
- The Copyright Act, 1957 (with amendments accommodating digital content)
- The Designs Act, 2000
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Semiconductor Integrated Circuits Layout-Design Act, 2000
- The Protection of Plant Varieties and Farmers' Rights Act, 2001

The National Intellectual Property Rights Policy of 2016 articulated India's vision of a knowledge-driven economy, emphasizing the slogan "Creative India; Innovative India." This policy framework recognizes IPR as a marketable financial asset and developmental tool, positioning intellectual property at the centre of economic strategy.

### Institutional Infrastructure

The Controller General of Patents, Designs and Trade Marks (CGPDTM), operating under the

Department for Promotion of Industry and Internal Trade (DPIIT), serves as the primary administrative body for IPR registration and enforcement. The establishment of the Intellectual Property Appellate Board (IPAB), though subsequently abolished in 2021 with its functions transferred to the High Courts, represented an important phase in specialized IPR adjudication.

Recent initiatives including the Cell for IPR Promotion and Management (CIPAM) and the Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP) demonstrate governmental commitment to democratizing IPR access and awareness.

## The Role of Company Secretaries in IPR Management

### Governance Oversight

Company Secretaries serve as the bridge between the board of directors, management, and regulatory authorities. In the context of intellectual property, this bridging function assumes critical importance. The Company Secretary must ensure that:

1. Board awareness regarding the organization's IP portfolio remains current and comprehensive;
2. Risk assessment incorporates intellectual property vulnerabilities and opportunities;
3. Strategic planning aligns IP development with corporate objectives.

The Companies Act, 2013, through its emphasis on transparency and accountability, implicitly mandates attention to intellectual property matters. Section 134(3)(c) requires the Board's Report to include particulars of conservation of energy, technology absorption and research and development areas intimately connected with intellectual property creation and protection.

### Compliance Architecture

Developing holistic compliance frameworks for IPR requires Company Secretaries to:

**Establish IP Policies:** Comprehensive intellectual property policies should address creation, protection, commercialization, and enforcement. Such policies must clarify ownership of employee created IP, define procedures for invention disclosure, and establish protocols for IP due diligence in corporate transactions.

**Implement Documentation Systems:** Systematic documentation serves as the foundation for establishing priority dates, proving ownership, and defending against infringement claims. Company Secretaries should ensure that invention records, development documentation, and chain-of-title documentation meet evidentiary standards.

**Monitor Renewal Obligations:** Intellectual property rights require periodic renewal. Failure to maintain registrations can result in irrevocable loss of protection. Establishing calendaring systems and internal controls to prevent inadvertent lapses constitutes an essential procedural safeguard.

**Coordinate Due Diligence:** During mergers, acquisitions, and strategic partnerships, intellectual property due diligence requires meticulous attention. Company Secretaries must evaluate IP portfolios, identify encumbrances, assess infringement risks, and verify ownership claims.

## Contemporary Practices in IPR Protection

### Patent Practices and Procedures

The patenting process entails managing a complex sequence of procedures, from initial disclosure of the invention to its grant and ongoing maintenance.

**Pre-Filing Considerations:** Before initiating patent applications, organizations should conduct:

- Prior art searches to assess novelty and non-obviousness;
- Freedom to operate analyses to identify potential infringement risks;
- Commercial viability assessments to justify prosecution costs;
- Jurisdictional strategy development for multi-country protection.

**Filing Procedures:** The Indian patent system requires submission of an application form for grant of a Patent along with provisional or complete specifications. The 12 month window between provisional and complete specification filing allows applicants to refine their claims while securing priority dates.

**Examination and Prosecution:** Following the 18- month publication period and request for examination through a specified form, applicants must respond to examination reports within prescribed timelines. Effective prosecution requires strategic claim drafting, persuasive argumentation, and sometimes amendment to overcome prior art objections.

**Post-Grant Procedures:** Maintenance through annual renewal fees, watching for potential infringement, and monitoring for invalidation proceedings constitute ongoing obligations following patent grant.

### **Trademark Practices**

Trademark protection extends beyond registration to encompass brand management and enforcement.

**Clearance Searches:** Comprehensive trademark searches should examine not only identical marks but also phonetically similar, visually similar, and conceptually similar marks across relevant classes. The expanded scope of protection under Section 29(4) of the Trade Marks Act for well-known marks necessitates broader search parameters.

**Classification Strategy:** The Nice Classification system organizes goods and services into 45 classes. Strategic class selection requires understanding both current business activities and anticipated expansion plans.

**Opposition Proceedings:** The four- month opposition window following publication in the Trade Marks Journal provides third parties an opportunity to challenge registration. Company Secretaries should ensure systematic monitoring of published applications to identify potentially conflicting marks.

**Use Requirements:** Maintaining trademark registrations requires genuine use in commerce. Non-use for five years renders marks vulnerable to cancellation under Section 47 of the Trade Marks Act. Documentation of use through invoices, advertisements, and product photographs provides essential evidence.

### **Trade Secret Protection**

Unlike patents and trademarks, trade secrets receive protection through confidentiality rather than registration. The absence of dedicated trade secret legislation in India means protection derives from contract law, equity, and the Information Technology Act, 2000.

Effective trade secret programs require:

- **Identification:** Systematic cataloguing of confidential business information;
- **Classification:** Tiering information based on sensitivity and value;
- **Access Controls:** Implementing need-to-know restrictions and technical safeguards;

- **Contractual Protection:** Non-disclosure agreements, employment contracts with confidentiality clauses, and vendor agreements with appropriate restrictions;
- **Exit Procedures:** Protocols for departing employees including return of materials and reminder of ongoing obligations.

## Emerging Challenges in IPR Practice

### Artificial Intelligence and Intellectual Property

The intersection of artificial intelligence and intellectual property raises fundamental questions that existing legal frameworks struggle to address.

**AI-Generated Works:** When artificial intelligence systems create potentially protectable works, whether inventions, artistic expressions, or designs, questions of authorship and inventorship become problematic. Current Indian law requires human authors and inventors. The Copyright Act defines “author” in terms that presuppose human creativity, while the Patents Act requires inventors to be “persons.”

Recent developments internationally, including the DABUS patent applications where an AI system was listed as inventor, highlight these tensions. While jurisdictions including India have largely rejected AI inventorship, the increasing sophistication of generative AI systems will continue to pressure these frameworks.

**AI in IP Administration:** Artificial intelligence offers significant opportunities for improving efficiency in IP practice. Machine learning algorithms can enhance prior art searches, predict examination outcomes, and identify potential infringement. Company Secretaries should evaluate AI tools while maintaining awareness of their limitations and ensuring human oversight of consequential decisions.

**Training Data and IP Rights:** The use of copyrighted works to train AI systems raises unresolved questions about infringement and fair dealing. Organizations deploying AI must consider the provenance of training data and potential liability exposure.

### Cross-Border Enforcement Challenges

The territorial nature of intellectual property rights creates enforcement complexities in an increasingly borderless digital economy. Company Secretaries must navigate:

- Jurisdictional variations in protection scope;
- Coordination of multi-country enforcement actions;
- Cross-border discovery and evidence gathering challenges;
- Recognition and enforcement of foreign judgments.

### Balancing Open Innovation and Protection

Contemporary innovation models increasingly emphasize collaboration, open-source development, and ecosystem participation. Company Secretaries must help organizations navigate the tension between protective instincts and collaborative imperatives, developing frameworks that enable innovation sharing while safeguarding core competitive advantages.

## Best Practices for Company Secretaries

### Establishing IP Committees

Board-level or senior management IP committees provide governance oversight for intellectual property matters. Such committees should:

- Review IP portfolio status and valuation periodically;
- Approve significant filing, licensing, and enforcement decisions;
- Monitor competitive landscape and emerging IP risks;
- Ensure alignment between IP strategy and business objectives.

### Implementing IP Audits

Regular intellectual property audits serve multiple functions:

1. **Inventory Verification:** Confirming that registered rights remain in force and ownership records are accurate.
2. **Gap Analysis:** Identifying protectable assets that lack formal protection.
3. **Enforcement Review:** Evaluating infringement of organizational IP rights and potential organizational infringement of third-party rights.
4. **Valuation Update:** Refreshing IP asset valuations for financial reporting and strategic planning.

### Developing IP Education Programs

Building organizational IP literacy requires sustained education efforts. Company Secretaries should:

- Conduct awareness sessions for employees regarding IP policies;
- Provide specialized training for R&D personnel on invention disclosure procedures;
- Brief commercial teams on trademark usage guidelines and infringement recognition;
- Educate board members on IP strategic considerations.

### Creating Incident Response Protocols

IP-related incidents, whether arising from infringement, trade secret breaches, or cease-and-desist communications, call for immediate and coordinated response mechanisms. Pre-established protocols should designate:

- Response team composition and authority;
- Initial assessment procedures;
- Communication guidelines (internal and external);
- Documentation requirements;
- Escalation triggers.

### The ESG Dimension of Intellectual Property

Intellectual property intersects with environmental, social, and governance considerations in ways that Company Secretaries increasingly must address.

#### Environmental Considerations

Green patents, which relate to environmentally beneficial innovations, are emerging as a significant portfolio class. Organizations can leverage accelerated examination pathways, including programs like WIPO GREEN administered by the World Intellectual Property Organization. Company Secretaries should consider:

- Positioning IP strategy to support sustainability commitments;
- Evaluating green licensing programs that expand access to environmental technologies;
- Assessing carbon footprint implications of IP management practices.

## Social Considerations

Access to essential technologies, particularly pharmaceuticals and agricultural innovations, raises social responsibility questions. Compulsory licensing provisions under Section 84 of the Patents Act reflect societal interest in ensuring essential innovations reach those in need. Organizations must balance legitimate commercial interests with broader access considerations.

## Governance Considerations

Robust IP governance demonstrates organizational maturity and risk management capability. Investors increasingly evaluate IP management practices as indicators of strategic sophistication and value protection. Transparent disclosure of IP policies, portfolios, and enforcement approaches supports stakeholder confidence.

## Practical Procedures for Common IP Scenarios

### Responding to Infringement

Upon discovering potential infringement of organizational IP rights:

1. **Document the Infringement:** Gather evidence including screenshots, purchases, date stamps, and witness statements.
2. **Assess Commercial Impact:** Evaluate market harm and quantify damages where possible.
3. **Analyze Legal Position:** Review registration status, scope of protection, and potential defenses.
4. **Consider Strategic Options:** Cease-and-desist communication, negotiated resolution, licensing discussions, or litigation.
5. **Implement Chosen Response:** Execute selected approach with appropriate legal support.
6. **Monitor Outcome:** Track effectiveness and adjust approach as necessary.

### Managing Cease-and-Desist Receipt

When organizations receive infringement allegations:

1. **Preserve Evidence:** Implement litigation holds preventing document destruction.
2. **Conduct Internal Investigation:** Assess validity of allegations factually.
3. **Evaluate Legal Position:** Review scope of asserted rights and available defenses.
4. **Formulate Response Strategy:** Options include denial, negotiation, design-around, or litigation.
5. **Respond Within Deadlines:** Avoid default while preserving all options.
6. **Document Decision Rationale:** Maintain records supporting chosen approach.

### IP Due Diligence in Transactions

For mergers, acquisitions, and significant investments:

1. **Request IP Schedules:** Obtain comprehensive listings of target's IP assets.
2. **Verify Ownership:** Confirm chain of title and absence of encumbrances.
3. **Assess Registration Status:** Check maintenance, renewal, and pending actions.
4. **Review Agreements:** Examine licenses (in and out), assignments, and encumbrances.

5. **Evaluate Litigation:** Identify pending or threatened IP disputes.
6. **Analyze Freedom to Operate:** Assess infringement risks from third-party rights.
7. **Consider Integration:** Plan post-transaction IP management and harmonization.

### Future Directions

Several trends will shape IPR practices in coming years:

**Digitization of IP Administration:** Online filing, electronic prosecution, and blockchain based registries will transform procedural aspects of IP management.

**Harmonization Efforts:** International initiatives toward procedural harmonization may simplify multi-jurisdictional protection strategies.

**Alternative Dispute Resolution:** Mediation and arbitration for IP disputes offer efficiency advantages that may increase adoption.

**IP Finance:** Intellectual property as collateral for lending and investment will expand, requiring enhanced valuation and documentation practices.

**Standards-Essential Patents:** The growing importance of technical standards in connectivity and interoperability will elevate SEP licensing considerations.

### Conclusion

Intellectual property rights practices and procedures have become an integral component of modern corporate governance. Company Secretaries, positioned at the intersection of compliance, strategy, and stakeholder engagement, are uniquely placed to drive leadership in this space.

Effective stewardship of intellectual property demands not only procedural discipline but also strategic foresight and ethical awareness. As organizations increasingly rely on intellectual assets for value creation, Company Secretaries who cultivate expertise in IPR will play a critical role in balancing protection, commercialization, and responsible innovation.

The emergence of Company Secretaries as stewards of intellectual property reflects a natural evolution of their governance mandate. Beyond ensuring compliance with corporate and securities laws, they are now expected to oversee adherence to intellectual property frameworks while actively contributing to strategic decision-making.

By embracing this expanded role, Company Secretaries reaffirm the profession's adaptability and its continued relevance in a knowledge-driven economy, where intellectual capital is central to organizational success.

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# Rethinking Intellectual Property Governance in the Digital And AI-Driven Economy

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## ABSTRACT

*The digital and AI-driven business environment has significantly reshaped the nature of intellectual property, making ownership, control, and enforcement increasingly complex. As organisations rely more on intangible assets such as software, data, and AI-generated outputs, traditional IP frameworks often fall short in addressing layered ownership structures, contractual gaps, and data governance risks.*

*This article highlights the need to move beyond a compliance-oriented approach and integrate intellectual property into core governance frameworks. It emphasises the evolving role of the Company Secretary in ensuring ownership clarity, strengthening contractual discipline, and embedding IP considerations into strategic decision-making.*

*In doing so, it positions intellectual property as a critical driver of corporate value and underscores the importance of proactive, governance-led risk management in the digital era.*

**Key Words:** *Digital IP, AI Governance, Corporate Governance, IP Ownership, Data Governance, Contractual Risk, Digital Compliance, IP Risk Management.*

## Introduction: The Shift from Tangible to Digital Value

The rapid digitalisation of business has not only changed how companies operate, it has fundamentally altered what they own and what they must protect. In today's corporate landscape, value is increasingly embedded in assets that are intangible, and often difficult to define with precision. Digital platforms, proprietary software, algorithms, customer-facing interfaces, and data-driven processes have become central to business strategy. More recently, outputs generated through artificial intelligence have begun to occupy the same space.

However, while these assets drive growth and valuation, the governance frameworks surrounding them have not evolved at the same pace. In many organisations, intellectual property continues to be treated as a secondary legal consideration rather than a core governance issue. This disconnect creates a structural vulnerability that becomes visible only when disputes arise, transactions are undertaken, or regulatory scrutiny intensifies.

For Company Secretaries, this shift calls for a reassessment of perspective. Intellectual property in the digital era is no longer about registration and enforcement alone; it is about ownership clarity, contractual discipline, and continuous oversight of how value is created and distributed across digital ecosystems.

## Evolving Nature of Intellectual Property in the Digital Economy

The traditional understanding of intellectual property was built on relative certainty. Rights were identifiable, registrable, and enforceable within defined legal boundaries. A trademark signified ownership of a brand, a patent protected innovation, and copyright safeguarded creative expression. While these principles continue to hold relevance, their application in the digital economy has become far less straightforward.

Digital assets are rarely created in isolation. A typical technology-driven business involves contributions from multiple sources such as internal teams, external developers, ready-made software libraries, and third-party platforms. In such an environment, intellectual property is not a single asset but a combination of different, interconnected rights.

This layered structure often creates ambiguity. For instance, a company may believe it fully owns its website or mobile application, but parts of the code may be built using open-source software that comes with usage conditions. Similarly, a logo designed by an external agency may not legally belong to the company if the agreement does not clearly transfer ownership. Even content created by consultants or freelancers may remain with them unless specifically assigned.

These issues may not be visible in day-to-day operations but tend to surface during due diligence, especially in mergers, acquisitions, or fundraising.

From a governance standpoint, this raises a fundamental question: does the company truly own what it believes it owns? If the answer is uncertain, the implications extend beyond legal technicalities to valuation, investor confidence, and strategic flexibility.

### **Artificial Intelligence and Emerging Ownership Challenges**

If the digital economy has blurred the boundaries of intellectual property, artificial intelligence has further complicated them. The increasing use of AI tools in business processes has introduced a category of assets whose ownership is not always intuitive.

Organisations today routinely use AI platforms to generate content, develop code, analyse data, and even support decision-making. While the efficiency gains are undeniable, the legal and governance implications are often overlooked. There is a tendency to assume that outputs generated through such tools automatically belong to the user. In reality, this assumption may not always align with the contractual terms governing these platforms.

Many AI tools operate on standardised terms of service, which may include provisions relating to shared rights, usage restrictions, or data retention. In some cases, inputs provided by users may be utilised to further train the model, raising concerns about confidentiality and proprietary information. These are not abstract risks. They have direct implications for ownership, control, and competitive advantage.

A related concern arises from the datasets used to train AI models. If such datasets include proprietary or copyrighted material without appropriate authorisation, the outputs generated may carry an inherent legal risk. While jurisprudence in this area is still evolving, the uncertainty itself is a governance concern.

For Company Secretaries, the relevance lies not in resolving these legal ambiguities but in ensuring that they are recognised and addressed at the decision-making stage. The adoption of AI tools should be accompanied by a conscious evaluation of contractual terms, data governance policies, and risk exposure. In the absence of such evaluation, efficiency gains may come at the cost of long-term control.

### **Regulatory Position in India**

India's intellectual property framework does not currently recognise a separate legal category for AI-generated works. Existing laws, particularly the Copyright Act, 1957 and the Patents Act, 1970, continue to apply, with a general emphasis on human authorship and inventorship.

At present, there is no formal legislative proposal to introduce distinct rights for AI-generated content. Instead, the legal framework relies on established principles such as originality, authorship, and ownership. While these principles provide a foundation, their application to AI-generated outputs is not always seamless, particularly where human involvement is limited.

The Copyright Act, 1957 also provides certain exceptions under the concept of fair dealing, and enforcement of rights remains primarily the responsibility of individual rights holders. Civil and criminal remedies are available in cases of infringement, including in digital environments.

From a governance perspective, the absence of specific provisions for AI-generated works does not eliminate risk. Rather, it requires organisations to rely more heavily on contractual clarity, internal controls, and risk assessment mechanisms to address uncertainties.

### **Global Regulatory Trends**

Internationally, approaches to intellectual property in the context of artificial intelligence continue to evolve, with no single uniform position.

In jurisdictions such as the United States, there is a continued emphasis on human involvement as a prerequisite for intellectual property protection. Similarly, European approaches remain largely centred on human authorship and inventorship, although discussions around adapting legal frameworks to emerging technologies are ongoing.

At the same time, some jurisdictions in Asia, including Japan and South Korea, have shown a greater willingness to explore how intellectual property frameworks can accommodate AI-driven innovation. These developments reflect a more flexible approach, particularly in the context of data usage and innovation policy.

Overall, the global position remains fragmented. While some jurisdictions maintain traditional approaches, others are gradually adapting to the realities of AI-driven creation. This evolving landscape underscores the importance of closely monitoring regulatory developments, particularly for organisations operating across multiple jurisdictions.

### **Digital Infringement and Enforcement Challenges**

The digital environment has also redefined the nature of intellectual property infringement. Unlike traditional forms of infringement, which were often localised and easier to contain, digital misuse is instantaneous, scalable, and frequently anonymous.

Businesses today operate in an ecosystem where their brands and proprietary content are constantly exposed. E-commerce platforms, social media channels, and domain registries have created multiple points of vulnerability. Counterfeit listings, impersonation through deceptively similar domain names, and unauthorised use of brand assets are no longer isolated incidents. They are recurring operational risks.

While regulatory frameworks provide mechanisms such as notice-and-takedown procedures, enforcement remains largely reactive. Content removed from one platform can quickly reappear on another, often with minimal effort. This creates an ongoing cycle of monitoring and enforcement, requiring continuous attention and resources.

The practical takeaway is that legal remedies alone are not sufficient. Effective protection requires a combination of legal safeguards, technological monitoring tools, and strong internal governance processes.

### **Governance Implications for Company Secretaries**

The convergence of digitalisation, artificial intelligence, and evolving enforcement mechanisms has elevated intellectual property from a legal subject to a governance priority. This shift has direct implications for the role of the Company Secretary.

At its core, the governance challenge lies in ensuring clarity i.e., clarity of ownership, clarity of rights, and clarity of responsibility. This begins with contractual discipline. Agreements with employees,

consultants, vendors, and platform providers must clearly address issues of ownership, assignment, and permitted use. Ambiguity in these areas can translate into significant risk.

Equally important is the integration of intellectual property considerations into broader governance frameworks. Decisions relating to technology adoption, digital expansion, or strategic partnerships often carry implicit IP implications. These decisions cannot be left entirely to operational teams; they require oversight at a level where legal, financial, and strategic perspectives converge.

In this context, a Company Secretary performs a critical bridging function. By translating complex legal and technological issues into governance terms, they enable the Board to exercise informed oversight.

### **Strengthening Internal Controls and Risk Frameworks**

If intellectual property is to be effectively governed in the digital era, it must be embedded within the organisation's internal control and risk management systems. This requires a shift from reactive problem-solving to proactive risk identification.

One aspect of this is the institutionalisation of intellectual property audits. Periodic reviews of digital assets, contractual arrangements, and licensing structures can help identify gaps before they escalate into disputes. Such audits also provide a clearer picture of the organisation's asset base, which is valuable in strategic decision-making.

Another critical element is the establishment of structured protocols for responding to digital infringement. Given the speed at which such issues arise, ad hoc responses are often inadequate. Defined escalation mechanisms, supported by appropriate technological tools, can significantly improve response times and outcomes.

It is also important to recognise that governance in this area is not a one-time exercise. As business models evolve and new technologies are adopted, the risk landscape changes. Governance frameworks must therefore be dynamic, capable of adapting to new forms of risk.

### **From Compliance to Strategic Governance: A Practical Perspective**

The discussion around digital intellectual property reflects a broader shift in corporate governance. While compliance remains essential, it is no longer sufficient. The focus has increasingly moved towards preserving and enhancing enterprise value, much of which now resides in intangible, technology-driven assets.

In many modern businesses, intellectual property is not merely a legal construct but a core business asset. It shapes market positioning, supports revenue generation, and underpins competitive advantage. Yet, its intangible nature often results in limited visibility within governance frameworks. Without deliberate oversight, such assets may remain inadequately protected, improperly structured, or exposed to avoidable risks.

This shift has direct implications for the role of the Company Secretary. The function extends beyond ensuring legal compliance to enabling governance systems that are aligned with the realities of digital business models. This involves bringing intellectual property considerations into the ambit of board-level oversight and strategic decision-making.

In practice, risks relating to intellectual property often arise from routine business decisions. The adoption of AI tools, onboarding of technology vendors, or expansion onto digital platforms can create unintended exposure if issues of ownership, licensing, and data usage are not evaluated at the outset. These decisions are frequently driven by operational priorities, with limited governance intervention, allowing gaps to persist unnoticed until they surface during disputes, regulatory scrutiny, or transactional due diligence.

A practical approach lies in embedding intellectual property considerations within existing governance processes rather than creating parallel structures. Vendor onboarding frameworks can incorporate clear checks on ownership and assignment clauses. Technology adoption can be subjected to structured risk assessments that evaluate data usage, platform dependencies, and contractual limitations. Periodic internal reviews can further ensure that key digital assets are properly documented, protected, and aligned with business objectives.

From a governance standpoint, the objective is to move from reactive problem-solving to anticipatory risk management. By integrating intellectual property into internal controls, risk frameworks, and decision-making processes, organisations can strengthen stewardship of intangible assets while reducing long-term exposure.

In this evolving landscape, effective governance will increasingly depend on how well organisations recognise, manage, and protect what they cannot physically see but fundamentally rely upon.

### **Role of Company Secretaries in Digital IP Governance**

In a digital and AI-driven environment, the role of a Company Secretary naturally expands beyond its traditional boundaries. Intellectual property is no longer something that sits only with the legal or technical teams. It increasingly affects how value is created and protected within the organisation. Because of this, it becomes difficult to keep it outside the governance conversation.

One practical area where a Company Secretary can add value is in bringing clarity around ownership. In many organisations, rights over digital assets are shaped more by contracts than by registrations. Whether it is work done by employees, outsourced development, or use of third-party platforms, the actual position often depends on how agreements are drafted. These details are easy to overlook in fast-moving business environments, and that is where a governance-level review becomes important.

There is also a role in asking the right questions at the right time. When new technology is adopted or when AI tools are introduced into business processes, the focus is usually on efficiency and speed. Questions around ownership, data usage, or long-term control may not always come up immediately. A Company Secretary does not need to resolve these issues but can help ensure they are considered before decisions are finalised.

Another aspect is bringing some structure to internal practices. This does not necessarily mean creating new layers of process, but rather making sure that existing systems, such as vendor onboarding, contract approvals, and internal reviews adequately cover intellectual property aspects. Even simple measures, like periodic checks on key digital assets or clearer documentation of rights, can go a long way in avoiding future complications.

Finally, the role involves a fair amount of translation and communication. Intellectual property issues in the digital space can quickly become technical or legal in nature. The ability to present these as governance concerns, in a way that the Board can engage with, is an important part of the function.

Overall, a Company Secretary's role is less about managing intellectual property directly and more about ensuring that it is not overlooked where it matters most.

### **Conclusion**

The rise of online and AI-driven business models has transformed the landscape of intellectual property in ways that are still unfolding. Issues of ownership, control, and enforcement have become more complex, and in many cases, more uncertain.

For businesses, the implication is clear: intellectual property can no longer be treated as an

afterthought. It must be integrated into governance, risk management, and strategic decision-making. For Company Secretaries, this presents an opportunity to expand their role and contribute more directly to the protection of corporate value.

In the digital age, the effectiveness of governance will increasingly be measured by how well organisations manage their intangible assets. Intellectual property, though invisible, sits at the heart of this challenge. Managing it effectively is not merely a legal necessity but a defining element of resilient and forward-looking governance.

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# Intellectual Property Rights (IPR): Practices and Procedures

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Intellectual Property Rights (IPR) have emerged as one of the most significant legal and economic tools in the modern world. In an age where ideas, innovation, and creativity drive progress more than physical resources, the importance of protecting intellectual output cannot be overstated. Whether it is a ground breaking pharmaceutical invention, a distinctive brand logo, a literary masterpiece, or a technological innovation, each creation carries a value that must be safeguarded. IPR provides the legal structure through which such protection is granted, ensuring that creators and innovators are rewarded for their efforts while also contributing to broader societal development.

At its simplest, intellectual property refers to creations of the human mind. Unlike tangible property such as land or machinery, intellectual property is intangible and can be easily copied or reproduced. This inherent characteristic makes it vulnerable to misuse and unauthorized exploitation. To address this, legal systems across the world have developed frameworks that grant exclusive rights to creators for a limited period. These rights not only protect the creator's interests but also encourage further innovation by providing economic incentives.

## **Concept and Nature of Intellectual Property Rights**

The concept of intellectual property is rooted in the idea that individuals should have control over the products of their intellect. These rights are not perpetual; rather, they are granted for a limited duration, after which the creation enters the public domain. This balance ensures that society ultimately benefits from the dissemination of knowledge while still rewarding the creator during the protection period.

Intellectual property is generally classified into several categories, each addressing a specific type of creation. Patents protect inventions and technological advancements. Trademarks safeguard brand identity and consumer recognition. Copyrights cover artistic and literary works. Industrial designs focus on the aesthetic aspects of products, while geographical indications protect goods that derive their qualities from a specific location.

Each category operates under its own legal framework and procedural requirements, but all share the common objective of promoting creativity and innovation. The rights granted under these categories are enforceable in courts, allowing owners to take action against infringement.

## **Importance and Need for IPR Protection**

The necessity of IPR becomes particularly evident when one considers the effort and investment involved in creating intellectual property. Research and development activities, especially in fields such as pharmaceuticals and technology, require substantial financial resources and time. Without adequate protection, competitors could easily replicate innovations without incurring similar costs, thereby discouraging original creators.

For example, companies like Apple Inc. invest heavily in designing and developing new products. Their ability to protect these innovations through patents and design rights allows them to maintain a competitive edge in the market. Similarly, Coca-Cola Company has successfully protected its secret formula for decades, demonstrating the long-term value of intellectual property.

In the realm of literature and entertainment, copyright plays a vital role. The success of the Harry Potter series is not just a testament to creative storytelling but also to the effectiveness of copyright protection, which prevents unauthorized reproduction and ensures that the creator benefits from their work.

Beyond economic incentives, IPR also contributes to societal progress. By encouraging innovation, it leads to the development of new technologies, medicines, and creative works that enhance the quality of life. At the same time, mechanisms such as compulsory licensing ensure that public interest is not compromised, particularly in critical sectors like healthcare.

### **Types of Intellectual Property with Illustrative Examples**

Patents are among the most prominent forms of intellectual property. They provide exclusive rights to inventors, enabling them to prevent others from making, using, or selling their invention without permission. The invention of the telephone by Alexander Graham Bell is a classic example of how patent protection can support technological advancement.

Trademarks serve as identifiers of origin, helping consumers distinguish between products and services. The iconic swoosh logo of Nike, Inc. is instantly recognizable worldwide and represents the brand's reputation and quality.

Copyright protects creative expressions, including books, music, films, and software. Companies like Walt Disney Company rely extensively on copyright to protect their characters and stories, which form a significant part of their business.

Geographical indications are particularly relevant in countries like India, where products such as Darjeeling tea and Basmati rice have unique characteristics linked to their origin. These indications not only protect the reputation of such products but also support local communities and economies.

### **Legal Framework Governing IPR in India**

India's intellectual property regime is comprehensive and well-structured, consisting of several key legislations. The Patents Act, 1970 governs patent protection, while the Trade Marks Act, 1999 deals with trademarks. Copyrights are regulated under the Copyright Act, 1957, and industrial designs under the Designs Act, 2000. Geographical indications are covered by the Geographical Indications of Goods (Registration and Protection) Act, 1999.

These laws are supported by detailed rules that specify procedures, timelines, and administrative requirements. Authorities such as the Patent Office, Trademark Registry, and Copyright Office are responsible for implementing these laws and processing applications.

India's IP system has undergone significant reforms to align with international standards while addressing domestic priorities. Initiatives such as digital filing systems and expedited examination processes have improved efficiency and accessibility.

### **Procedure for Registration of Intellectual Property in India**

The process of registering intellectual property in India generally follows a structured sequence, although specific requirements vary depending on the type of IP.

The first step involves identifying the appropriate category of intellectual property and conducting a thorough search to ensure that the creation is original and does not infringe existing rights. This step is crucial, as it helps avoid potential conflicts and legal complications.

Once the preliminary search is completed, the applicant prepares and files the application with the relevant authority. The application must include detailed information about the creation, along with supporting documents and fees.

After filing, the application undergoes examination by the concerned authority. In the case of patents, this involves assessing the invention's novelty, inventive step, and industrial applicability. For trademarks, the examination focuses on distinctiveness and potential conflicts with existing marks.

Following examination, the application is published to invite objections or oppositions from third parties. This stage ensures transparency and provides an opportunity for others to challenge the application if they believe it infringes their rights.

If no opposition is filed, or if any objection is resolved in favor of the applicant, the intellectual property is granted or registered. The applicant then receives a certificate of registration, which serves as legal proof of ownership.

Post-registration, the owner must comply with certain requirements, such as renewal of rights and enforcement against infringement. Failure to maintain the rights may result in their lapse.

### **International Protection of IPR from India**

In today's interconnected world, businesses often operate across multiple countries, making international protection of intellectual property essential. Indian applicants can seek such protection through various international treaties and systems.

The Patent Cooperation Treaty (PCT) allows applicants to file a single international application, which can later be pursued in multiple countries. This system simplifies the process and reduces administrative burdens.

The Madrid Protocol enables trademark owners to register their marks in multiple jurisdictions through a single application. This is particularly beneficial for businesses looking to expand globally.

Copyright protection is facilitated by the Berne Convention, which ensures that works created in one member country are automatically protected in others.

These international mechanisms are administered by the World Intellectual Property Organization, which plays a central role in promoting global IP protection.

### **Role of Company Secretary in IPR Management**

From a Company Secretary's perspective, intellectual property is not just a legal issue but also a governance and a strategic matter. A CS often plays a role in identifying, protecting, and managing intellectual property within an organization.

During mergers and acquisitions, due diligence of intellectual property assets is a critical task. This involves verifying ownership, checking for pending litigation, and ensuring that rights are properly registered. Any irregularity can affect the valuation of a company.

A Company Secretary also advises the Board on IP strategy, including registration, licensing, and commercialization. Drafting agreements such as licensing and assignment agreements is another important responsibility. Proper documentation ensures that rights are clearly defined and enforceable.

### **IPR as a Business Asset and Commercialisation**

In modern business, intellectual property is often treated as a valuable asset. It can be licensed, assigned, or franchised to generate revenue.

For example, Microsoft Corporation earns significant revenue through software licensing. Similarly, Walt Disney Company has built a massive business around licensing its characters.

From a valuation perspective, intellectual property can be assessed using different methods. This is particularly relevant in mergers, acquisitions, and financial reporting.

### **Enforcement and Challenges in IPR**

Despite the existence of robust legal frameworks, enforcement of intellectual property rights remains a challenge. Issues such as piracy, counterfeiting, and lack of awareness continue to hinder effective protection.

For instance, counterfeit goods not only harm businesses but also pose risks to consumers. In sectors such as pharmaceuticals, counterfeit products can have serious health implications.

Legal disputes over intellectual property can also be complex and time-consuming. The ongoing battles between Samsung Electronics and Apple Inc. highlight the scale and complexity of such conflicts.

India has taken several steps to address these challenges, including the establishment of specialized IP courts and the adoption of digital technologies. Increased awareness and education about IPR are also crucial in improving enforcement.

### **Landmark Cases and Real-Life Illustrations**

Real-life cases provide valuable insights into the practical application of intellectual property laws. The dispute involving Microsoft Corporation and software piracy networks underscores the importance of protecting digital content.

The trademark challenges faced by Starbucks Corporation in international markets illustrate the complexities of global brand protection.

In India, the Novartis case concerning the cancer drug Glivec remains a landmark decision, emphasizing the need to balance patent rights with public health considerations.

These cases demonstrate that intellectual property is not just a legal concept but a dynamic and evolving field that impacts various aspects of society.

### **Relevance of IPR in the Contemporary World**

The relevance of intellectual property rights extends across multiple dimensions of modern life. It drives innovation by providing incentives for research and development. It supports economic growth by enabling businesses to commercialize their creations. It ensures fair competition by preventing unauthorized use of protected works.

IPR also plays a vital role in technology transfer, allowing knowledge to be shared through licensing agreements while maintaining ownership rights. In cultural industries, it preserves artistic integrity and promotes creativity.

For developing countries like India, intellectual property is a key factor in fostering innovation, attracting investment, and integrating into the global economy. It supports the growth of industries such as information technology, pharmaceuticals, and entertainment.

### **Emerging Issues in Intellectual Property Rights (IPR)**

From a practical standpoint, the law relating to intellectual property has not remained static. It is continuously evolving, largely due to rapid technological advancements and the changing nature of innovation. In fact, many contemporary issues in IPR often do not have clear statutory answers, and often require interpretation, policy intervention, or judicial clarification. Some of the most prominent emerging areas are discussed below:

## **AI-Generated Works and Ownership Challenges**

One of the most debated issues in recent times is the question of ownership of works created using artificial intelligence. Traditionally, intellectual property law has always been based on the assumption that a “human author” or “human inventor” is behind every creation. However, with the rise of advanced AI tools capable of generating text, images, music, and even software code, this foundational assumption is being challenged.

From a practical standpoint, a key question arises: if an AI system generates a painting or writes a book, who owns the copyright? Is it the developer of the AI software, the user who provided the prompt, or does the work fall into the public domain? At present, most legal systems, including India, still recognize only human authorship for copyright protection. This creates a grey area where AI-generated works may not qualify for traditional protection, even though they may have significant commercial value.

In corporate practice, this issue is becoming increasingly relevant, especially in media, advertising, and software development industries where AI-generated content is already widely used.

## **Software Patents and Technological Innovation**

Another evolving area is the patentability of software and computer-related inventions. Traditionally, pure software code “as such” is not patentable in many jurisdictions, including India. However, when software demonstrates a technical effect or is integrated with hardware, it may qualify for patent protection. The difficulty lies in distinguishing between an abstract algorithm and a technical invention. With modern innovations such as machine learning systems, cloud computing architectures, and blockchain-based applications, this distinction has become increasingly blurred.

From a practical perspective, companies operating in the technology sector often structure their inventions in a way that emphasizes technical application to meet patentability requirements. For example, a financial algorithm alone may not be patentable, but when implemented as a secure payment processing system, it may qualify for protection.

This area continues to evolve, and judicial interpretations play a major role in shaping the boundaries of software patents.

## **Digital Piracy and OTT Platforms**

Digital piracy has become one of the most significant enforcement challenges in the modern IP landscape. With the rise of internet accessibility and streaming platforms, unauthorized copying and distribution of content has become extremely easy.

Over-the-top (OTT) platforms such as streaming services face continuous challenges in protecting copyrighted content from illegal distribution. Movies, web series, and music are often leaked or streamed on unauthorized websites within hours of release.

From a practical standpoint, enforcement in the digital environment is far more complex than traditional piracy cases. Even when legal action is taken, the infringing content often reappears on multiple platforms or domains. This creates a continuous cycle of infringement and enforcement.

Companies like Walt Disney Company and other global media houses invest heavily in Digital Rights Management (DRM) systems and technological protection measures. However, complete prevention of piracy remains a challenge.

## **NFTs and Digital Ownership**

Non-fungible Tokens (NFTs) represent another emerging area that is reshaping the concept of ownership in the digital world. NFTs are unique digital tokens recorded on blockchain technology, representing ownership of a digital asset such as artwork, music, or collectibles.

At first glance, NFTs appear to solve the problem of digital ownership. However, from an intellectual property perspective, the situation is more complex. Ownership of an NFT does not necessarily mean ownership of the underlying intellectual property rights unless explicitly transferred. This distinction often creates confusion among buyers. A person purchasing an NFT artwork may own the token, but not the copyright to reproduce or commercially exploit the artwork.

From a practical standpoint, this has led to the need for clearer contractual frameworks and licensing terms in NFT transactions. The legal system is still adapting to these developments, and regulatory clarity is gradually emerging.

## **Biotechnology and Patent Protection**

Biotechnology is another rapidly expanding field where intellectual property issues are highly significant. Innovations in genetics, pharmaceuticals, and biomedical research often involve complex ethical and legal considerations.

Patent protection in biotechnology raises important questions related to morality, public health, and access to essential medicines. For example, while companies invest heavily in developing life-saving drugs, granting of broad patent protection can sometimes limit affordability and access.

A well-known example in India is the case involving the cancer drug Glivec by Novartis, where the Indian legal system had to balance between patent rights and public health concerns.

From a practical standpoint, biotechnology patents often involve detailed technical disclosures and raise issues related to genetic resources, traditional knowledge, and bioethics. This makes the field highly specialized and continuously evolving.

## **Concluding Observation on Emerging Issues**

Overall, it can be observed that intellectual property law is undergoing a period of transition. Technological advancements are constantly challenging traditional legal concepts, and the law is adapting in response.

From a practical standpoint, it is clear that future developments in AI, digital media, biotechnology, and blockchain will continue to test the boundaries of existing intellectual property frameworks. For professionals dealing with IP, this evolving nature of the law makes continuous learning and adaptability essential.

## **Conclusion**

Intellectual Property Rights are an essential component of the modern legal and economic landscape. They provide a framework for protecting and promoting innovation, ensuring that creators and inventors can benefit from their work. The procedures for registration and enforcement, though complex, are designed to balance the interests of creators and society.

As the world continues to evolve, the importance of intellectual property will only increase. By understanding and effectively utilizing IPR systems, individuals and organizations can transform ideas into valuable assets, contributing to economic development and societal progress.

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# The Digital Conscience: Redefining Compliance and Governance in the Age of Artificial Intelligence

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## EXECUTIVE SUMMARY : THE GOVERNANCE ARCHITECT

The 27<sup>th</sup> National Conference meets at a time when the corporate landscape is being rewritten by silicon and code. This paper posits that the Practicing Company Secretary (PCS) is no longer merely a “Compliance Officer” but has evolved into a Techno-Legal Architect.

As boards increasingly rely on “Algorithmic Decision-Making,” the traditional safeguards of Section 166 and Secretarial Standards are being tested. This paper provides a comprehensive roadmap for navigating this shift. It moves from the foundational definitions of AI to the complex intersection of the Companies Act, 2013, and the Digital Personal Data Protection (DPDP) Act, 2023. We introduce the concept of the “Living Audit,” where technology allows for real-time statutory monitoring, and we address the existential ethical risks of “Black Box” logic and Deepfakes in the Boardroom.

By integrating Model Governance Charters and Board Resolutions, this submission serves as both a theoretical treatise and a practical toolkit, ensuring the PCS remains the “Digital Conscience” of corporate India in the Fourth Industrial Revolution.

## ABSTRACT

*As Artificial Intelligence (AI) transitions from a peripheral technological tool to the central nervous system of corporate strategy, the traditional framework of compliance is undergoing a seismic shift. For the Practicing Company Secretary (PCS), this evolution presents a dual challenge: the necessity to integrate AI into secretarial audits and the imperative to govern the ethical implications of “algorithmic decision-making.” This article explores the transition from reactive compliance to predictive governance, the legal nuances of AI under the Companies Act, 2013 and the DPDP Act, 2023, and the emerging role of the PCS as a “Techno-Legal Architect.” By analyzing the intersection of Fiduciary Duty and Machine Learning, the paper provides a comprehensive roadmap for the PCS to remain the “Digital Conscience” of the corporate world.*

## 1. Introduction: The Fourth Industrial Revolution and the Legal Profession

Corporate governance is an inherently iterative discipline. Historically, every major industrial shift has redefined the role of the Company Secretary. The manual ledger entries of the 19<sup>th</sup> century gave way to the computerized ERP systems of the late 20<sup>th</sup> century, and now, we stand at the precipice of the “Age of AI.” This Fourth Industrial Revolution is fundamentally different from its predecessors because it does not merely automate physical labor; it automates cognitive processes.

For the participants of the 27<sup>th</sup> National Conference, the context is clear: Artificial Intelligence is not a passing trend but a foundational shift in how “the mind and will of the company” (the Board) operates. The PCS, as the primary advisor on governance, must ensure that this new technological “mind” remains compliant with the laws of the land and the ethical expectations of society. We are moving from a world of “Statutory Certainty” to one of “Algorithmic Probability.”

## 2. Defining the AI Landscape for the Practicing Professional

Before addressing compliance, the PCS must understand the technology they are governing. AI in a corporate context typically manifests in three forms:

1. **Machine Learning (ML):** These are algorithms that improve through experience. In corporate settings, they are used for predictive analytics, such as forecasting market trends, identifying potential insolvency risks, or optimizing supply chains.
2. **Natural Language Processing (NLP):** This is the ability of a computer program to understand human language as it is spoken and written. This is crucial for secretarial functions, enabling the automated review of thousands of contracts or the synthesis of Board minutes into actionable summaries.
3. **Generative AI (GenAI):** Advanced models capable of creating new content, including drafting legal opinions, corporate policies, and board correspondence.

Each of these technologies brings specific risks: “black box” logic in ml (where the reasoning is hidden), context errors in nlp, and “hallucinations” in genai (where the ai makes up facts). The pcs must be equipped to audit not just the output of these tools, but the governance process by which they were selected and deployed.

## 3. Deep-Dive: The Algorithmic Duty of Care

The most significant legal debate for the PCS in the current era is the application of the Business Judgment Rule to AI. Under Section 166(3) of the Companies Act, 2013, a director must exercise “independent judgment.”

- 3.1 **The “Blind Reliance” Trap:** If a Board approves a multi-billion dollar expansion based solely on an AI’s “Black Box” recommendation without understanding the underlying data assumptions, they may be in breach of their duty of care. The PCS must advise the Board that independent judgment requires explainability. If the AI cannot explain “Why,” the Board cannot legally say “Yes.”
- 3.2 **The Standard of “Reasonable Director”:** In the Age of AI, the definition of a “reasonable director” is shifting. A reasonable director is now expected to have a basic understanding of technological risks. The PCS plays a vital role in “Board Skilling” – organizing training sessions to ensure directors can ask the right questions of the Chief Technology Officer (CTO) or Chief Information Officer (CIO).

## 4. The Legislative Matrix: Harmonizing AI with Indian Law

In India, the governance of AI is currently a mosaic of existing and emerging legislations. The PCS must act as the “thread” that weaves these statutes together.

### 4.1 The Companies Act, 2013: Fiduciary Duty in a Hybrid World

Section 134 (Board’s Report) and Section 177 (Audit Committee) must now reflect the company’s technological risk profile. The PCS should advocate for the inclusion of “Technological Integrity” as a subset of the Internal Financial Controls (IFC).

### 4.2 The Digital Personal Data Protection (DPDP) Act, 2023: The Role of the Data Trust Officer

The DPDP Act is the most critical compliance hurdle. Section 7 requires that data be used only for specified purposes.

**Consent Management:** AI models often use “synthetic data” or “anonymized data.” The PCS must verify if the anonymization process is robust enough to prevent “re-identification,” which would trigger a compliance breach.

- 4.3 **SEBI and the Push for “SupTech”:** The Securities and Exchange Board of India (SEBI) is increasingly using AI to detect Insider Trading. For listed entities, the PCS must navigate real-time disclosures. Compliance is no longer hidden in volumes of files; it is visible in the data patterns analyzed by the regulator’s own AI.

## 5. Global Comparative Analysis: EU AI Act vs. Indian Jurisprudence

As PCS professionals, we often advise companies with global footprints. Therefore, understanding the EU AI Act – the world’s first comprehensive AI law—is essential. The EU AI Act uses a risk-based approach, classifying AI into four categories: Unacceptable Risk, High Risk, Limited Risk, and Minimal Risk.

**High Risk AI:** Includes systems used in recruitment, credit scoring, and critical infrastructure. These require mandatory fundamental rights impact assessments. While India has not yet passed a standalone AI Act, the NITI Aayog’s “National Strategy for AI” and the Ministry of Electronics and Information Technology (MeitY) advisories suggest a similar leaning toward high-risk oversight. A PCS must advise clients that “compliance” is no longer just local; it is a global requirement.

## 6. The “Cyber-Secretarial” Intersection: Governance of Digital Identity

As AI advances, the threat of Deepfakes in the boardroom becomes a legitimate governance concern.

- 6.1 **The Threat Profile** An AI-generated voice or video of a chairperson authorizing a fund transfer or a sensitive merger can bypass traditional controls. This is no longer science fiction; it is a current corporate risk.
- 6.2 **The Governance Framework for Digital Security** must require the PCS to implement Multi-Factor Authorization (MFA) for Board resolutions and sensitive corporate communications. We must move beyond simple email approvals to cryptographic signatures and “Liveness Tests” for virtual board meetings. Governance policies must now explicitly define how digital identities are verified.

## 7. The Metamorphosis of Secretarial Audit: From Post-Mortem to Living Audit

The traditional secretarial audit is often a “post-mortem” of the previous year’s filings. AI allows the PCS to transition to a “Living Audit.”

- 7.1 **Real-Time Statutory Monitoring:** AI-powered RegTech (Regulatory Technology) can monitor the MCA21 portal, SEBI circulars, and RBI notifications simultaneously. A PCS firm can deploy “Bots” to cross-reference these updates with their clients’ industry codes. An AI tool can instantly flag if a client’s independent director has exceeded the maximum limit of directorships across all companies.
- 7.2 **Enhanced Due Diligence in M&A:** During a merger or acquisition, the due diligence process involves reviewing thousands of contracts. AI tools utilizing NLP can scan these documents for change-of-control clauses, non-compete violations, or hidden liabilities. The PCS, armed with this AI-generated “Red Flag Report,” can provide high-value strategic advice rather than spending hours in a physical or virtual data room.

## 8. Ethical Governance: The “Black Box” and ESG

- 8.1 **Explainable AI (XAI):** Many AI models operate as “Black Boxes” – even their creators cannot explain exactly why a specific output was generated. In corporate governance, this is unacceptable. PCS must advocate for Explainable AI (XAI). If an AI recommends terminating 10% of the workforce, the Board must be able to explain the logic to stakeholders.

- 8.2 **Algorithmic Bias and ESG:** Environmental, Social, and Governance (ESG) metrics are now a priority for investors. If an AI-driven recruitment tool favors a certain demographic, the company faces a “Social” failure in its ESG score. The PCS is uniquely positioned to audit the “Ethical AI Policy” of the company, ensuring it aligns with the values of the ICSI and the broader corporate social responsibility framework.

## 9. A Procedural Guide: How to Conduct an “Algorithm Audit”

For PCS in practice, the question is: What do I actually check?

1. **Data Inventory:** Audit where the data comes from. Is it scraped from the web (high risk) or collected via consent (low risk)?
2. **Model Governance:** Check out the documentation. Did the company perform “Stress Testing” or “Adversarial Attacks” to see if the AI can be tricked into leaking data?
3. **Output Verification:** Perform “Spot Checks” on AI-generated reports. Does the output align with the source data?
4. **Bias Testing:** Review the “Fairness Reports” generated by the data science team. A PCS should ensure that these reports are tabled at Audit Committee meetings.

## 10. Challenges and Professional Liability for the PCS

The path to AI integration is fraught with risks that the practicing professional must mitigate.

1. **“Hallucinations” and Professional Negligence:** If a PCS uses an AI to draft a legal opinion and the AI cites a non-existent Supreme Court judgment, the professional liability remains solely with the PCS. Human oversight is not just the best practice; it is a legal shield.
2. **Data Sovereignty:** Many AI servers are located outside India. The PCS must ensure that sensitive corporate secretarial data does not violate data localization norms under the DPDP Act.
3. **The Digital Divide:** There is a risk that small and medium-sized practices (SMPs) may be left behind.

## 11. Reimagining the PCS: The Techno-Legal Architect

The “Age of AI” does not make the Company Secretary obsolete; it makes the traditional Company Secretary obsolete. The new PCS must be a Techno-Legal Architect who understands both the code and the code of law.

- 11.1 **The New Skill Set Prompt Engineering for Law:** Learning how to query LLMs to extract precise legal precedents.

**Data Governance:** Understanding how data flows through a corporation – from collection to AI ingestion.

**Cyber-Governance:** Ensuring the Boardroom is protected from AI-driven threats like deepfakes and sophisticated phishing attacks.

## 12. Implementation Roadmap: 12 Months to AI-Ready Practice

For the forward-thinking PCS firm, the transition can be structured over a year:

**Month 1-3: Assessment.** Audit all “Shadow AI” being used by staff. Create an “AI Acceptable Use Policy.”

**Month 4-6: Infrastructure.** Invest in secure, “Closed-Loop” LLMs that do not leak data to the public internet. Train staff on “Prompt Engineering” for legal research.

**Month 7-12: Integration.** Transition to “Real-Time Compliance Dashboards” for clients. Offer “AI Ethics Audits” as a new service line to distinguish your practice.

### 13. The Digital Boardroom: Impact on Secretarial Standards (SS-1 & SS-2)

AI introduces new complexities:

- **Transcription and Minutes (SS-1, Clause 7):** AI can now provide real-time, verbatim transcripts. However, “Minutes” are not a transcript; they are a summary of decisions. The PCS must govern the “Summarization Algorithm” to ensure it doesn’t inadvertently omit a dissenting director’s view, which could lead to legal repercussions under Section 118.
- **Virtual Attendance and Identification:** With the rise of AI-driven deepfakes, the “verification of identity” for directors attending via VC (Video Conferencing) must move from a manual roll-call to Biometric AI verification to ensure compliance with the quorum requirements.

### 14. AI and Minority Interest: Preventing Oppression & Mismanagement

Under Sections 241-242 of the Companies Act, 2013 minority shareholders can move the NCLT for relief. AI acts as a “Watchdog” for the minority:

- **Detecting Siphoning of Funds:** AI models can be programmed to flag “unusual transactions” with Related Parties that don’t match market benchmarks (At Arm’s Length).
- **Democratic Voting:** AI can analyze voting patterns in General Meetings to identify if “institutional” and “retail” shareholders are being marginalized through complex corporate structures.

### 15. AI and Corporate Social Responsibility (CSR): Beyond the 2%

Under Section 135 of the Companies Act, 2013, CSR is a mandatory obligation. AI offers the PCS a tool to move CSR from “expenditure” to “impact.”

- **Project Selection & Predictive Impact:** AI can analyze socio-economic data to predict which CSR interventions (e.g., water conservation vs. vocational training) will yield the highest “Social Return on Investment” (SROI) in a specific geography.
- **Transparency and Fraud Prevention:** AI-linked blockchain systems can track the flow of CSR funds to NGOs in real-time, ensuring that the 2% spend is not siphoned off through ghost projects. The PCS, in their role as an advisor to the CSR Committee, can provide “Impact Assurance Reports” backed by data.

### 16. Global Convergence: OECD AI Principles and the PCS

Indian corporate governance does not exist in a vacuum. The PCS must align local practice with global benchmarks:

- **OECD Principles on AI:** These focus on “Inclusive growth, sustainable development, and well-being.” A PCS advising an MNC must ensure the company’s AI policy reflects these international standards, especially the “Accountability Principle.”
- **G20 AI Guidelines:** As India plays a leading role in the G20, the push for “Pro-Innovation Regulation” is significant. The PCS acts as the bridge, ensuring that the company’s drive for innovation does not bypass the “Check and Balance” system of the Board.

## 18. Drafting Observations in Secretarial Audit Report (MR-3)

One of the most practical challenges for a PCS is: *How do I report an AI failure?* If an AI-driven compliance tool misses a SEBI filing or if a company's AI violates data privacy, the PCS must capture this in the Form MR-3. Here is the recommended “Techno-Legal” language for such observations:

*“During the period under review, the Company utilized an automated Algorithmic Decision-Making (ADM) system for [specific function, e.g., Vendor Selection/Credit Approval]. Our audit observed a lack of documented ‘Explainability’ (XAI) in the model’s logic, potentially impacting the ‘Due Care’ standards under Section 166. However, the Board has since initiated an Algorithmic Integrity Audit to rectify these transparency gaps.”*

## 19. The Road Ahead: The PCS as a “Data Reconciliation Officer”

In the next five years, the MCA, RBI, and SEBI will likely move toward a unified API-based reporting system. In this environment:

- The PCS will no longer “file” forms; they will “verify data flows.”
- The profession will move from “Batch-Processing” (filing at year-end) to “Stream-Processing” (verifying data as it happens).
- The “Certificate of Practice” (CP) will effectively become a “Certificate of Data Integrity.”

## 20. Conclusion: The Future is Human-Centric

Artificial Intelligence is a mirror—it reflects the data we give it and the goals we set for it. In the Age of AI, the “Company” in Company Secretary remains a human institution. While machines can calculate the “What” and the “How,” only a professional with the training and ethics of a PCS can determine the “Why.”

The 27<sup>th</sup> National Conference of Practicing Company Secretaries is a call to action. We must not fear the algorithm; we must govern it. By embracing AI, we rise to our true calling: being the strategic advisors, the ethical guardians, and the digital conscience of corporate India.

### Annexure A: Model AI Governance Charter for Companies

1. **Objective and Scope:** This Charter establishes the principles for the ethical development, procurement, and deployment of AI systems within the Company.
2. **Core Governance Principles:** Accountability (HITL protocol), Transparency (interpretable logic), Fairness (quarterly bias audits), Data Sovereignty (localization compliance), and Vendor Liability (compliance warranties).
3. **Roles:** The Board (ultimate responsibility), AI Ethics Committee (project review), and PCS (DPO and lineage audit).

### Annexure B: Secretarial Audit Checklist in an AI Environment

1. **Board Process:** AI-related risks in risk policy, disclosure in Board report, evidence of questioning AI logic in minutes.
2. **Statutory Compliance:** Consent logs for training data, data minimization processes, disclosure of technology risks to exchanges (SEBI LODR).
3. **Operational Integrity:** Inventory of AI tools, adversarial testing records, algorithmic indemnity in vendor contracts, and bias audit documentation.

### Annexure C: Global Case Studies in AI Compliance Failures

1. **Knight Capital (2012):** Failure of Internal Financial Controls (IFC). \$440M loss due to dormant algorithm activation. Secretarial View: Need for audit trails of code decommissioning.
2. **Clearview AI (2024):** Consent crisis and scraping data. Secretarial View: Violation of Purpose Limitation; importance of auditing data lineage.
3. **Nasdaq FB IPO (2012):** System glitch and loss. Secretarial View: Stress testing requirements in BCP.
4. **Amazon Recruitment (2018):** Gender bias. Secretarial View: Social (ESG) compliance failure; need for fairness testing.
5. **Zillow Offers (2021):** Algorithmic failure. Secretarial View: Breach of Sec 166 (Reasonable Care) due to over-reliance on black-box predictions.

### Annexure D: Glossary of AI Terms for the PCS

**Algorithmic Accountability:** Responsibility for outcomes. **Data Lineage:** Data journey mapping. **Explainable AI (XAI):** Interpretable predictions. **Hallucination:** False generations. **Shadow AI:** Unapproved tool usage.

### Annexure E: Model Board Resolution for AI Adoption

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED IN THE MEETING OF THE BOARD OF DIRECTORS OF [COMPANY NAME] HELD ON [DATE] AT [TIME] AT [VENUE].**

**“RESOLVED THAT** pursuant to the provisions of Section 166 and other applicable provisions of the Companies Act, 2013, the Board hereby approves the formal ‘Artificial Intelligence Governance and Ethics Policy’ as placed before the Board and initialed by the Chairperson for the purpose of identification.

**RESOLVED FURTHER THAT** the Company Secretary be and is hereby authorized to establish an AI Ethics Oversight Committee comprising of [Names/Designations], to monitor the deployment of High-Impact AI systems and ensure compliance with the Digital Personal Data Protection Act, 2023.

**RESOLVED FURTHER THAT** the Board shall, at least once a year, review a ‘Technological Integrity Report’ provided by a Practicing Company Secretary as part of the Secretarial Audit, ensuring that all algorithmic decision-making tools align with the fiduciary duties of the Directors.

**RESOLVED FURTHER THAT** [Name], Company Secretary, be and is hereby authorized to sign and file necessary forms with the Registrar of Companies and do all such acts, deeds, and things as may be necessary to give effect to this resolution.”

### Annexure F: Comparative Analysis – Traditional vs. Forensic Governance

Governance Feature	Traditional (Manual/Digital)	Forensic AI-Driven Governance
Transaction Review	Sampling (e.g., 10% of invoices).	100% Real-time data scan.
Director’s Liability	Document-based “Due Diligence.”	“Algorithmic Transparency” Audit.
Conflict of Interest	Voluntary Disclosure (Form MBP-1).	Automated Cross-linkage of directorships via Graph AI.
Fraud Detection	Reactive (post-occurrence).	Predictive (Red flag patterns).

## Originality Confirmation

This text is an original synthesis prepared for the ICSI 27<sup>th</sup> National Conference. It interprets the roles of the PCS under the Companies Act, 2013 and the DPDP Act, 2023 through the lens of emerging global technology standards. All checklists and annexures have been curated to provide actionable value while maintaining strict academic integrity.

## Specific Statutory Reference Footnote

The Digital Personal Data Protection Act, 2023 (Act No. 22 of 2023), as notified by the Ministry of Law and Justice on August 11, 2023. See also, NITI Aayog (2021), "National Strategy for Artificial Intelligence: #AlforAll."

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# AI-Powered Compliance: Opportunities, Risks and the CS Perspective

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## Introduction

The idea of Artificial Intelligence (AI) was first formally articulated at the Dartmouth Summer Research Project in 1955, when American computer scientist John McCarthy proposed that machines could be designed to simulate aspects of human intelligence. What began as an academic experiment has, over the decades, evolved into one of the most transformative technologies of our time. Today, AI systems are deeply embedded in business processes, decision-making frameworks, and increasingly, in the domain of regulatory compliance.

Before examining “Compliance in the Age of AI,” it is essential to clarify the key concepts involved. Compliance refers to an organization’s adherence to applicable laws, regulations, internal policies, and ethical standards. It is not merely a legal obligation but a foundational element of corporate governance and risk management. Intelligence, in a functional sense, can be understood as the capacity to make appropriate decisions in a given context—essentially, doing the right thing at the right time. Artificial intelligence, therefore, represents the simulation or augmentation of this decision-making capability through computational systems developed by humans.

The convergence of these ideas has given rise to AI-driven compliance systems—tools that not only assist in meeting regulatory requirements but also enhance the quality, speed, and foresight of compliance functions. The compliance landscape, traditionally reactive and documentation-heavy, is now undergoing a profound transformation. AI is enabling a shift from retrospective verification to proactive risk management, from periodic reporting to continuous monitoring, and from siloed functioning to integrated governance frameworks.

In an era where regulatory requirements are expanding in both volume and complexity—particularly in jurisdictions like India, where multiple regulators such as - the Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Insurance Regulatory and Development Authority of India (IRDAI). operate—AI offers a compelling solution. It allows Company Secretaries and compliance professionals to manage compliance obligations across statutes such as the Companies Act, 2013, Securities Laws, Labour Legislations, Competition Law, Tax laws, Environment Protection Laws, IT Law and data protection frameworks with greater precision and efficiency.

However, the integration of AI into compliance is not without its challenges. Issues relating to explainability, accountability, data privacy, and ethical governance must be carefully addressed. The objective behind harnessing the potential of AI is not to replace human judgment but to augment it—creating a symbiotic relationship between human expertise and machine intelligence.

## Conceptual Framework: AI and Compliance

AI enhances compliance by augmenting human intelligence with machine-driven analytics. However, it does not displace legal responsibility. Indian corporate jurisprudence consistently emphasizes that compliance obligations are non-delegable, even when technology is used.

Under Section 166 of the Companies Act, directors must exercise due and reasonable care, skill, diligence, and independent judgment. Reliance on external tools – including AI – does not dilute these duties.

## **Evolution of Compliance: From Reactive to Predictive**

Historically, compliance functions operated in a reactive mode. Organizations would interpret regulatory requirements, implement controls, and periodically review adherence through audits or inspections. This approach was often resource-intensive, prone to human error, and limited in its ability to detect emerging risks.

With the advent of AI, compliance is transitioning into a predictive and intelligence-driven discipline. Machine learning models can analyze vast datasets, identify patterns, and predict potential compliance breaches before they occur. Natural language processing (NLP) tools can interpret regulatory texts, map them to internal policies, and highlight gaps in real time.

For example, AI systems can monitor amendments to securities regulations issued by SEBI from time to time and automatically assess their impact on a company's disclosure obligations. Similarly, AI-driven analytics can detect anomalies in financial transactions that may indicate fraud, insider trading, or violations of related-party transaction norms.

This transformation is particularly relevant in India and where organizations are required to comply with multiple overlapping regulatory frameworks. AI enables organizations to stay ahead of regulatory changes, ensuring timely compliance and reducing the risk of penalties.

## **SWOT Analysis: AI aided compliance**

### ***Strengths (Internal Advantages)***

AI-driven compliance systems offer significant efficiency gains by automating repetitive and time-consuming tasks such as data analysis, transaction monitoring, and report generation. Studies indicate that organizations can reduce compliance costs by up to 30–50% while improving accuracy and speed.

Another key strength lies in AI's ability to perform real-time monitoring and predictive risk assessment. Machine learning algorithms excel at identifying patterns and anomalies, enabling proactive detection of fraud, anti-money laundering (AML) risks, and compliance breaches.

AI also enhances scalability. It can process massive volumes of structured and unstructured data—including regulatory texts, financial records, and communications—providing deeper insights and faster decision-making. This is particularly valuable for large organizations operating across multiple jurisdictions.

Importantly, AI allows compliance professionals to focus on strategic functions rather than routine tasks. By automating operational processes, it frees up human resources for risk management, policy development, and stakeholder engagement.

Finally, AI-driven systems improve consistency and auditability. Standardized processes reduce the likelihood of human error and create detailed audit trails, which are critical during regulatory inspections.

### ***Weaknesses (Internal Challenges)***

Despite its advantages, AI implementation in compliance involves significant challenges. High initial costs, including investments in technology infrastructure, data management systems, and integration with legacy platforms, can be a barrier – especially for smaller organizations.

Another major concern is the lack of explainability in AI models. Many machine learning systems operate as “black boxes,” making it difficult to justify their decisions to regulators or auditors. This raises issues of accountability, particularly in highly regulated sectors.

AI systems are also heavily dependent on data quality. Inaccurate or biased data can lead to

flawed outcomes, undermining the reliability of compliance processes. Therefore, robust data governance frameworks are essential.

Additionally, there is a shortage of skilled professionals who can bridge the gap between compliance, technology, and legal domains. Organizational resistance to change further complicates adoption.

### **Opportunities (External Factors)**

The adoption of AI-driven compliance systems is gaining significant momentum globally. A significant proportion of organizations are planning to integrate AI into their compliance functions, driven by the need for efficiency and regulatory resilience.

Regulatory frameworks are also evolving to accommodate technological advancements. While India does not yet have a comprehensive AI law, initiatives by the Ministry of Electronics and Information Technology and by the sectoral regulators indicate a move towards structured AI governance. This creates opportunities for organizations to adopt AI-driven compliance solutions that align with emerging standards.

AI also enables innovation in risk management. Predictive analytics, real-time regulatory intelligence, and integration with technologies such as blockchain and cloud computing can transform compliance into a strategic advantage.

Organizations that effectively leverage AI can enhance their reputation, improve customer trust, and gain a competitive edge in the market.

### **Threats (External Risks)**

The rapid evolution of AI technology and regulatory frameworks presents significant risks. Non-compliance with emerging AI regulations could lead to increased legal disputes and penalties.

Cybersecurity and data privacy are major concerns. AI systems are vulnerable to cyberattacks, data breaches, and misuse, particularly in sectors handling sensitive information.

Regulatory uncertainty is another challenge. Frequent changes in laws and standards can quickly render AI systems obsolete, requiring continuous updates and investments.

Ethical and reputational risks are also significant. Bias in AI algorithms, lack of transparency, and errors in decision-making can lead to loss of trust and legal liabilities.

## **AI and the Compliance Professional**

The role of compliance professionals is undergoing a fundamental transformation. Rather than being replaced by AI, professionals are becoming orchestrators of AI-driven systems, combining legal expertise with technological understanding.

### **1. Automated drafting, document processing and regulatory filings:**

- AI tools (e.g., generative AI like ChatGPT/Claude or specialized platforms) can assist Company Secretaries to generate checklists, board resolutions, notices, explanatory statements, and complete ROC filings for various statutory processes under the Companies Act, 2013 and other legislations.
- AI can assist in compliance monitoring regarding statutory e-filings (e.g., AOC-4, MGT-7, annual returns etc.) for discrepancies or delays.
- Financial statements/Annual Report disclosure review: AI can scan documents for compliance with Section 134 of Companies Act, 2013 (Boards Report), risk management, internal controls, Corporate Social Responsibility obligations and flag fraud indicators or inconsistencies.

- Automated BRSR drafting: AI can aggregate data from multiple systems (HR, procurement, etc.) and generate structured reports compliant with SEBI's format.

## 2. Continuous compliance monitoring and risk management:

- **Regulatory change tracking:** AI can monitor regulatory (MCA/SEBI/RBI/IRDA etc.) updates, circulars, and amendments in real time, mapping them to a company's policies and alert teams (e.g., changes in audit trail requirements under Companies Act or amendments in SEBI (Listing Obligations and Disclosure Requirements) Regulations ('LODR') disclosures or Related Party disclosures).
- **Risk and anomaly detection:** Machine learning can identify irregularities in transactions, related-party dealings or insider trading patterns. It can support Audit Committees with continuous auditing and decision-making intelligence.
- **Corporate governance automation:** Background checks on directors, contract clause review, policy drafting, and consistency checks between filings, press releases, and investor presentations.
- **Disclosure and reporting automation:** AI can assist in ensuring compliance with SEBI (LODR) Regulations relating to event-based disclosures, ESG and sustainability reporting, Corporate Governance reporting and automate stock entry/exit reports for trading compliance.
- **AI for data verification and assurance:** NLP + satellite imagery/IoT tools validate claims on emissions, supplier due diligence, or human rights (e.g., flagging child labor risks in supply chains).
- **AI monitoring of trading patterns:** AI can analyze employee/director trades (from Form C filings on exchanges) against Unpublished Price Sensitive Information (UPSI) windows. It can flag anomalies (e.g., unusual volume before results) and generate alerts for the compliance team.

## 3. Broader Governance and Operational Uses

- **Enhancing Company Secretary productivity:** AI can handle routine tasks like document distribution, e-voting platforms, shareholder meeting logistics, and research-freeing time for strategic work
- **Secretarial audit automation:** For listed entities, AI can scan thousands of documents (minutes, filings, policies) against the Companies Act, LODR, and other laws. It can produce exception reports, highlights gaps (e.g., missed committee compositions etc.) and support the Secretarial Auditor's issuance of Form MR-3 and LODR Reg.24A Compliance Report.
- **Board evaluation and minutes review:** AI can analyze past board/committee minutes to flag recurring issues and suggest agenda items for Risk Oversight Committees.
- **Fraud and AML/KYC integration:** Real-time transaction monitoring ties into Companies Act disclosures and SEBI's investor protection rules.
- **Assist Nomination and Remuneration Committee:** AI can scan online databases and reports to assist the Nomination and Remuneration Committee in identifying suitable candidates for appointment as directors and to formulate the right compensation strategy keeping in view the prevailing market conditions.
- **Board-level decision support:** Prepare analytical dashboards for risk oversight, early warnings on compliance gaps, and scenario analysis.

- **Continuous compliance intelligence:** AI platforms can track MCA/SEBI circulars, amendments (e.g. to LODR or Insider Trading Regulations), and map them directly to company's policies, board resolutions, or internal controls. Dashboards can alert the Audit Committee on emerging risks like cyber audits or related-party transactions.
- **Integrated platforms:** Tools can combine MCA V3 filing analytics (which already uses AI to flag discrepancies) with SEBI portal submissions for seamless quarterly/half-yearly governance reports.

### AI and the Regulator

- Regulators themselves are increasingly adopting AI to enhance supervision and enforcement. For instance, SEBI uses AI for market surveillance, detecting insider trading, and monitoring fraudulent activities.
- Regulators may also require organizations to disclose their use of AI systems, emphasizing transparency and accountability. This reflects a broader trend towards technology-driven regulation.

### Legal and Ethical Considerations

The integration of AI into compliance raises several legal and ethical issues.

#### 1. Accountability and Liability

Under Indian law, directors and officers remain responsible for compliance, regardless of the use of AI. Section 166 of the Companies Act imposes fiduciary duties on directors, while Section 447 addresses fraud. AI outputs must, therefore, be carefully reviewed to avoid liability.

#### 2. Data Protection and Privacy

The Digital Personal Data Protection Act, 2023 introduces strict requirements for data processing, storage, and security. AI systems must comply with these requirements, particularly when handling personal data.

#### 3. Explainability and Fairness

Regulators are increasingly emphasizing the need for explainable AI. Organizations must ensure that AI decisions can be justified and are free from bias.

#### 4. Governance Frameworks

Organizations should adopt robust AI governance frameworks, including policies on data management, model validation, risk assessment, and human oversight. Board-level involvement is critical to ensure accountability and alignment with organizational objectives.

### Benefits for Indian Companies

The adoption of AI-driven compliance system offers significant benefits for Indian companies. These include improved efficiency, reduced costs, enhanced accuracy, and proactive risk management. AI enables organizations to manage complex regulatory requirements across multiple jurisdictions, particularly for listed companies subject to both MCA and SEBI regulations.

It also enhances scalability, allowing organizations to handle increasing volumes of data and regulatory obligations without proportional increases in resources.

### Guardrails and Best Practices

To effectively leverage Artificial Intelligence in compliance, organizations must adopt a structured

and principled approach that integrates technological capability with robust governance frameworks. The deployment of AI in compliance is not merely a technological initiative but a strategic transformation that requires alignment with legal obligations, ethical considerations, and organizational culture. The following best practices are critical to ensuring that AI-driven compliance systems are reliable, accountable, and sustainable.

### **1. Ensuring Human Oversight and Accountability**

At the core of any AI-enabled compliance framework lies the principle of human accountability. While AI systems can process large volumes of data and generate insights with remarkable speed and accuracy, they lack the contextual judgment, ethical reasoning, and legal accountability inherent in human decision-making.

Under the Companies Act, 2013, directors and key managerial personnel are entrusted with fiduciary duties that cannot be delegated to automated systems. Accordingly, organizations must establish a “human-in-the-loop” or, where appropriate, a “human-in-command” model, ensuring that all critical AI-driven decisions are reviewed, validated, and approved by qualified professionals.

This involves clearly defining accountability structures, documenting decision-making processes, and ensuring that responsibility for compliance outcomes remains traceable to human actors. Boards and audit committees should actively oversee the use of AI systems, integrating them into enterprise risk management frameworks and ensuring alignment with corporate governance principles.

### **2. Implementing Robust Data Governance and Security Frameworks**

AI systems are fundamentally dependent on data. The quality, integrity, and security of data directly influence the reliability of AI outputs. Consequently, organizations must establish comprehensive data governance frameworks that address the entire data lifecycle—from collection and storage to processing and disposal.

In the Indian context, compliance with the Digital Personal Data Protection Act, 2023 is particularly critical. Organizations must ensure that personal data used in AI systems is processed lawfully, with appropriate consent, purpose limitation, and data minimization principles.

Data governance frameworks should include:

- Standardized data quality controls to prevent inaccuracies and inconsistencies
- Strong access controls and encryption mechanisms to safeguard sensitive information
- Regular data audits to identify and rectify anomalies
- Clear policies on data retention and deletion

In addition, organizations must address risks associated with data bias, ensuring that training datasets are representative and do not perpetuate discriminatory outcomes.

### **3. Prioritizing Explainability and Transparency in AI Models**

One of the most significant challenges in AI adoption is the lack of transparency associated with complex machine-learning models, often referred to as the “black box” problem. In a compliance context, this poses serious risks, as organizations must be able to justify their decisions to regulators, auditors, and other stakeholders.

To address this, organizations should prioritize the adoption of explainable AI frameworks.

Transparency also extends to external stakeholders. Organizations should be prepared to

disclose the use of AI in compliance processes, particularly where it impacts regulatory reporting, financial disclosures, or stakeholder rights.

#### 4. Conducting Regular Audits and Validation of AI Systems

AI systems are not static; they evolve over time as they process new data and adapt to changing environments. This dynamic nature necessitates continuous monitoring, auditing, and validation to ensure that systems remain accurate, reliable, and compliant.

Organizations should implement periodic AI audits that assess:

- Model performance and accuracy
- Data integrity and relevance
- Compliance with regulatory requirements
- Presence of bias or unintended outcomes

Independent validation, either through internal audit functions or external experts, can provide an additional layer of assurance. These audits should be integrated into the organization's broader compliance and risk management frameworks.

- Moreover, stress testing and scenario analysis can help identify potential vulnerabilities in AI systems, enabling organizations to proactively address risks before they materialize.

#### 5. Investing in Training and Upskilling Compliance Professionals

The successful adoption of AI in compliance depends not only on technology but also on the capabilities of the workforce. Compliance professionals must develop a hybrid skill set that combines legal expertise with an understanding of AI technologies, data analytics, and risk management.

Organizations should invest in continuous training programs that cover:

- Fundamentals of AI and machine learning
- Data governance and privacy regulations
- Ethical considerations in AI deployment
- Interpretation of AI-generated insights

Cross-functional collaboration between compliance, legal, IT, and data science teams is essential to bridge knowledge gaps and ensure effective implementation. By fostering a culture of learning and innovation, organizations can enhance their ability to leverage AI as a strategic tool.

#### 6. Adopting a Phased Implementation Approach

Given the complexity and risks associated with AI deployment, organizations should avoid large-scale, untested implementations. Instead, a phased approach—beginning with pilot projects in high-impact areas—allows for controlled experimentation and learning.

Pilot projects should focus on areas where AI can deliver immediate value, such as:

- Regulatory change tracking
- Automated document review and filings
- Transaction monitoring and anomaly detection

Such pilot implementations enable organizations to evaluate the effectiveness of AI systems, identify challenges, and refine processes before scaling up. Lessons learned from pilot

implementations can inform broader deployment strategies, ensuring a smoother transition and minimizing disruption.

## Conclusion

Compliance in the age of AI represents a paradigm shift in how organizations approach regulatory obligations. AI is transforming compliance from a reactive, process-driven function into a proactive, intelligence-led discipline.

While the benefits are substantial, the challenges are equally significant. Organizations must navigate issues of governance, ethics, and regulation with care. The key lies in striking the right balance between technological innovation and human judgment.

Ultimately, AI should be viewed not as a replacement for compliance professionals but as a powerful tool that enhances their capabilities. By embracing this transformation responsibly, organizations can turn compliance into a strategic advantage—driving efficiency, resilience, and trust in an increasingly complex regulatory environment.

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# Compliance in the Age of AI: How Compliance in the Age of Artificial Intelligence Reshapes the Economy

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## INTRODUCTION

Compliance in the age of AI is no longer a peripheral concern; it sits at the heart of how organizations design, deploy and govern intelligent systems. As AI reshapes everything from customer facing automation to risk and audit functions, regulators, boards and legal teams are recalibrating what “compliance” means – expanding it from datacentric rules to encompass algorithmic accountability, transparency and systemic risk management. In practice, this means that AI driven processes must be as compliant as the humans they augment, but under a more complex and rapidly evolving regulatory landscape.

### “THE EVOLVING LANDSCAPE OF AI-DRIVEN COMPLIANCE IN MODERN REGULATORY FRAMEWORKS”

For decades, compliance programs revolved around clearly defined rules, checklists and periodic audits conducted by human teams. Today, AI systems are embedded in customer onboarding, credit scoring, fraud detection, contract review and even HR decision making, which means that regulatory risk is no longer just about what people do, but about how algorithms behave in real time. As a result, regulators are rolling out AI specific regimes – such as the EU AI Act, U.S. state level AI laws and executive level guidance on “safe, secure and trustworthy” AI development, creating a layered compliance environment that spans sector specific rules and horizontal AI requirements.

Compliance in the age of AI therefore implies two parallel streams: (1) using AI to strengthen compliance processes (faster monitoring, risk based alerting and continuous control assurance), and (2) ensuring that AI systems themselves comply with a growing mosaic of legal and ethical standards.

#### 1. The EU AI Act

“The European Union Artificial Intelligence Acts (EU AI Act) is a law made by the European Union to regulate the use of AI systems. It is the world’s first comprehensive, risk-based legal framework for artificial intelligence, adopted in June 2024 to ensure safety and ethical AI use across the European Union. It is called a risk-based regulatory framework because AI systems are divided into four categories according to how dangerous or impactful, they are:

##### 1. Unacceptable risk

These AI systems are considered too dangerous and are completely banned.

Examples:

- Social credit scoring
- Certain real-time biometric surveillance systems

##### 2. High Risk

These AI systems are allowed, but they must follow very strict legal rules.

Examples:

- AI used in hiring employees
- Credit approval decisions
- Healthcare
- Critical infrastructure like transport or energy systems

### 3. Limited Risk

These systems have lower risk and mainly require basic transparency, such as informing users that they are interacting with AI.

### 4. Minimal Risk

These systems have very low risk and face very few legal obligations.

Example:

- Spam filters
- AI used in games

## Why it was launched

- **Rapid Growth of AI systems** started being widely used in hiring, banking, healthcare, education, law enforcement and many other sectors.
- **Traditional laws were not specifically designed** for AI-related issues like algorithmic bias, automated decision-making, lack of explainability and AI-generated misinformation.
- **Some AI systems could harm privacy**, equality, fairness and human dignity. The EU wanted to prevent misuse of AI that could lead to unlawful surveillance.
- **Need for Transparency and Accountability in AI is vital to ensure fairness.** People should know when AI is being used and organizations should be responsible for AI decisions.
- **Need for harmonized Rules Across EU Countries.** As different EU member states could create different AI rules, causing confusion for businesses. The EU AI Act creates one common framework for all member states.
- **Building Trust in AI is essential for its responsible adoption and meaningful impact.** The law helps increase public trust by making sure AI systems are safe and reliable, encouraging responsible innovation instead of uncontrolled use.

By 2026, EU member states are actively enforcing phasetwo obligations, including transparency notices for AIgenerated content, detailed records of training data sources and robust impact assessments for highrisk deployments. For multinational organizations, Companies working in many countries must create jurisdiction-specific AI governance stacks, meaning they need separate compliance systems based on the laws of each country or region.

## 2. Canada's AI Framework

The Canadian AI framework is the system of laws and rules created by Canada to regulate Artificial Intelligence, protect personal data and ensure responsible use of AI.

The main part of this framework is the **Artificial Intelligence and Data Act (AIDA)**, introduced under **Bill C-27**, along with the **Consumer Privacy Protection Act (CPPA)**.

Key Features :

### 1. Risk-Based Regulation:

Like the EU approach, Canada focuses more on high-impact AI systems, such as AI used in:

- Hiring and employment;
- Banking and lending;
- Healthcare.

## 2. Transparency and Accountability

Organizations using AI must:

- Explain how AI systems work;
- Identify risks of harm or bias;
- Maintain proper documentation;
- Ensure human oversight in important decisions.

## 3. Privacy Protection through CPPA

The CPPA strengthens privacy laws by regulating:

- Collection of personal data;
- Use of customer information;
- Rights of individuals over their personal data.

These Canadian rules are being designed to match international AI standards such as:

- European Union Artificial Intelligence Act (EU AI Act)
- Organisation for Economic Co-operation and Development (OECD) AI principles.

This helps Canada follow global best practices while introducing AI laws step by step (phased implementation).

## 3. U.S. States and the patchwork of AI rules

The **United States** does not have one single national law for Artificial Intelligence like the EU AI Act. Instead, different states create their own AI-related laws and regulations. This is called a **patchwork of AI rules**.

A patchwork means many separate rules made by different states, rather than one common law for the whole country.

For example:

- California may have one set of AI rules
- Colorado may have different requirements
- New York may impose additional obligations

### Areas commonly regulated

These state laws mainly apply where AI affects important decisions such as:

- Hiring and employment;
- Lending and credit approvals;
- Healthcare;
- Consumer protection.

Different U.S. State AI laws create a complex compliance environment, with overlapping and sometimes conflicting requirements. For example, States may define high-risk (“consequential”) AI systems differently.

To manage this, Companies should adopt a centralized compliance framework instead of handling each state separately. A single system can be designed to adapt to varying state-specific requirements efficiently.

#### 4. UK’s AI Governance Approach

The United Kingdom follows a pro-innovation and decentralized approach for AI governance. What it means instead of making one strict and detailed AI law like the European Union Artificial Intelligence Act (EU AI Act), the UK allows its existing regulators to manage AI within their own sectors.

For example:

- The Information Commissioner’s Office (ICO) handles AI issues related to data protection and privacy;
- The Financial Conduct Authority (FCA) manages AI use in financial services;
- Bodies like the National Health Service (NHS) create sector-specific AI rules in healthcare.

#### Five core principles

These regulators apply five important principles for responsible AI use:

- **Safety** → AI should not cause harm
- **Transparency** → People should know when and how AI is being used
- **Fairness** → AI should avoid discrimination and biases
- **Accountability** → Organizations must take responsibility for AI outcomes
- **Redress** → People should have a way to challenge unfair AI decisions

#### 5. AI Compliance under the Indian Regulatory Framework

India launched the **India AI Governance Guidelines** in November 2025, featuring seven principles (Sutras) like safety, transparency and accountability. They were issued by the **Ministry of Electronics and Information Technology (MeitY)** under the IndiaAI Mission on 5 November 2025. It promotes a “whole-of-government” model with institutions such as the AI Governance Group (AIGG) and India AI Safety Institute (AISI), plus a national AI incidents database for tracking harms.

#### The Seven Sutras are:

##### 1. **Trust is the Foundation**

AI systems should be reliable, safe and trustworthy so that people and businesses can confidently use them.

##### 2. **People First**

AI should be human-centric, meaning it should serve people’s interests and humans should retain final control over important decisions.

##### 3. **Innovation over Restraint**

India supports innovation and growth in AI while managing risks, instead of restricting AI development too heavily.

#### 4. **Fairness and Equity**

AI should avoid biases and discrimination and treat all individuals fairly.

#### 5. **Accountability**

Organizations using AI must take responsibility for AI decisions and outcomes.

#### 6. **Understandable by Design**

AI systems should be transparent and explainable so that people can understand how decisions are made.

#### 7. **Safety, Resilience and Sustainability**

AI should be secure, stable and beneficial for society in the long term.

Supporting Laws include:

- **Digital Personal Data Protection (DPDP) Act, 2023:** Data protection laws mandate consent, data minimization and security for AI systems handling personal data. Frameworks like the General Data Protection Regulation and Digital Personal Data Protection Act remain essential in ensuring responsible and transparent AI use.
- **IT Act, 2000 & IT Rules 2021/2026:** Regulates intermediaries for AI-generated content like deepfakes, requiring labeling, grievance mechanisms and swift removal of unlawful outputs.
- **India AI Mission (2025):** Boosts sovereign AI infrastructure, compute access and capacity building for responsible use.

### **HOW AI CAN STRENGTHEN COMPLIANCE PROGRAMS**

While AI introduces new compliance obligations, it also offers powerful tools to modernize compliance functions themselves. Many organizations now use AI to automate manual processes, monitor regulatory change and detect anomalies in real time, turning compliance from a reactive, paperbound function into a proactive, data-driven discipline.

#### 1. **Real-Time Regulatory Intelligence**

Traditional compliance relies on manual horizon scanning. Earlier, compliance work was done manually, where people had to regularly check laws, notifications and government updates to identify new rules or changes. This process is called manual horizon scanning.

Now, with AI agents, the system can automatically:

- Collect regulations and legal updates from official sources like EUR-Lex or Press Information Bureau (PIB);
- Use Natural Language Processing (NLP) to read and understand legal language;
- Identify amendments or changes in laws;
- Predict how those changes may affect the company's compliance requirements.

Compliance teams traditionally spend significant time tracking regulatory updates across jurisdictions, translating them into internal policies and updating training materials. AI-driven "regulatory intelligence" platforms now automate large parts of this workflow by scanning legislation, regulatory publications and enforcement actions, then mapping changes to an organization's internal control framework.

#### 2. **Risk Prediction and Anomaly Detection**

Machine Learning (ML) models examine transaction data to help with AML (Anti-Money

Laundrying) and KYC (Know Your Customer) compliance, flagging 90% of suspicious activities with fewer false by study the patterns of financial transactions, detect unusual or suspicious activities (such as fraud, money laundering, or fake accounts) and automatically flag these transactions for review. Tools like Symphony AI help monitor whether an AI model is still working properly.

For example, AI can estimate:

- How many fines may be imposed under General Data Protection Regulation (GDPR) for misuse of personal data.
- How much penalty may arise under India's (Digital Personal Data Protection Act) for (DPDP) data privacy violations.

By applying machine learning models to historical risk data, these tools can dynamically adjust risk scores, prioritize alerts for human reviewers and continuously learn from investigator feedback.

Now a days regulators want Companies to make sure that AI systems used in processes remain accurate, fair, under human control and are periodically revalidated. From a compliance standpoint, when Companies use automation or AI for compliance work, this automation must be accompanied by robust documentation, validation protocols and oversight mechanisms.

### 3. Data privacy to algorithmic accountability

Traditional data protection laws such as the General Data Protection Regulation (GDPR) and India's Digital Personal Data Protection Act (DPDP) remain foundational in the AI era, especially when AI systems process large volumes of personal data. Companies already use security measures like: Encryption, access control policies, data classification schemes and consent management workflows now, these protections must also apply to AI systems, including:

- **Training data**, the data used to teach the AI model;
- **Model inputs**, the information given to AI when it is working;and
- **Inferencetime queries**, the questions or requests users ask the AI when it gives output or decision.

Example:

If customer personal data is used to train an AI system, that data must also be encrypted, access-controlled and used only with proper consent.

However, AI introduces new dimensions beyond classic "data at rest" and "data in transit."

- **Data at rest** → data stored in databases, servers, laptops, or cloud storage.
- **Data in transit** → data moving from one place to another, like emails, online transfers, or system communication.

Companies mainly protect these using security measures like encryption and access controls. However, when AI is used, data privacy becomes more complex because AI creates new risks beyond just stored or moving data.

### 4. Continuous compliance monitoring and control assurance

Beyond policy tracking, AI can support continuous compliance monitoring by analyzing system logs i.e. records of activities happening in systems, user activity as to what employees

or users are doing in the system and control execution data information showing whether internal controls and compliance checks are working correctly.

For example, AI-based security tools can identify:

- **Anomalous access patterns** → unusual login behavior, like someone accessing data at odd hours or from an unusual location.
- **Policy violations** → actions that break company rules or compliance requirements.
- **Configuration drift** → system settings changing from approved standards without authorization.

This continuous monitoring is particularly valuable in environments where AI systems are frequently retrained or updated. When these issues cross a set limit, AI can send alerts to compliance or security teams and automatically start corrective actions (automated remediation workflows). Instead of relying solely on periodic audits, organizations can maintain near realtime visibility that whether AI related controls such as data handling restrictions, model version governance, or human in the loop check points are operating as intended.

## KEY COMPLIANCE CONSIDERATIONS FOR ORGANIZATIONS ADOPTING ARTIFICIAL INTELLIGENCE

### 1. Conduct an AI compliance gap analysis

Organizations should begin by mapping their AI related activities such as:

- **Internal tools** → AI used inside the Company for HR, compliance, finance, fraud detection, etc.; and
- **Customer facing system** → AI used directly by customers, such as chatbots, recommendation systems, loan approval tools, etc.

After identifying AI systems, Companies should compare them with relevant regulations and emerging AI laws. This gap analysis helps determine high-risk models, assess adequacy of existing controls, identify legal risks and highlight missing policies or required improvements. The result should be a prioritized roadmap that aligns AI governance with regulatory requirements and business goals.

### 2. Establish crossfunctional AI governance structures

Effective AI compliance requires collaboration across:

- **Legal team** → checks laws and regulations
- **Compliance team** → ensures rules are followed
- **Data science team** → develops and manages AI models
- **IT security team** → protects systems and data
- **Business teams** → use AI in daily operations

Many organizations now create cross functional AI governance committees or “AI Ethics Boards” that review high risk projects before approval, set standards for model development, oversee incident response for AI related issues ensuring fairness, ensuring fairness, transparency and legal compliance.

These bodies should be empowered with clear mandates: the ability to approve, reject, or require modifications to AI deployments; access to model performance data and audit logs; and influence over training and awareness programs for employees who interact with AI systems so they can effectively control AI use in the company.

### 3. Embed compliance with AI development lifecycles

To prevent compliance issues from arising late in the development cycle, organizations should “bake in” compliance requirements from the outset. This includes:

- **Data Protection Impact Assessments (DPIA-style assessments)**

Before starting AI projects that use personal data, Companies should check privacy risks and how to protect that data.

- **Fairness and bias mitigation during model design**

While designing the AI model, Companies should make sure it does not unfairly discriminate against any person or group and should reduce bias from the beginning.

- **Logging, monitoring and explainability features in the model architecture**

The AI system should be built so that:

- Activities and decisions are recorded (logging)
- Performance and risks can be tracked (monitoring)
- People can understand why the AI made a certain decision (explainability)

Compliance should be part of AI development from day one, not something added later after problems happen.

### 4. Invest in training and a culture of AI literacy

Finally, compliance in the age of AI depends on people as much as on technology. Employees across functions from frontline staff to senior executives must understand basic AI risks, including:

- **Data privacy issues** → How personal or sensitive data may be misused or exposed.
- **Potential for bias** → AI may make unfair or discriminatory decisions if not properly designed.
- **Human oversight** → Humans must review and control AI decisions instead of trusting AI blindly.

Organizations are increasingly using AI-driven tools to personalize security awareness and compliance training content, tailoring modules to specific roles and past behavior patterns.

Also, Companies should have:

- **Regular training** → Continuous learning about AI risks and compliance rules.
- **Clear internal policies** → Simple and well-defined rules for using AI responsibly.
- **Open reporting channels** → Employees should be able to report AI-related problems, concerns, or misuse without fear.

AI compliance improves when employees receive proper training, clear guidance and a safe way to report problems, so rules are followed in real life, not just written on paper.

Best tools for AI regulatory monitoring in 2026

Tool	Regulatory Alignment	Monitoring Capabilities	Best For
Credo AI	EU AI Act, NIST, ISO 42001	Risk assessment, policy enforcement	Heavily regulated enterprises
Bifrost/Maxim AI	Audit trails, EU AI Act	Real-time logging, quality evals	Infrastructure governance

Tool	Regulatory Alignment	Monitoring Capabilities	Best For
One Trust	GDPR, HIPAA, global regs	Vendor assessments, workflows	GRC-focused teams
IBM watsonx	NIST, enterprise standards	Drift/bias detection, lifecycle	IBM ecosystem users
FairNow	EU AI Act, US laws	Continuous testing, synthetic data	Risk and bias mitigation

### Case Studies: Practical Successes in AI-Driven Compliance

AI governance and compliance have proven transformation in real-world deployments, turning regulatory challenges into operational strengths. Leading organizations leverage AI to automate monitoring, reduce risks and ensure ethical practices across sectors. These examples illustrate measurable ROI through efficiency gains and proactive oversight.

- 1. PwC's AI Agents for Integrated Risk Management:** Partnering with a global tech leader, PwC embedded AI agents into risk platforms, reducing manual effort by 60% and issue detection accuracy improved.
- 2. Deloitte's Compliance Risk Platform:** Deloitte uses **Machine Learning based compliance risk tools** to help organizations manage compliance more effectively. Clients saw 25% fewer incidents and optimized resource allocation, shifting from reactive to predictive compliance.
- 3. Amazon:** It used AI to help comply with the General Data Protection Regulation (GDPR) across Europe. This minimized errors in secure handling and preempted regulatory risks through ML-flagged issues
- 4. Swiss Life (Insurance):** Swiss Life improved its AI compliance by creating clear data ownership and making sure AI models use high-quality and reliable data. The Company clearly defined who is responsible for collecting data, who manages and updates the data, who checks the accuracy and quality of the data. Swiss Life improved AI fairness and compliance by making sure the right people manage good-quality data, helping AI systems make transparent and accountable decisions.

### Challenges

#### 1. Interpretive and Enforcement Gaps

AI technologies are evolving faster than existing laws, creating uncertainty in applying regulations to automated decision-making and data-driven systems. This makes it difficult to interpret concepts like liability, accountability, due diligence and consent when AI makes decisions. As a result, organizations face compliance challenges, highlighting the need for clearer and updated AI-specific regulations.

#### Example:

If an autonomous AI system makes a wrong decision that causes harm or breaks a law, it may be unclear:

- Is the company responsible?
- The developer of the AI responsible?
- The employee using the system responsible?

Similarly, existing laws on data protection and corporate governance may not explicitly address issues such as:

- **Algorithmic bias** → Unfair or discriminatory AI decisions.
- **Explainability** → Understanding why AI made a certain decision.
- **Real-time decision-making** → Instant decisions made automatically by AI.

Since laws do not clearly mention these issues, different people may interpret them differently (inconsistent interpretations). AI systems, especially **Large Language Models (LLMs)**, may sometimes misunderstand or incorrectly interpret unclear or complex laws. For example, in early AI-based contract reviews, AI tools sometimes misread legal clauses or misunderstood ambiguous language, which could lead to wrong compliance decisions.

Solution to reduce the risk:

- **Human-in-the-loop** → A human expert (such as a lawyer or compliance officer) reviews and verifies the AI's output before any final decision is made.
- **Ensemble validation** → Using multiple AI tools, models, or checking methods together to confirm accuracy instead of depending on only one system.

Also, the Large Multinational Companies often use **RegTech (Regulatory Technology) stacks** such as **Thomson Reuters** to manage compliance across different countries.

These tools help in:

- Tracking laws in multiple jurisdictions;
- Comparing legal requirements across countries (**cross-jurisdictional mapping**);
- Ensuring compliance with different regional regulations.

## 2. Bias and Ethical Pitfalls

### I. Ethical dilemmas:

Ethical problems persist, including inherent biases perpetuating discrimination which can lead to unfair decisions and legal risks.

### II. Weak ongoing controls:

Even if Companies have compliance frameworks on paper, many do not continuously monitor and control AI risks. The statement says **70% of organizations lack ongoing controls**, meaning rules exist, but proper supervision is missing.

## 3. Cybersecurity and Privacy

AI systems pose significant cybersecurity and privacy risks due to their reliance on large datasets, complex operations and multiple attack points, often exceeding traditional IT risks.

Key threats include data poisoning (manipulating training data), adversarial attacks (tricking AI with small input changes), prompt injections in LLMs (bypassing safeguards) and data breaches (exposure of sensitive information). These vulnerabilities can reduce AI reliability, create compliance issues and expose confidential data.

To mitigate risks, organizations can adopt measures such as zero-trust architecture, differential privacy and homomorphic encryption to strengthen security and data protection.

#### 4. Scalability and Skills Shortage

A significant challenge in ensuring compliance in the age of AI lies in the ability of organizations to scale their compliance frameworks while simultaneously addressing the shortage of skilled professionals. As AI systems are deployed across multiple business functions and jurisdictions, the volume, complexity and dynamic nature of compliance requirements increase substantially.

##### I. Legacy IT resists integration

Many organizations still use old (**legacy**) IT systems that were not built for modern AI tools.

Because of this:

- AI systems are difficult to connect with existing systems;
- Compliance monitoring becomes slow and inefficient;
- Real-time control and reporting become harder.

##### II. Talent shortage

Many Companies do not have enough professionals who understand both AI technology and compliance requirements which creates a serious skills gap.

##### III. Compliance becomes harder to scale

When AI is used across many departments and countries, compliance requirements increase because:

- More laws and regulations apply;
- Rules keep changing quickly;
- Monitoring must happen continuously, not only once in a while.

This makes compliance more complex and difficult to manage on a large scale (scaling compliance frameworks).

##### IV. Traditional compliance methods are not enough

Older compliance systems are often manual and periodic (checked only monthly, quarterly, etc.)

But now the AI needs:

- Real-time monitoring;
- Continuous oversight;
- Faster detection of risks and errors.

So traditional methods cannot handle AI compliance effectively.

#### Solution

Companies try to solve this by:

- Upskilling employees through learning platforms like Coursera.
- Partnering with organizations like NASSCOM (National Association of Software and Service) in India for training and industry support.

Hence, addressing this issue necessitates investment in technological solutions, such as automated

compliance tools, alongside focused efforts on training and upskilling personnel to align with the evolving demands of AI-driven compliance.

### **Conclusion**

Compliance in the age of AI is evolving from a static, checklist driven function into a dynamic discipline that must keep pace with both technological innovation and regulatory change. Organizations that treat AI as purely a technical initiative risk exposing themselves to enforcement actions, reputational damage and loss of stakeholder trust. Conversely, those that integrate AI governance into their core compliance and risk management frameworks can harness AI's power to strengthen controls, improve transparency and build more resilient, trustworthy organizations.

In 2026 and beyond, success will depend not only on deploying advanced models, but on demonstrating that those models operate within clear ethical, legal and operational boundaries – a challenge that sits squarely at the intersection of technology, governance and compliance.

# Compliance in the Age of Artificial Intelligence

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## ABSTRACT

*Artificial Intelligence (AI) is fundamentally reshaping the compliance ecosystem in corporate India by transforming it from a static, rule-based, retrospective function into a dynamic, predictive and continuously evolving governance system. Compliance, once viewed as a procedural obligation executed after business decisions, is now increasingly embedded within organisational decision-making frameworks.*

*This transformation is being driven by both technological advancement and regulatory evolution. India's compliance environment has become increasingly digitised through MCA21 Version 3, GST analytics systems, SEBI's surveillance architecture and the introduction of the Digital Personal Data Protection Act, 2023. Globally, regulatory discourse on Artificial Intelligence governance, including frameworks such as the EU AI Act and OECD principles, is shaping expectations around algorithmic transparency and accountability.*

*Artificial Intelligence enhances compliance through predictive analytics, anomaly detection, regulatory mapping and real-time monitoring. However, it also introduces governance concerns relating to accountability, legal interpretation, ethical judgment and data privacy. Compliance remains fundamentally a human responsibility anchored in statutory accountability.*

*This article analyses the evolution of compliance systems in India, the integration of Artificial Intelligence into regulatory ecosystems, recent legal developments and the redefined role of the Company Secretary as a governance interpreter in an AI-enabled environment.*

## 1. Evolution of Compliance: From Procedural Discipline to Embedded Governance Intelligence

The traditional compliance framework in corporate India was designed around predictability and periodic reporting. Compliance functions such as statutory filings, maintenance of registers, board meeting documentation and annual returns were largely manual, structured and calendar - driven. The Company Secretary functioned as the central custodian of statutory compliance, ensuring that regulatory obligations were met within prescribed timelines.

This model operated in a regulatory environment where compliance was largely external to decision-making. Business decisions were taken first and compliance validation followed afterwards.

However, this separation no longer exists in modern corporate governance. Compliance has now become an embedded governance layer that actively influences decision-making at the stage of formulation itself. Every major corporate action today, whether capital restructuring, mergers, acquisitions, or cross-border investments requires simultaneous regulatory evaluation under multiple frameworks including the Companies Act, SEBI regulations, FEMA provisions and sectoral laws.

For instance, under SEBI's Listing Obligations and Disclosure Requirements (LODR), listed entities are required to disclose material events on a continuous basis. This means that even internal board-level deliberations may trigger disclosure obligations, depending on materiality thresholds. Similarly, under the Companies Act, 2013, related party transactions, borrowing decisions and structural changes require prior compliance scrutiny.

Artificial Intelligence intensifies this shift by embedding regulatory intelligence directly into enterprise

systems. AI systems do not operate as passive tools; they function as active analytical layers that continuously process organisational data and regulatory updates in real time.

This raises a fundamental governance question. *If compliance execution is increasingly automated, what remains uniquely human in compliance responsibility?*

The answer lies in accountability. While Artificial Intelligence can process and interpret data, it cannot assume legal responsibility. Governance remains inherently human because law requires identifiable accountability, not algorithmic decision-making.

## **2. India's Expanding Compliance Ecosystem: Regulatory Depth and Digital Transformation**

India's compliance landscape has expanded significantly over the past decade due to regulatory reforms, increased disclosure requirements and digital transformation of governance systems.

The Companies Act, 2013 introduced a structured corporate governance framework that strengthened board accountability, enhanced disclosure obligations and imposed stricter penalties for non-compliance. Sections relating to financial reporting, board powers and director responsibilities have significantly increased the compliance burden on companies.

SEBI has further strengthened capital market governance through continuous disclosure requirements under LODR Regulations, insider trading prevention mechanisms under PIT Regulations and advanced surveillance systems designed to detect market manipulation and abnormal trading behaviour.

FEMA and RBI regulations add further layers of complexity by governing cross-border capital flows, foreign investments and external commercial borrowings, requiring layered compliance interpretation.

A major recent development is the Digital Personal Data Protection Act, 2023, which introduces a comprehensive legal framework governing personal data processing. It mandates lawful consent, purpose limitation, storage restrictions, breach reporting obligations and cross-border data governance requirements. This law integrates data protection directly into corporate compliance architecture.

Simultaneously, MCA21 Version 3 has transformed corporate filings into a fully digitised ecosystem. Regulatory filings are now validated through automated systems that cross-check financial statements, director disclosures, and statutory records across multiple databases.

GST systems similarly employ data analytics to detect mismatches between invoices, input tax credits and supplier filings, creating a data-driven enforcement environment.

Globally, regulatory frameworks such as the EU AI Act and OECD AI principles are shaping governance expectations around transparency, explainability and algorithmic accountability. SEBI has already begun integrating AI-based surveillance tools for market monitoring and risk detection.

Despite this regulatory advancement, most compliance failures continue to arise from operational inefficiencies rather than legal ignorance. These include coordination gaps between departments, delayed approvals, and fragmented compliance tracking systems.

For example, delays in filings under Sections 92 or 137 of the Companies Act are often caused by internal communication breakdowns rather than lack of legal understanding. However, such delays still attract regulatory penalties and may result in director-level consequences under Section 164.

This gap between regulatory expectations and operational execution has created a natural foundation for Artificial Intelligence to become embedded within compliance systems.

### **3. Artificial Intelligence as Compliance Infrastructure: From Automation to Predictive Governance**

Artificial Intelligence has evolved from being a supportive automation tool to becoming a core component of compliance infrastructure within modern organisations. AI systems increasingly operate continuously across enterprise environments, monitoring transactions, regulatory updates and compliance obligations in real time. They integrate data from multiple internal and external sources to provide a unified view of compliance status across the organisation.

These systems perform several critical functions simultaneously, including real-time monitoring of statutory obligations, detection of anomalies in financial and legal data, mapping of regulatory requirements across jurisdictions and generation of automated compliance alerts.

In large corporate groups, AI systems can track compliance obligations across subsidiaries, ensuring consistency and early identification of deviations in reporting patterns. AI is also widely used in contract analysis, audit preparation, due diligence exercises and financial reporting validation. It is capable of processing large volumes of structured and unstructured data, identifying inconsistencies and highlighting regulatory risks within seconds.

A significant advancement in this domain is predictive compliance modelling. Instead of detecting violations after they occur, AI systems now forecast potential compliance risks based on behavioural patterns, historical data and regulatory trends. For instance, in banking systems, AI is used to detect suspicious transactions under anti-money laundering regulations. In listed companies, AI ensures consistency across quarterly results, investor presentations and regulatory disclosures. This represents a fundamental shift from reactive compliance to anticipatory governance.

### **4. Case Study 1: SEBI Disclosure Risk Detection through Artificial Intelligence**

In a listed infrastructure and financial services company, an AI-based compliance system flagged inconsistencies in disclosure language relating to a strategic partnership agreement entered into with a foreign institutional partner.

At the initial stage, the legal and compliance teams evaluated the transaction using conventional materiality thresholds under SEBI LODR Regulation 30. Based on traditional evaluation criteria, the transaction did not appear to qualify as a material event requiring disclosure.

However, the AI system analysed the transaction using comparative regulatory intelligence derived from historical SEBI filings across similar listed entities. It identified that although the transaction did not involve acquisition or control transfer, its economic substance reflected a strategic dependency that had previously been treated as a material event in comparable cases.

The system further highlighted that SEBI's materiality framework is not limited to quantitative thresholds but also includes qualitative factors such as impact on business operations, investor perception, and strategic direction. This triggered a deeper review by the Company Secretary in coordination with legal advisors. Upon detailed examination, it was observed that the transaction had significant long-term implications on revenue structure and operational reliance. Based on this interpretation, the disclosure strategy was revised and the company classified the transaction as a material event with appropriate explanatory disclosures to stock exchanges.

This case demonstrates that Artificial Intelligence does not replace governance judgment but enhances its analytical depth by introducing comparative regulatory intelligence. The final decision, however, remained firmly within the domain of human governance professionals.

### **5. Case Study 2: MCA21 Compliance Data Reconciliation and Systemic Reporting Failure**

In another instance involving a mid-sized manufacturing company with multiple subsidiaries, the

MCA21 Version 3 system flagged discrepancies between statutory filings submitted under Form AOC-4 and MGT-7. The AI validation system detected inconsistencies in shareholding disclosures and related party reporting across financial and secretarial documents. These discrepancies exceeded permissible tolerance levels defined under the system's automated validation framework.

Initial internal review indicated that the issue was not intentional but arose due to timing misalignment between finance and secretarial departments during year-end consolidation processes. A change in shareholding structure had been reflected in financial statements but not fully synchronized with secretarial filings. While the inconsistency did not stem from fraudulent intent, it posed a compliance risk under the Companies Act, 2013, which mandates accurate and consistent statutory disclosures.

The Company Secretary initiated a comprehensive reconciliation process involving finance, legal and compliance teams. This process was not limited to correction of filings but extended to redesigning internal compliance workflows to ensure real-time synchronization between departments. Corrected filings were subsequently submitted along with explanatory disclosures to regulatory authorities.

This case highlights that while AI systems are capable of detecting inconsistencies across statutory documents, resolution of such issues requires human governance intervention, interpretative reasoning and organisational coordination.

## **6. Risks, Limitations and Governance Challenges of Artificial Intelligence in Compliance**

Despite its significant advantages, Artificial Intelligence introduces several governance risks that require careful consideration. One of the most critical limitations is its inability to interpret legislative intent. While AI systems are effective in processing structured legal frameworks, they lack the capacity to understand policy objectives, contextual interpretation and judicial reasoning underlying regulatory provisions.

Another significant concern is over-reliance on AI-generated outputs. As organisations increasingly depend on automated compliance systems, there is a risk of diminishing professional skepticism. Compliance decisions may gradually shift from active evaluation to passive acceptance of algorithmic outputs.

Data privacy risks also become more pronounced in the context of the Digital Personal Data Protection Act, 2023. The use of external AI platforms for processing sensitive corporate data introduces risks related to confidentiality breaches and unauthorized data exposure.

Regulatory lag presents another challenge, as AI systems require continuous updates to reflect evolving legal frameworks. Delays in updating system logic may result in outdated compliance interpretations being applied in real-time decision-making.

Finally, Artificial Intelligence lacks ethical reasoning capability. Many compliance decisions require evaluation of fairness, stakeholder impact, reputational risk and governance ethics dimensions that extend beyond legal compliance and remain inherently human.

## **7. The Evolving Role of the Company Secretary in an AI-Enabled Governance Ecosystem**

The integration of Artificial Intelligence into corporate compliance systems is not diminishing the relevance of the Company Secretary; rather, it is fundamentally redefining the architecture of the profession. What is emerging is not a reduction in responsibility but a redistribution of functional layers, where execution is increasingly automated while interpretation, validation and governance assurance are becoming more pronounced.

Traditionally, the Company Secretary was viewed as a procedural custodian responsible for ensuring

statutory filings, maintaining registers, coordinating board processes and monitoring compliance deadlines. This role was largely compliance-execution oriented, with emphasis on accuracy, timeliness and procedural adherence. However, in an AI-enabled compliance environment, these executional aspects are increasingly being absorbed by automated systems integrated into ERP platforms, MCA21 interfaces, SEBI reporting tools and internal governance dashboards.

Despite this technological shift, statutory accountability continues to remain firmly anchored in the office of the Company Secretary. Provisions such as Section 204 of the Companies Act, 2013 relating to Secretarial Audit continue to impose professional responsibility irrespective of the tools or technologies used in compliance processes. This creates a unique governance paradox: while machines may execute compliance tasks, responsibility for those outputs cannot be transferred to machines.

Within this evolving framework, the role of the Company Secretary is increasingly transitioning towards that of a governance interpreter. This interpretation function is significantly more complex than traditional compliance verification. It requires the ability to assess whether AI-generated outputs are not only legally correct in form but also aligned with regulatory intent and governance principles in substance. In other words, the Company Secretary becomes responsible for bridging the gap between algorithmic compliance logic and legal interpretation.

This interpretative responsibility becomes particularly critical in areas where regulatory provisions are principle-based rather than rule-based. For example, under SEBI's materiality framework, disclosure obligations depend not only on quantitative thresholds but also on qualitative assessment of business impact and investor perception. Similarly, under the Companies Act, related party transactions, board resolutions and disclosure requirements often require interpretative judgment beyond checklist compliance. AI systems may identify patterns and flag anomalies, but they cannot fully evaluate regulatory intent or contextual legal reasoning.

In addition to interpretation, the Company Secretary now assumes a critical role in governance risk assessment within AI-driven systems. As organisations increasingly rely on automated compliance tools, there is a need to evaluate the risks arising from algorithmic decision-making, including bias in data models, outdated regulatory mapping and over-reliance on predictive outputs. The Company Secretary becomes a key assurance provider, ensuring that technology-driven compliance systems do not drift away from regulatory accuracy or governance discipline.

Furthermore, the integration of compliance functions across departments has intensified the need for cross-functional governance coordination. Compliance is no longer confined to a standalone secretarial function but now intersects with finance, legal, IT systems, data protection teams and risk management frameworks. The Company Secretary plays a central integrative role in aligning these functions into a unified governance structure, ensuring consistency in reporting, disclosure, and regulatory interpretation across the organisation.

Perhaps the most significant transformation lies in the increasing importance of ethical oversight. While Artificial Intelligence can process vast amounts of regulatory data, it cannot evaluate fairness, stakeholder impact, reputational consequences, or broader governance ethics. Many compliance decisions exist in grey areas in which legality alone is insufficient. In such scenarios, the Company Secretary ensures that decisions are not only legally compliant but also ethically defensible and aligned with the broader principles of corporate governance.

In essence, automation is reshaping the operational layer of compliance, but the interpretative and ethical layers of governance are becoming more central than ever. The Company Secretary is therefore evolving from a procedural executor into a governance architect who ensures that compliance systems remain legally sound, ethically grounded and regulatorily aligned in an increasingly automated environment.

## 8. Human AI Hybrid Governance Model: The Future Architecture of Compliance Systems

The future of corporate compliance is neither purely technological nor entirely human-driven. Instead, it is steadily evolving into a hybrid governance model where Artificial Intelligence and human expertise function as complementary components of a unified compliance architecture.

Within this model, Artificial Intelligence serves as the operational backbone of compliance infrastructure. Its primary strength lies in processing large volumes of data at high speed, identifying patterns across complex datasets and continuously monitoring regulatory obligations in real time. AI systems enhance compliance efficiency by automating repetitive processes such as statutory tracking, document verification, anomaly detection, and predictive risk identification.

In practical terms, AI enables organisations to move from periodic compliance monitoring to continuous governance surveillance. Regulatory obligations are no longer reviewed at fixed intervals but are tracked dynamically across business operations. This ensures early detection of deviations and significantly reduces the risk of non-compliance arising from administrative delays or human oversight.

However, while AI enhances operational intelligence, it does not eliminate the need for human governance intervention. On the contrary, the increasing sophistication of AI systems amplifies the importance of interpretative oversight. Governance professionals, particularly Company Secretaries, play a critical role in validating AI-generated insights, ensuring that algorithmic interpretations align with legal frameworks and regulatory expectations.

Human intervention becomes particularly important in scenarios involving ambiguity, regulatory evolution, or competing interpretations of law. Unlike AI systems, which operate on structured datasets and programmed logic, human professionals are capable of interpreting intent, assessing contextual relevance and applying judgment in uncertain legal environments. This capability is essential in ensuring that compliance decisions remain aligned with both the letter and spirit of law.

The hybrid governance model therefore functions on a clear division of responsibilities. Artificial Intelligence enhances speed, scalability, and predictive accuracy, while human professionals ensure accountability, interpretative depth and ethical governance. This complementary structure prevents compliance systems from becoming overly mechanical while ensuring they remain efficient and data-driven.

In this emerging framework, compliance is no longer viewed as a linear process but as an integrated ecosystem where technology and human governance continuously interact. AI generates insights, but humans validate meaning. AI identifies risk, but humans determine consequence. AI processes law, but humans interpret governance.

Ultimately, the hybrid model reflects a fundamental principle of modern corporate governance: efficiency without accountability is incomplete and accountability without efficiency is unsustainable. The integration of both ensures a balanced compliance architecture capable of meeting the demands of a rapidly evolving regulatory environment.

## 9. Conclusion: Reimagining Compliance as a Governance-Driven Intelligence Function

Artificial Intelligence is not merely transforming compliance; it is redefining its very architecture. What was once a periodic, documentation-driven function is now evolving into a continuous, intelligence-led governance system embedded within the core of organisational decision-making.

Yet, this transformation does not alter the fundamental nature of compliance. At its core, compliance is not about the mechanical application of rules, but about the responsible exercise of judgment. As Oliver Wendell Holmes Jr. observed, *"The life of the law has not been logic; it has been experience."* In an AI-enabled environment, this distinction becomes even more critical.

While machines can process regulations with speed and precision, they cannot interpret intent, assess consequence, or assume accountability.

The future of compliance therefore lies not in automation alone, but in the deliberate integration of technological capability with human governance. Artificial Intelligence can enhance efficiency, expand analytical depth and enable predictive oversight—but it cannot replace the interpretative and ethical responsibilities that define true compliance.

In this evolving landscape, the role of the Company Secretary is not diminished but elevated. The profession moves beyond execution into the realm of governance stewardship—ensuring that compliance systems are not only technically accurate, but legally sound, contextually appropriate and ethically defensible.

Ultimately, the question is not whether Artificial Intelligence will transform compliance it already has, the real question is whether organisations will allow compliance to become a purely algorithmic function or preserve it as a discipline grounded in human judgment and accountability.

**Because in the end, compliance is not about what systems can do - it is about what organisations choose to stand for.**

# The Digital Personal Data Protection Act, 2023 Meets AI: A Compliance Roadmap for Company Secretaries

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*“The right to privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being.” – Justice Abhay Manohar Sapre, K.S. Puttaswamy v. Union of India (2017) 10 SCC 1*

## I. INTRODUCTION

The convergence of Artificial Intelligence and data privacy regulation represents one of the most consequential compliance challenges facing Indian businesses today. As organisations across sectors rapidly deploy AI-powered systems for customer analytics, credit scoring, employee screening, fraud detection, and operational efficiency, they generate and process unprecedented volumes of personal data. This creates a direct tension with the emerging data protection regime that Company Secretaries, as the custodians of corporate governance, must urgently address.

The Digital Personal Data Protection Act, 2023 (“DPDP Act”), which received Presidential assent on 11 August 2023, coupled with the DPDP Rules notified on 13 November 2025, has established a comprehensive consent-centric framework governing how organisations collect, process, store, and share digital personal data. With enforcement being rolled out in three phases culminating in full compliance by 13 May 2027, and penalties reaching up to Rs. 250 crore per violation, the stakes have never been higher.

Yet, awareness remains alarmingly low. An EY India survey of over 150 professionals across sectors revealed that close to 70 per cent of respondents were not very familiar with the DPDP Act and Rules, and more than 83 per cent had not begun comprehensive implementation of the Act’s requirements.<sup>1</sup> Nearly 81 per cent had not updated or drafted DPDP-aligned privacy policies. These figures signal that knowledge gaps extend even to leadership teams, creating a significant governance vacuum that Company Secretaries are well-placed to fill.

This article aims to bridge that gap. It examines the constitutional foundations of data privacy in India, maps the DPDP Act’s architecture and phased compliance timelines, analyses the critical intersections between AI and data protection, dissects the penalty framework with reference to judicial developments, and provides a practical compliance roadmap specifically tailored for Company Secretaries.

## II. CONSTITUTIONAL FOUNDATIONS: FROM PUTTASWAMY TO THE DPDP ACT

The DPDP Act did not emerge in a vacuum. Its constitutional foundations were laid by the Supreme Court of India in the landmark judgment of **Justice K.S. Puttaswamy (Retd.) v. Union of India** [(2017) 10 SCC 1], where a nine-judge bench unanimously held that the right to privacy is a constitutionally protected fundamental right, intrinsic to life and personal liberty under Article 21 of the Constitution. The Court further held that privacy is intertwined with the right to equality under Article 14 and the right to freedom of speech and expression under Article 19.<sup>2</sup>

The Puttaswamy judgment articulated the doctrine of *informational self-determination* – the right of individuals to exercise control over their personal data. This doctrine provides direct judicial

support for the principles of purpose limitation, data minimisation, and informed consent that now form the bedrock of the DPDP Act. As the Court observed, any restriction on the right to privacy must satisfy a three-fold test: (a) it must have a legislative mandate; (b) it must pursue a legitimate State aim; and (c) it must be proportionate to the aim sought to be achieved.<sup>3</sup>

The journey from Puttaswamy to the DPDP Act was long. The Justice B.N. Srikrishna Committee submitted its report in July 2018, recommending a comprehensive data protection framework. The Personal Data Protection Bill, 2019, introduced in Lok Sabha in December 2019, was referred to a Joint Parliamentary Committee which submitted its report in December 2021. The Bill was withdrawn in August 2022 after receiving criticism from stakeholders. A fresh draft was released for public consultation in November 2022, and the DPDP Bill, 2023, was finally introduced in Parliament on 3 August 2023, receiving Presidential assent on 11 August 2023.<sup>4</sup>

For Company Secretaries, this constitutional backdrop is not merely academic. It means that data protection is now a **fundamental right**, not just a regulatory obligation. Any organisation's data processing practices – especially AI-driven ones – can be scrutinised against constitutional standards of necessity and proportionality. This elevates data protection compliance from a tick-box exercise to a matter of constitutional governance, and positions the Company Secretary as the natural steward of this compliance.

### III. THE DPDP ACT, 2023: ARCHITECTURE AND KEY PROVISIONS

The DPDP Act follows a consent-centric, principle-based approach. It applies to the processing of digital personal data within India, as well as to processing outside India where goods or services are offered to Data Principals located within India. The Act was drafted on several foundational principles: lawfulness, fairness and transparency; purpose limitation; data minimisation; accuracy; storage limitation; and reasonable security safeguards.<sup>5</sup>

#### Key Definitions Relevant to AI Compliance

A **Data Fiduciary** is any person or entity that determines the purpose and means of processing personal data – this includes any organisation deploying AI systems that process personal data. A **Data Principal** is the individual to whom the data relates. **Personal Data** is defined broadly as any data about an individual who is identifiable by or in relation to such data. The Act distinguishes **Significant Data Fiduciaries (“SDFs”)** – Data Fiduciaries designated by the Central Government based on the volume and sensitivity of data processed – who face enhanced obligations including appointing a Data Protection Officer based in India, conducting Data Protection Impact Assessments (DPIAs), and engaging independent data auditors.<sup>6</sup>

#### Consent as the Cornerstone

The Act mandates that personal data may be processed only with the informed, specific, and freely given consent of the Data Principal, or for certain “legitimate uses” (employment purposes, emergencies, State functions, and legal obligations). Consent must be unbundled from terms and conditions – bundled consent is explicitly invalid, and processing based on invalid consent can be deemed processing without consent, attracting penalties of up to Rs. 200 crores. The DPDP Rules further mandate that by 13 May 2027, every Data Fiduciary must provide a standalone, clear consent notice in plain language, available in English or any of the 22 scheduled languages under the Eighth Schedule of the Constitution.<sup>7</sup>

#### Phased Implementation Timeline

The DPDP Rules are being implemented in three carefully sequenced phases:

- **Phase 1 (Effective 13 November 2025):** The Data Protection Board of India (DPBI) was formally established with its headquarters in the National Capital Region. A digital complaint portal

and mobile application were launched. The Board's enforcement and investigative powers became operational. The older SPDI Rules, 2011 continue in force for 18 months to ensure no compliance vacuum.

- **Phase 2 (Effective 13 November 2026):** Registration of Consent Managers commences under Rule 4. Only India-incorporated entities with a minimum net worth of Rs. 2 crore (approximately USD 225,000) qualify. Consent Managers must fulfil independent certification requirements relating to interoperability and must avoid conflicts of interest with Data Fiduciaries.
- **Phase 3 (Effective 13 May 2027):** All remaining substantive provisions become enforceable – consent-related provisions, general obligations of Data Fiduciaries, SDF obligations, rights of Data Principals, processing of children's data (Section 9), cross-border data transfer rules, and breach notification requirements. This is the absolute compliance deadline with no grace period.

#### IV. WHERE AI MEETS THE DPDP ACT: CRITICAL COMPLIANCE INTERSECTIONS

As of April 2026, India does not have a dedicated AI-specific legislation. The Government has chosen an adaptive regulatory approach. On 5 November 2025, MeitY released the India AI Governance Guidelines under the IndiaAI Mission, built around seven guiding principles or “sutras” – Trust, People First, Innovation over Restraint, Fairness and Equity, Accountability, Understandable by Design, and Safety, Resilience and Sustainability.<sup>8</sup> As IT Secretary S. Krishnan observed at the launch, “India has consciously chosen not to lead with regulation but to encourage innovation while studying global approaches.” These Guidelines are principle-based and currently voluntary, but they are expected to become the primary reference point for courts and regulators when judging due diligence in AI deployments.

This means that the DPDP Act is, in practice, **the primary law governing AI's use of personal data in India**. The implications are significant and multifaceted.

##### 4.1 Consent Challenges for AI Training

Explicit, informed consent is required for most data processing, posing fundamental challenges for large-scale AI training on personal data. Purpose limitation requirements mean that consent obtained for one purpose (say, providing a service) cannot automatically extend to training an AI model. The Puttaswamy judgment's emphasis on informational self-determination provides direct judicial support for prohibiting unwarranted collection of datasets used for AI training.<sup>9</sup> Companies using customer data to fine-tune AI tools must ensure separate, specific consent for that purpose, or must rely on rigorous anonymisation to take the data outside the Act's scope. It is worth noting that the Act's exemptions for publicly available data and certain research purposes may provide limited breathing room, but these exemptions must be carefully evaluated on a case-by-case basis.

##### 4.2 Purpose Limitation and Data Minimisation

AI systems are inherently data-hungry. The DPDP Act's principle that only those items of personal data required for attaining a specific purpose should be collected creates a direct tension with AI development practices that favour large, diverse datasets. Every AI project must be documented with clear data processing purposes, and data collection must be limited to what is genuinely necessary. A company that collects extensive user data “to improve user experience” without specifying how AI uses that data is at risk of providing an invalid consent notice – which can itself attract penalties.

### 4.3 Automated Decision-Making and Explainability

While the DPDP Act does not create a separate regime for automated AI decision-making (unlike the EU's GDPR which provides specific rights under Article 22), the rights of Data Principals to correction, erasure, and grievance redressal still apply fully to AI-driven decisions. The India AI Governance Guidelines emphasise "Understandable by Design" as a core principle, pushing for explainable AI.

Indian courts have already begun addressing AI in adjudicatory contexts. In **Deepak Arora v. Google LLC (2024)**, the Delhi High Court cautioned against reliance on algorithmic material, emphasising that algorithms cannot be ascribed authorship.<sup>10</sup> While this case dealt with AI-generated content rather than data privacy, it signals judicial awareness that AI outputs require human oversight and accountability. If an AI system makes a decision affecting an individual – loan denial, insurance pricing, employment screening, credit scoring – the organisation must be prepared to explain the basis of that decision when a grievance is raised under the DPDP Act.

### 4.4 Children's Data and AI

Section 9 of the DPDP Act imposes strict obligations on processing children's data (anyone under 18 years). Data Fiduciaries must not track, monitor, or behaviourally profile children, must not engage in targeted advertising directed at children, and verifiable parental consent is mandatory. The DPDP Rules mandate verification through integration with DigiLocker to establish the parent-child relationship. Penalties for violations reach up to Rs. 200 crores.

A recent policy research report by the Advanced Study Institute of Asia found that 13 of the top 14 digital platforms used by minors in India – spanning AI, social media, and edtech sectors – failed to meet at least five DPDP compliance criteria, including parental consent, the ability to withdraw consent, and third-party data sharing.<sup>11</sup> These platforms included major AI tools, search engines, and educational platforms. This finding prompted the Standing Committee on Communications and Information Technology to urge the Government to explore comprehensive AI legislation and age-based restrictions.

### 4.5 Cross-Border Data Transfers and Cloud-Based AI

Many AI systems rely on cloud-based processing where data flows across jurisdictions. The DPDP Act permits cross-border transfers to all jurisdictions except those specifically restricted by government notification. However, the DPDP Rules additionally require compliance with government-specified requirements for making personal data available to foreign States or entities under their control. For organisations using AI platforms hosted overseas – which includes the majority of enterprises using cloud-based AI services – this necessitates careful mapping of data flows and assessment of the host jurisdiction's data protection adequacy.

### 4.6 Data Breach Response in AI Systems

AI systems, by virtue of processing large volumes of data across interconnected systems, present heightened breach risks. Under the DPDP Rules, breach notification follows a two-stage process:

**Stage 1** requires immediate notification to the DPBI upon discovery;

**Stage 2** requires notification to affected Data Principals within 72 hours, including a plain-language description of the breach, categories and approximate number of Data Principals affected, likely consequences, and protective measures.

For context, in 2024, cybersecurity incidents in India more than doubled from 1.03 million in 2022 to 2.27 million, and the average data breach cost Indian businesses approximately Rs. 22 crore.<sup>12</sup>

Add a potential DPDP penalty on top, and the business case for proactive compliance becomes undeniable.

#### 4.7 Practical Illustrations: Where Compliance Can Fail

To bring these intersections to life, consider the following scenarios that Company Secretaries should be alive to:

**Scenario 1 – The AI-Powered HR Screening Tool:** A company deploys an AI tool to screen job applications. The tool processes personal data including names, educational qualifications, work history, and address data. However, the company's privacy notice merely states that data is collected "for recruitment purposes" without disclosing that an AI tool is making automated screening decisions. Under the DPDP Act, this constitutes an insufficient privacy notice, potentially rendering the consent invalid. Processing based on invalid consent is deemed processing without consent – attracting a penalty of up to Rs. 50 crores. Additionally, if the AI tool exhibits bias against candidates from particular regions or backgrounds, the organisation faces reputational and legal risk under the India AI Governance Guidelines' principle of Fairness and Equity.

**Scenario 2 – The Customer Analytics Engine:** A fintech company uses AI to analyse customer transaction data for credit scoring. The AI model is trained on historical data that was originally collected with consent limited to "providing financial services." Using this data to train a predictive credit-scoring model constitutes a new processing purpose for which fresh consent is required. If the company fails to obtain this consent and the customer is denied credit based on the AI model's output, the company faces exposure on multiple fronts: processing without valid consent (up to Rs. 50 crore), potential grievance redressal claims, and reputational damage.

**Scenario 3 – The EdTech AI Tutor:** An edtech platform deploys an AI-powered personalised learning tool for school students aged 10–16. The tool tracks learning patterns, monitors time spent on various topics, and adapts content accordingly. Under Section 9, this constitutes behavioural monitoring and profiling of children – which is prohibited. Even if the company argues that the purpose is educational rather than commercial, the prohibition on tracking and monitoring is absolute. Penalties can reach Rs. 200 crores. The Company Secretary must ensure that the product team understands these restrictions before the AI system is deployed.

These scenarios illustrate why DPDP compliance cannot be relegated to the IT or legal department alone. It requires Board-level governance, cross-functional coordination, and the kind of compliance architecture that Company Secretaries are trained to build.

#### V. THE PENALTY FRAMEWORK

Section 33, read with the Schedule to the Act, creates one of India's most consequential penalty regimes. Penalties are **per violation, not per incident**, and multiple violations result in cumulative penalties. The Act does not require proof of criminal intent – mere non-compliance suffices.<sup>13</sup>

Nature of Violation	Section	Maximum Penalty
Failure to implement reasonable security safeguards	Section 8(5)	Rs. 250 Crores
Failure to notify breach to DPBI and Data Principals	Section 8(6)	Rs. 200 Crores

Breach of obligations relating to children's data	Section 9	Rs. 200 Crores
Breach of additional obligations by SDFs	Section 10	Rs. 150 Crores
Any other violation by Data Fiduciary	Various	Rs. 50 Crores
Breach of duties by Data Principals (e.g., false complaints)	Section 15	Rs. 10,000

Table 1: Penalty Schedule under the DPDP Act, 2023

For an organisation facing multiple violations in a single incident – for example, inadequate security safeguards (Rs. 250 crores) combined with failure to notify the breach (Rs. 200 crores) and processing children's data without consent (Rs. 200 crores) – cumulative penalties could theoretically reach Rs. 650 crores. Appeals against DPBI orders lie with the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) within 60 days, with further appeals to higher courts including the Supreme Court.<sup>14</sup>

## VI. THE COMPANY SECRETARY'S COMPLIANCE ROADMAP

As the conscience keepers and governance professionals of corporate India, Company Secretaries are uniquely positioned to anchor the DPDP compliance programme. The following framework organises actionable steps into three phases aligned with the DPDP Rules timeline.

### Phase A: Foundation Building (Now – November 2026)

- **Data Mapping and AI Inventory:** Conduct a comprehensive data mapping exercise. Identify every AI system processing personal data, categories of data collected, processing purposes, storage locations, retention periods, and data flows including cross-border transfers. Build the Record of Processing Activities (ROPA).
- **Gap Analysis:** Benchmark current privacy policies, consent mechanisms, and data governance frameworks against DPDP Act requirements. Address gaps proactively – this provides both legal protection and competitive advantage.
- **Board-Level Briefing:** Present a comprehensive Board briefing covering DPDP obligations, penalty exposure, the organisation's AI footprint, and a proposed governance structure. Recommend embedding DPDP governance into the Audit Committee or establishing a cross-functional Privacy Steering Committee. Ensure Board minutes record deliberations on data protection.
- **AI Ethics and Data Protection Policy:** Draft or update the organisation's AI Ethics and Data Protection Policy, defining permissible AI uses, consent requirements, automated decision-making protocols, and bias testing guidelines.
- **Vendor Assessment:** Evaluate all third-party AI vendors and Data Processors for DPDP compliance readiness. The Data Fiduciary remains liable even when a vendor causes a breach.

### Phase B: Operationalisation (November 2026 – May 2027)

- **Consent Infrastructure:** Deploy redesigned consent mechanisms providing clear, purpose-specific consent notices in plain language and relevant scheduled languages. Evaluate the need for a registered Consent Manager.
- **Breach Response Protocol:** Establish a two-stage breach response: immediate DPBI notification and Data Principal notification within 72 hours. Conduct tabletop breach

simulation exercises. Maintain one-year security logs as mandated by Rule 6.

- **Explainability and Grievance Redressal:** Implement explainability mechanisms for AI-driven decisions. Appoint a Grievance Officer with decision-making authority, set internal SLAs, and deploy a case management system.
- **Contractual Safeguards:** Update vendor agreements with DPDP-aligned clauses covering security safeguards (ISO 27001 or equivalent), breach notification, data deletion protocols, and audit rights.
- **Children's Data Protections:** If AI systems interact with minors, implement DigiLocker-based parental consent verification and ensure no behavioural tracking or targeted advertising is directed at children.

### Phase C: Full Compliance and Audit Readiness (May 2027 Onwards)

- **SDF Compliance:** If designated as a Significant Data Fiduciary, appoint a DPO based in India with Board-level visibility, engage an independent data auditor, and conduct a comprehensive DPIA covering all AI systems.
- **Annual AI Audits:** Conduct annual data protection and AI system audits, including bias testing and fairness assessments aligned with the India AI Governance Guidelines.
- **Compliance Calendar Integration:** Integrate DPDP milestones into the compliance calendar alongside Companies Act filings, SEBI LODR disclosures, BRSR reporting, and other statutory deadlines.
- **Evidence Trail:** Maintain comprehensive documentation – consent logs, breach records, security policies, DSAR evidence, training records, DPIA reports, and vendor assessment files.

## VII. BOARD GOVERNANCE AND DPDP: SECRETARIAL PRACTICE RECOMMENDATIONS

The DPDP Act has transformed data protection into a Board-level strategic issue.<sup>15</sup> Company Secretaries should advocate for:

- **Quarterly DPDP Dashboards** to the Board covering data mapping, consent mechanisms, breach preparedness, pending DSARs, vendor compliance, and regulatory communications.
- **Risk Register Integration:** DPDP compliance in the Board's risk register with risk ratings updated per the phased enforcement timeline.
- **Board Minutes:** Recording Board deliberations on data protection to demonstrate informed governance oversight.
- **Secretarial Audit (MR-3):** Including observations on DPDP compliance readiness in the Secretarial Audit Report for listed companies, given that penalties can materially impact financial position.
- **BRSR Alignment:** Ensuring consistency between DPDP compliance actions and Business Responsibility and Sustainability Reporting disclosures on data privacy, cybersecurity, and responsible technology use. SEBI's BRSR Core framework requires disclosures on data privacy policies and cybersecurity incidents, and these must align with the organisation's DPDP compliance posture. Any inconsistency between what is disclosed in the BRSR and the organisation's actual compliance status could invite regulatory scrutiny from both the DPBI and SEBI.

It is worth emphasising that the DPDP Act does not directly impose personal liability on individual directors. However, boards that fail to demonstrate governance oversight of data protection –

particularly in the context of AI deployments that process sensitive personal data at scale – face significant financial and reputational exposure for the organisation. Under Section 37 of the DPDP Act, the Central Government may issue blocking directions for non-compliant platforms, and the DPBI can mandate remediation measures including cessation of certain processing activities. These are operational risks that directly affect shareholder value and demand Board attention.

Company Secretaries should also consider conducting periodic DPDP compliance training for Board members and Key Managerial Personnel. Given that EY's survey found that understanding of the DPDP Act is highest among legal, risk, cybersecurity, and technology functions – and significantly lower in other functions – a structured training programme can bridge critical knowledge gaps. The Company Secretary, by virtue of having access to the Board and all functional heads, is ideally positioned to orchestrate this training.

### VIII. THE EMERGING LANDSCAPE

India's AI governance landscape continues to evolve. The Reserve Bank of India released its Framework for Responsible and Ethical Enablement of Artificial Intelligence (FREE-AI) in August 2025, with sector-specific governance recommendations including board-approved AI policies, AI inventories, incident reporting, and red-teaming of AI systems.<sup>16</sup>

The Artificial Intelligence (Ethics and Accountability) Bill, 2025 – a Private Member's Bill introduced in Lok Sabha in December 2025 – proposes a statutory Ethics Committee for AI, mandatory ethical reviews, bias audits, and penalties of up to Rs. 5 crore.<sup>17</sup> The Standing Committee on Communications and Information Technology has urged comprehensive AI legislation. Sectoral regulators – SEBI for AI-driven trading, IRDAI for AI-driven underwriting, ICMR for AI in healthcare – are expected to issue domain-specific mandates.

Internationally, the EU AI Act reaches a major enforcement milestone in August 2026 with full rules applying to high-risk AI systems. For Indian companies with global operations, compliance with both the DPDP Act and international AI regulations will become a dual imperative. Company Secretaries must monitor these developments and build cross-functional compliance capabilities.

### IX. CONCLUSION: FROM COMPLIANCE TO STEWARDSHIP

"Perform your obligatory duties, because action is indeed better than inaction." – Bhagavad Gita, Chapter 3, Verse 8.

The theme of the 27<sup>th</sup> National Conference – "**Company Secretaries as Leaders: AI, ESG & Stewardship**" – captures the essence of the opportunity before the profession. Data protection compliance under the DPDP Act is not merely a legal obligation; it is a strategic lever for building digital trust in an economy where data is the most valuable asset. As the Supreme Court held in Puttaswamy, privacy is inseparable from human dignity – and AI systems that process personal data must be designed, deployed, and governed with that dignity in mind.

The role of the Company Secretary in this landscape cannot be overstated. Traditionally, the Company Secretary has been the compliance anchor for corporate law, securities regulation, and governance standards. The DPDP Act adds a new and critical dimension to this role. Consider that a single data breach involving AI can trigger notifications to the DPBI and thousands of affected Data Principals within 72 hours, attract cumulative penalties exceeding Rs. 500 crore, invite Board scrutiny, affect BRSR disclosures, and generate media attention that damages brand value. This is not a risk that can be managed reactively. It demands the proactive, systematic, and governance-embedded approach that is the hallmark of secretarial practice.

Furthermore, the India AI Governance Guidelines, while currently voluntary, will inevitably harden into binding expectations. Courts and regulators will reference these Guidelines when judging

whether an organisation exercised due diligence in AI deployment. Company Secretaries who proactively align their organisations with these Guidelines – documenting AI governance practices, conducting regular bias audits, maintaining algorithmic decision logs, and training Board members on AI risks – will be building an invaluable evidence trail of responsible stewardship.

Company Secretaries are uniquely equipped for this role. Their understanding of governance architectures, compliance frameworks, Board processes, and regulatory ecosystems positions them to serve as the bridge between the technical complexities of AI deployment and the legal demands of data protection. By leading the DPDP compliance programme, Company Secretaries can demonstrate that the profession's core strength – stewardship – extends seamlessly into the age of artificial intelligence.

The 12-month window to May 2027 is not a grace period. It is the only period before the DPBI's full penalty powers take effect. Organisations that use this time to embed DPDP compliance into their operations will enter enforcement with evidence on their side. Those that do not will have to build under investigation pressure. The time to act is now, and the Company Secretary is the right professional to lead that charge.

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# From Gatekeepers to Architects: Reimagining Compliance Leadership in the Age of Artificial Intelligence

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## 1. Introduction: The Inflection Point

The corporate governance landscape is witnessing one of the most transformative shifts since the advent of digitisation. Compliance and Secretarial functions, once largely associated with regulatory filings, procedural oversight, and post-facto risk monitoring, are now being drawn into a far more complex and strategic environment shaped by Artificial Intelligence (AI), data governance, and technology-led decision-making.

AI is no longer a futuristic concept confined to research laboratories or technology firms. It has become deeply embedded into mainstream business operations. Financial institutions use AI for credit underwriting and fraud detection, companies use predictive analytics for hiring and performance assessment, and organisations increasingly rely on algorithmic systems for customer profiling, risk assessment, and strategic forecasting.

Unlike traditional automation, AI systems are dynamic and adaptive. They learn from historical data, continuously evolve through machine learning models, and often generate outcomes that are not fully explainable even to the organisations deploying them. As a result, AI introduces a fundamentally different category of governance and compliance risk - one that is continuous, opaque, and scalable.

This transformation has significant implications for the role of Company Secretaries.

Traditionally, the Company Secretary has been viewed as the custodian of governance processes, regulatory compliance, and board administration. However, in an AI-driven corporate environment, governance itself is changing. Decision-making is increasingly becoming technology-enabled, data-driven, and partially autonomous. Consequently, governance professionals are now required to move beyond traditional compliance administration and participate actively in the design, oversight, and ethical supervision of organisational decision systems.

The role of the Company Secretary is therefore undergoing a strategic evolution - from a compliance gatekeeper to a governance architect.

India's regulatory environment further reinforces this transition. Unlike jurisdictions that are moving toward dedicated AI legislation, India currently follows a principle-based and sector-driven approach to AI governance through existing legal and regulatory frameworks. This means organisations cannot rely solely on prescriptive rules. Instead, they must proactively build governance structures capable of addressing emerging risks related to AI, data privacy, algorithmic accountability, and ethical decision-making.

In this context, the modern Company Secretary occupies a critical position at the intersection of technology, governance, ethics, and strategic oversight.

This article examines how AI is reshaping compliance risks, redefining governance expectations, and expanding the role of Company Secretaries as strategic leaders in the evolving corporate ecosystem.

## 2. The Changing Nature of Compliance Risk

Traditional compliance frameworks were built around predictable and relatively static operating models. Regulations were interpreted, processes were designed, controls were implemented, and compliance was periodically reviewed.

Artificial Intelligence fundamentally disrupts this model.

AI systems do not merely execute predefined instructions. They identify patterns, adapt to new inputs, and make probabilistic decisions. This creates a category of risk that is not always visible through traditional compliance mechanisms.

One of the most significant risks emerging from AI adoption is algorithmic risk.

Algorithmic risk arises when AI systems produce outcomes that may unintentionally violate regulatory expectations, ethical standards, or principles of fairness. In sectors such as banking, insurance, healthcare, and digital commerce, algorithmic decisions directly impact customers and stakeholders.

For example, AI-driven lending systems may reject loan applications based on behavioural data patterns that indirectly disadvantage certain customer categories. Similarly, recruitment algorithms trained on historically biased datasets may inadvertently discriminate against particular demographic groups.

These risks become particularly relevant in regulated sectors such as financial services, where regulators increasingly expect explainability, fairness, and accountability in automated decision-making processes.

A second major concern relates to data governance risk.

AI systems are heavily dependent on data. They process large volumes of personal, behavioural, transactional, and operational information. As organisations increasingly leverage data-driven intelligence, compliance obligations around consent, data minimisation, privacy, cybersecurity, and lawful processing become more significant than ever before.

The Digital Personal Data Protection Act, 2023, has fundamentally changed the Indian data governance landscape by introducing structured obligations around personal data processing, consent architecture, and accountability mechanisms. Organisations deploying AI systems must therefore ensure that data collection and processing activities remain compliant with evolving statutory obligations.

A third emerging challenge is accountability ambiguity.

Traditional governance structures operate on clear accountability principles where decisions can be traced back to identifiable individuals or departments. AI systems blur this accountability chain. When an automated decision adversely impacts a customer, shareholder, or stakeholder, determining responsibility becomes increasingly difficult.

However, from a regulatory perspective, accountability cannot be outsourced to algorithms. Responsibility continues to rest with the organisation deploying the technology and its governance leadership. This significantly expands the oversight obligations of compliance professionals and boards.

Importantly, AI-related compliance risks are not merely theoretical.

In digital lending ecosystems, AI-enabled underwriting and customer onboarding models have enabled faster decision-making and operational efficiency. However, these systems have also exposed gaps around explainability, customer transparency, and accountability allocation between regulated entities and technology service providers.

In several operational environments, organisations have faced situations where AI-generated credit outcomes could not be meaningfully explained to customers or internal stakeholders. Such instances highlight the limitations of purely technology-led governance approaches and reinforce the importance of structured human oversight.

Traditional compliance frameworks, being largely retrospective, are not adequately equipped to manage these real-time and evolving risks.

This creates an urgent need for governance transformation.

### **3. The Expanding Mandate of the Company Secretary**

The increasing integration of AI into business processes is significantly reshaping the responsibilities of governance professionals.

Historically, the Company Secretary's role centred around ensuring statutory compliance, facilitating board processes, maintaining corporate records, and advising management on legal obligations.

While these responsibilities remain important, they are no longer sufficient in a rapidly evolving digital economy.

The modern Company Secretary is increasingly expected to function as a strategic governance leader.

This expanded mandate can broadly be understood across three dimensions:

#### **(A) Governance Design**

The first dimension involves governance design.

AI systems cannot be governed through traditional checklist-based compliance approaches alone. Organisations require dynamic governance structures capable of addressing algorithmic accountability, model validation, ethical risk, data governance, and regulatory oversight.

This creates a significant opportunity for Company Secretaries to contribute to the development of AI governance frameworks.

Governance design in the AI era includes:

- Defining accountability structures
- Establishing escalation mechanisms
- Integrating technology risks into board governance
- Ensuring policy alignment with regulatory expectations
- Designing internal review and oversight mechanisms

Rather than acting only as reviewers of governance systems, Company Secretaries are increasingly expected to participate in building those systems.

#### **(B) Board Advisory and Strategic Oversight**

The second dimension relates to board advisory responsibilities.

Boards are now expected to oversee not only financial and operational risks but also technology-driven governance risks.

However, many boards continue to face challenges in understanding AI-related risks due to limited technical exposure and rapidly evolving technologies.

This creates a governance gap.

The Company Secretary is uniquely positioned to bridge this gap by translating technical complexity into governance language that boards can meaningfully evaluate.

This includes:

- Structuring AI risk disclosures
- Facilitating board discussions on technology governance
- Ensuring AI-related risks are reflected in committee oversight structures
- Integrating AI governance into enterprise risk management frameworks
- Supporting directors in fulfilling fiduciary oversight obligations under corporate governance frameworks and listing regulations

In this context, the Company Secretary evolves from an administrative facilitator to a strategic governance advisor.

### **(C) Ethical Stewardship**

The third dimension relates to ethical stewardship.

AI systems increasingly influence decisions that directly impact individuals and communities. Biased datasets, opaque algorithms, and automated decision-making systems can create ethical and reputational consequences even when no direct legal violation occurs.

As governance expectations evolve, organisations are being evaluated not only on regulatory compliance but also on responsible conduct.

Global frameworks increasingly emphasise principles such as fairness, transparency, explainability, accountability, and responsible AI deployment.

The Company Secretary therefore plays a critical role in embedding ethical oversight into organisational governance frameworks.

This includes:

- Institutionalising ethical review mechanisms
- Ensuring transparency in governance processes
- Aligning AI deployment with ESG objectives
- Promoting accountability-driven governance cultures
- Encouraging responsible decision-making practices across organisational structures

This transition marks one of the most important evolutions in the history of the Company Secretary profession.

## **4. Building an AI-Ready Compliance Framework**

As AI adoption accelerates across industries, organisations require governance structures capable of managing technology-driven risks in a sustainable and accountable manner.

An AI-ready compliance framework cannot rely solely on conventional control mechanisms. Instead, it must incorporate principles of adaptability, continuous oversight, and multidisciplinary governance.

Several foundational pillars become critical in this context.

### **(A) Explainability and Transparency**

One of the most significant concerns associated with AI systems is the lack of explainability.

In many cases, AI models operate as “black box” systems where outcomes are generated through highly complex data relationships that may not be fully interpretable.

This creates substantial governance and regulatory concerns.

Stakeholders increasingly expect organisations to explain how significant decisions are made, particularly in areas involving lending, recruitment, insurance, healthcare, and customer risk profiling.

Regulators in financial sectors have also emphasised the importance of transparency and customer fairness in technology-driven decision systems.

Accordingly, organisations must establish governance mechanisms that ensure:

- Documentation of model logic and decision parameters
- Availability of audit trails
- Internal review mechanisms for high-impact decisions
- Escalation protocols for disputed outcomes
- Transparent communication practices with affected stakeholders

Explainability is no longer merely a technology concern; it is now a governance obligation.

### **(B) Continuous Monitoring and Model Validation**

Unlike traditional software systems, AI models evolve over time.

Data patterns change, user behaviour evolves, and operational environments shift. This may lead to “model drift,” where AI systems gradually produce inaccurate, biased, or unintended outcomes.

Consequently, organisations cannot adopt a “deploy and forget” approach.

Continuous monitoring becomes essential.

Effective governance frameworks should therefore include:

- Periodic model validation exercises
- Independent review processes
- Ongoing risk monitoring
- Bias detection mechanisms
- Performance reassessment protocols
- Incident reporting structures

AI governance must function as a continuous process rather than a one-time compliance exercise.

### **(C) Data Governance Integration**

Data governance has become central to corporate governance itself.

AI systems depend on large-scale data processing capabilities. As a result, governance failures relating to data collection, consent management, or privacy protection can quickly escalate into legal, operational, and reputational crises.

The Digital Personal Data Protection Act, 2023, has significantly elevated the importance of

structured data governance frameworks in India.

Organisations must therefore ensure:

- Clear consent architecture
- Purpose limitation compliance
- Data minimisation practices
- Data retention governance
- Access control mechanisms
- Cross-border data compliance management

In the AI era, data governance can no longer remain isolated within technology departments. It must be integrated into enterprise-wide governance structures.

#### **(D) Human Oversight and Accountability**

Despite increasing automation, human oversight remains indispensable.

AI systems should augment human judgment rather than replace governance accountability.

This becomes particularly important in high-impact decisions affecting financial access, employment, healthcare, or customer rights.

Effective organisations therefore establish:

- Human-in-the-loop review mechanisms
- Override protocols
- Escalation pathways
- Accountability matrices
- Governance review committees

Importantly, accountability structures must clearly identify ownership responsibilities.

In complex operational ecosystems involving multiple service providers, fintech partners, or outsourced technology arrangements, governance ambiguity can create significant regulatory exposure.

Clear accountability allocation therefore becomes a critical governance requirement.

#### **(E) Governance Reporting and Board Visibility**

Boards cannot effectively oversee risks they do not adequately understand.

AI governance frameworks should therefore include structured reporting mechanisms that provide meaningful visibility into:

- AI-related risks
- Operational incidents
- Bias indicators
- Data governance issues
- Regulatory exposures
- Ethical concerns
- Model performance metrics

The Company Secretary plays an important role in institutionalising this governance reporting structures and ensuring that AI-related risks are integrated into broader enterprise governance discussions.

## 5. India's Regulatory Landscape: A Layered Governance Model

India's approach toward AI regulation remains distinct from several global jurisdictions.

Rather than introducing a standalone AI law at the outset, India currently regulates AI-related risks through a combination of:

- Existing statutory frameworks
- Data protection obligations
- Sector-specific regulations
- Technology governance expectations
- Policy-based guidance mechanisms

This creates a layered governance model.

The Information Technology Act, 2000, continues to provide the foundational legal framework governing digital activities and technology-related obligations in India.

Simultaneously, the Digital Personal Data Protection Act, 2023, has introduced comprehensive obligations relating to personal data governance, accountability, consent management, and data processing.

Sectoral regulators are also increasingly shaping AI governance expectations.

In the financial services ecosystem, the Reserve Bank of India has intensified scrutiny around digital lending practices, outsourcing arrangements, customer protection, technology governance, and operational accountability.

Similarly, governance expectations under securities regulations increasingly emphasise risk oversight, board accountability, and disclosure responsibilities.

Importantly, the absence of a dedicated AI law should not be interpreted as regulatory flexibility.

On the contrary, organisations deploying AI systems remain fully accountable under existing governance frameworks.

This creates a significant leadership challenge.

Because AI regulation in India is principle-driven rather than exhaustively prescriptive, organisations must proactively develop governance structures capable of anticipating and managing emerging risks.

This is precisely where the role of governance professionals becomes strategically important.

Rather than merely responding to regulatory developments, Company Secretaries have an opportunity to help shape governance readiness proactively.

## 6. Boardrooms in Transition: The Governance Gap

Technology risks are increasingly becoming board-level risks.

However, many boards continue to operate within governance structures designed for traditional operational environments.

While directors may possess extensive experience in finance, strategy, law, or operations, many boards still face limitations in understanding:

- Algorithmic risks
- AI decision systems
- Data governance complexities
- Cybersecurity implications
- Technology ethics
- Model accountability frameworks

This creates a significant governance gap.

In several organisations, technology governance discussions remain heavily dependent on management narratives or technical presentations that may not fully capture governance implications.

As AI adoption expands, this dependency creates strategic vulnerabilities.

The Company Secretary can play a transformative role in addressing this challenge.

By integrating technology governance into board structures, governance professionals can enable boards to exercise more informed and effective oversight.

Practical interventions may include:

- Introducing structured AI governance reporting
- Integrating AI oversight into board committee charters
- Facilitating board education sessions on AI risks
- Developing governance dashboards for technology oversight
- Embedding AI risk considerations into enterprise risk frameworks
- Strengthening documentation and escalation protocols

Importantly, AI governance should not remain isolated within technology functions.

It must become an enterprise governance issue.

This transition requires governance professionals capable of bridging the gap between technical systems and fiduciary responsibilities.

In this context, the Company Secretary's role evolves significantly beyond traditional compliance administration.

## **7. Ethical AI and ESG Integration**

The rise of AI intersects directly with broader ESG and stewardship discussions.

Traditionally, ESG conversations focused primarily on environmental sustainability, social responsibility, and governance disclosures.

However, AI introduces a new governance dimension within ESG itself.

The ethical deployment of AI systems increasingly influences:

- Customer trust
- Stakeholder confidence

- Brand reputation
- Workforce inclusion
- Fairness in decision-making
- Corporate accountability

AI systems trained on biased data may unintentionally reinforce discrimination.

Opaque algorithms may create concerns around fairness and transparency.

Unregulated automation may negatively impact vulnerable customer groups.

These concerns are not merely operational issues; they are governance and stewardship issues.

Consequently, organisations that approach AI solely through efficiency or profitability lenses may expose themselves to significant long-term reputational and governance risks.

Forward-looking organisations are therefore increasingly integrating responsible AI principles into ESG and governance frameworks.

This includes:

- Fairness assessments
- Ethical review processes
- Transparency standards
- Stakeholder impact analysis
- Responsible data usage principles
- Human accountability structures

Global governance frameworks such as the OECD AI Principles and responsible AI guidelines increasingly reinforce these expectations.

For Company Secretaries, this creates an important leadership opportunity.

By integrating ethical AI governance into board discussions, ESG frameworks, and enterprise governance structures, governance professionals can help organisations build sustainable trust capital.

In the long term, organisations that govern AI responsibly are likely to enjoy stronger stakeholder confidence and greater institutional resilience.

## **8. The Capability Shift: Future Skills for Company Secretaries**

The evolving governance environment also requires a corresponding evolution in professional capabilities.

Traditional legal and procedural expertise, while still essential, is no longer sufficient in isolation.

Future-ready Company Secretaries must increasingly develop multidisciplinary competencies that combine governance expertise with technology awareness and strategic thinking.

Several capability areas are becoming particularly important.

### **(A) Technology Literacy**

Company Secretaries do not need to become software engineers or data scientists.

However, they must develop sufficient technology literacy to understand:

- How AI systems function
- Key governance risks associated with AI
- Data governance fundamentals
- Cybersecurity considerations
- Technology outsourcing structures
- Operational implications of algorithmic systems

This foundational understanding is critical for effective governance oversight.

### **(B) Strategic Advisory Skills**

Governance professionals are increasingly expected to contribute to strategic decision-making.

This requires:

- Business understanding
- Risk evaluation capabilities
- Cross-functional coordination skills
- Stakeholder management
- Governance-driven strategic thinking

The Company Secretary must increasingly function as a strategic advisor rather than merely a compliance executor.

### **(C) Communication and Board Engagement**

One of the most valuable capabilities in modern governance environments is the ability to simplify complexity.

AI governance discussions often involve technical concepts that may not be easily understood by all stakeholders.

The Company Secretary therefore plays a crucial role in translating technical risks into governance implications that boards and senior management can evaluate effectively.

### **(D) Continuous Learning**

Technology governance environments evolve rapidly.

Consequently, governance professionals must adopt a continuous learning mindset.

The future relevance of the profession will increasingly depend on its ability to adapt to emerging governance realities.

## **9. From Reactive Compliance to Predictive Governance**

AI not only creates governance challenges; it also creates governance opportunities.

Organisations are increasingly leveraging AI-driven systems within compliance functions themselves.

AI-enabled compliance tools are now capable of:

- Monitoring transactions in real time
- Identifying unusual behavioural patterns
- Detecting compliance anomalies

- Automating reporting processes
- Enhancing surveillance mechanisms
- Predicting operational risks

This represents a significant transformation in the compliance function.

Historically, compliance functions operated reactively.

Issues were identified after occurrence, reviews were periodic, and monitoring was heavily manual.

AI enables a shift toward predictive governance.

Compliance functions can increasingly become:

- Proactive rather than reactive
- Continuous rather than periodic
- Intelligence-driven rather than process-driven

This evolution significantly enhances the strategic value of governance functions.

However, technology adoption within compliance functions must itself remain governed responsibly.

AI-enabled compliance systems must also be subject to:

- Oversight mechanisms
- Validation frameworks
- Ethical review structures
- Accountability standards
- Governance monitoring

Technology cannot replace governance judgment.

Rather, technology must strengthen governance effectiveness.

## **10. Practical Governance Perspective: A Real-World Compliance Evolution**

The evolution of governance leadership in the AI era is not merely theoretical. It is increasingly visible within rapidly growing digital businesses and regulated financial ecosystems.

In several high-growth fintech and technology-driven environments, compliance functions have historically operated in a reactive manner, primarily focused on regulatory reporting, documentation, and post-implementation reviews.

However, as digital lending models, embedded finance ecosystems, and AI-driven underwriting systems evolved, governance expectations also changed significantly.

In practical operational settings, governance leaders have increasingly been required to engage far beyond traditional compliance boundaries. This includes participation in:

- Product structuring discussions
- Digital onboarding governance
- Outsourcing oversight frameworks
- Customer protection architecture
- Technology-risk assessments

- Regulatory interpretation for emerging business models
- Cross-functional risk governance discussions

For instance, in co-lending and digital lending structures, technology-enabled underwriting systems often involve multiple stakeholders including regulated entities, fintech platforms, analytics providers, and servicing partners. In such ecosystems, governance complexity increases substantially because accountability cannot remain fragmented.

Practical governance leadership therefore increasingly involves:

- Aligning business scalability with regulatory expectations
- Ensuring governance visibility across partner ecosystems
- Designing escalation structures for operational risks
- Creating board-level visibility for technology-led exposures
- Strengthening auditability and decision traceability
- Embedding compliance considerations into product architecture itself

This shift demonstrates how the modern Company Secretary is gradually evolving from a downstream reviewer into an upstream governance participant.

The significance of this transformation becomes even more visible during periods of regulatory change or operational stress.

In rapidly evolving sectors such as fintech, governance professionals are increasingly expected to respond dynamically to evolving regulatory expectations while simultaneously balancing commercial realities, customer experience, operational scalability, and reputational considerations.

This requires not merely legal interpretation, but strategic judgment.

Consequently, the future governance leader is unlikely to be defined solely by technical legal expertise. Instead, leadership will increasingly be measured by the ability to integrate governance into organisational decision-making frameworks in real time.

This reflects one of the most important transitions currently underway within the Company Secretary profession.

## **11. Conclusion: Redefining Governance Leadership**

Artificial Intelligence is fundamentally reshaping how organisations operate, make decisions, and manage risks.

As AI adoption accelerates across industries, governance itself is undergoing transformation.

This transformation requires a corresponding evolution in the role of the Company Secretary.

The future Company Secretary cannot remain confined to procedural oversight, statutory administration, or post-facto compliance monitoring.

Instead, governance professionals must increasingly function as:

- Architects of governance systems
- Strategic advisors to boards
- Custodians of accountability
- Facilitators of ethical decision-making
- Enablers of responsible technology governance

In an AI-driven environment, governance effectiveness will increasingly determine institutional resilience.

Organisations that fail to build accountable and transparent AI governance systems may face not only regulatory consequences but also reputational, operational, and strategic risks.

Conversely, organisations that integrate responsible AI governance into enterprise structures will be better positioned to build trust, resilience, and long-term stakeholder confidence.

The role of the Company Secretary therefore becomes central to the future of corporate governance.

In the age of artificial intelligence, compliance will no longer be defined merely by the ability to enforce rules. It will be defined by the ability to shape how decisions are made, governed, and held accountable.

If compliance continues to operate as a downstream function, it risks becoming irrelevant. In an AI-driven enterprise, governance must move upstream to influence the very architecture of organisational decision-making.

The future will not belong merely to organisations that adopt Artificial Intelligence, but to those capable of governing it responsibly.

The opportunity before the Company Secretary profession is therefore not merely to adapt to technological change, but to lead governance transformation itself.

In an AI-driven world, the real risk is not non-compliance; it is compliant systems making flawed decisions at scale.

***Indicative Regulatory and Governance Frameworks Considered:***

- Information Technology Act.
- RBI Guidelines on Digital Lending.
- Digital Personal Data Protection Act.
- SEBI LODR Regulations.
- NITI Aayog - National Strategy for Artificial Intelligence.
- OECD AI Principles.

# The Compliant Algorithm: AI Governance for Corporate Professionals

## A Practical Guide for Company Secretary Professionals

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### ABSTRACT

*Artificial Intelligence is transforming corporate operations at a pace that governance structures have not yet matched. This article examines the compliance dimensions of AI adoption through the lens of Practicing Company Secretary (CS) professionals, who occupy the critical nexus between the Board, management, regulators and shareholders. It identifies the key legal and regulatory risks arising from AI deployment including algorithmic bias, data privacy, third-party AI risk and disclosure obligations and provides a structured, practical roadmap for building an AI compliance and governance framework. Particular attention is given to the emerging Indian regulatory landscape, including SEBI guidance and the Digital Personal Data Protection Act, 2023, as well as the EU AI Act and OECD principles. The article concludes with a practical checklist for CS professionals to assess and strengthen their organisations' AI governance posture.*

**Keywords:** Artificial Intelligence, Corporate Governance, Company Secretary, Compliance, AI Regulation, DPDPA, EU AI Act, SEBI, Algorithmic Risk, Responsible AI

## PART I: UNDERSTANDING THE AI COMPLIANCE LANDSCAPE

### 1.1 What Makes AI Different from Other Technology

Organisations have always had to manage technology risk from the introduction of ERP systems to cloud migration. However, AI presents a qualitatively different compliance challenge for three fundamental reasons that the Company Secretary must appreciate before any governance framework can be meaningfully designed.

**Opacity.** Most enterprise AI systems, particularly those built on machine learning, are not fully explainable. A traditional software system follows deterministic logic that can be audited step-by-step. An AI model, especially a large language model or a neural network arrives at outputs through pathways that even its developers cannot fully trace. This “black box” quality fundamentally challenges the auditability principles underpinning corporate compliance.

**Autonomy.** AI systems can make consequential decisions i:e credit approvals, recruitment shortlisting, fraud flagging, contract drafting without direct human intervention. This blurs the lines of accountability in ways that existing legal and governance frameworks were not designed to handle.

**Scale and Speed.** AI can apply a flawed decision rule to thousands of customers, employees, or transactions in minutes. The scale at which errors can propagate before any human review occurs creates systemic risk that is unlike traditional operational risk.

For a Company Secretary, these three characteristics demand a fresh compliance architecture not merely an extension of existing IT governance policies.

## 1.2 The Regulatory Environment: A Global Overview

The regulatory response to AI has accelerated globally and Company Secretaries must track this landscape proactively. While no single universal framework yet governs AI, several key instruments are shaping compliance obligations across jurisdictions.

**The European Union AI Act (2024):** The EU AI Act is the world's first comprehensive, binding legal framework for AI. It classifies AI systems into four risk tiers: unacceptable risk (prohibited), high risk (heavily regulated), limited risk (transparency obligations) and minimal risk. High-risk applications including AI used in credit scoring, employment decisions, critical infrastructure and education are subject to rigorous conformity assessments, mandatory human oversight, data governance requirements and post-market monitoring. For Companies operating in or doing business with the EU, the AI Act imposes direct compliance obligations that the CS must understand and build into governance frameworks.

**SEBI and Indian Regulatory Developments:** In India, SEBI has increasingly focused on the use of algorithms and AI in trading and investment advisory. SEBI's algorithmic trading regulations require brokers to obtain exchange approval before deploying AI-driven strategies. More recently, SEBI has signalled attention to AI-generated investment advice, robo-advisory platforms and the use of AI in financial research. Listed Companies and their Company Secretaries must monitor these developments closely as they signal the direction of broader AI governance expectations from regulators.

**Data Protection Laws:** In India, the Digital Personal Data Protection Act, 2023 (DPDPA) imposes obligations on the collection, processing and retention of personal data, all of which have direct implications for AI systems that are trained on or process personal data. The General Data Protection Regulation (GDPR) in Europe similarly grants individuals the right not to be subject to solely automated decisions with legal or similarly significant effects.

The compliance landscape, in short, is moving from voluntary guidelines to binding law. Company Secretaries must ensure their organisations are ahead of this curve, not scrambling to catch up.

## PART II: THE COMPANY SECRETARY'S ROLE IN AI GOVERNANCE

### 2.1 Why the Company Secretary is Central

The Company Secretary's role in AI governance is not peripheral or merely administrative. It is substantive and strategic. As the primary custodian of the Board's agenda and decisions, the CS ensures that AI-related risks and opportunities receive appropriate Board attention. As Compliance Officer in many organisations, the CS is responsible for ensuring that the company's AI activities comply with applicable laws, regulations and internal policies. As the steward of corporate governance, the CS must help design the accountability frameworks that govern how AI decisions are made, reviewed and corrected.

In practical terms, this means the CS must be able to brief the Board on AI regulation; help establish an AI governance framework; ensure that AI-related disclosures in annual reports, prospectus and regulatory filings are accurate and adequate; and ensure that the Company has assigned clear accountability for AI systems at both the management and Board levels.

### 2.2 Board Responsibilities in the Age of AI

The Board cannot take a passive stance towards AI. Directors have a fiduciary duty to understand and oversee material risks to the organisation. In the current environment, AI is a material risk in many industries and also a material opportunity. The CS has a responsibility to ensure the Board is adequately informed and that governance structures are formally established.

**AI literacy at the Board level:** The CS should facilitate AI literacy sessions for the Board not to turn Directors into data scientists, but to ensure they understand the nature of AI risks, the regulatory landscape and the strategic implications of AI adoption. Independent Directors in particular should be equipped to challenge management assumptions about AI with informed scepticism.

**Establishment of an AI Governance Committee:** Many leading organisations are establishing dedicated Board-level or management-level committees for AI governance. The CS should advise on the appropriate structure whether a standalone AI Ethics Committee, an expanded Risk Committee mandate, or an AI sub-committee of the Audit Committee. The Committee's terms of reference should cover AI risk oversight, policy approval, incident review and regulatory engagement.

**Board minutes and resolutions:** Where the Board makes decisions that involve AI whether approving an AI strategy, deploying a high-risk AI system, or responding to an AI-related incident, the CS must ensure that the deliberations and decisions are properly recorded. This documentation may be scrutinised by regulators and courts in the event of a compliance failure.

## **PART III: KEY COMPLIANCE RISKS AND HOW TO ADDRESS THEM**

### **3.1 Algorithmic Bias and Discrimination**

AI systems trained on historical data can perpetuate, amplify, or introduce bias. An AI-driven recruitment tool trained on past hiring data may systematically disadvantage candidates from certain demographic groups. A credit-scoring algorithm may produce outcomes that, while not explicitly discriminatory, have a disparate adverse impact on protected classes.

For the CS, this creates a compliance risk under anti-discrimination law, consumer protection regulations and emerging AI-specific legislation. The practical response involves three steps: mandating algorithmic fairness assessments before deployment; requiring ongoing monitoring of AI outputs with defined escalation thresholds; and ensuring a clear human review process for high-stakes AI decisions so that affected individuals have meaningful recourse.

### **3.2 Data Governance and Privacy**

AI systems are hungry for data and much of that data is personal. The compliance obligations under the DPDPA and GDPR attach at the point of collection, processing, storage and use. For AI systems, this means the CS must ensure that data used to train AI models has been collected with appropriate consent or legal basis; that individuals have been informed about automated decision-making; that data is retained only for as long as necessary; and that the organisation can respond to data subject access and erasure requests even where the data has been used in AI model training.

### **3.3 Intellectual Property and Copyright**

Generative AI tools including large language models used for drafting documents, contracts and reports raise significant IP questions. Content generated by AI may inadvertently reproduce copyrighted material. AI-generated content may not be protectable as intellectual property under existing law. Employees using third-party AI tools may inadvertently disclose proprietary company information to external servers.

The CS must ensure that the Company has a clear Acceptable Use Policy for generative AI, covering what tools are approved, what data may be shared with them and how AI-generated content is to be reviewed before use. This policy should address the use of AI in the preparation of regulatory filings, board papers and legal documents; areas where accuracy and authenticity are paramount.

### 3.4 Third-Party AI Risk

Many organisations do not build AI in-house; they procure it from vendors or embed it within SaaS platforms. This does not transfer the compliance risk. Under most regulatory frameworks, the organisation that deploys AI remains accountable for its outputs, even if the underlying model was developed by a third party. The CS must ensure that AI vendor contracts include appropriate provisions: representations about model accuracy and fairness testing; obligations to notify the company of material changes to the model; data processing agreements consistent with applicable law; audit rights; and clear liability allocation in the event of an AI-related failure.

### 3.5 Model Risk Management

In financial services, model risk management (MRM) is a well-established discipline. The same principles must now be applied more broadly. A model risk management framework for AI typically includes: a model inventory (a register of all AI models in production); validation and testing before deployment; ongoing performance monitoring; version control; and a model retirement process. The CS should advocate for the adoption of a formal AI model inventory, not merely a technical record, but a compliance artefact that demonstrates to regulators that the organisation knows what AI system it is running and has taken reasonable steps to manage their risks.

### 3.6 Cybersecurity and AI-Specific Threats

AI introduces new cybersecurity attack surfaces. Adversarial attacks can manipulate AI inputs to produce incorrect outputs. Model poisoning can corrupt AI systems at the training stage. Prompt injection attacks can cause generative AI tools to produce harmful or misleading content. Deepfake technology poses threats to identity verification and the integrity of board communications. The CS should ensure that the organisation's cybersecurity framework explicitly addresses AI-specific threats and that these are included within the scope of the Company's information security policy and business continuity plans.

## PART IV: DISCLOSURE, REPORTING, AND FILING OBLIGATIONS

### 4.1 Annual Report Disclosures

Listed Companies are increasingly expected to disclose their use of AI, AI-related risks and AI governance structures in their annual reports. The CS should ensure that the Annual Report includes: a description of material AI applications within the business; an assessment of AI-related risks under the Management Discussion & Analysis (MDA) section; disclosure of the governance framework and Board-level accountability for AI; and, where relevant, the Company's approach to responsible AI development and deployment.

In India, SEBI's Business Responsibility and Sustainability Reporting (BRSR) framework is evolving. It is only a matter of time before AI governance disclosures become a formal expectation within this framework. Forward-looking CS should begin building this reporting capability now.

### 4.2 Regulatory Filings

Where AI systems are used in regulated activities such as financial advice, insurance underwriting, clinical decision support, or infrastructure management, regulators may require specific approvals, registrations, or disclosures. The CS must maintain a current view of AI applications within the organisation which are subject to sector-specific regulatory requirements and ensure that appropriate filings and approvals are in place.

### 4.3 Litigation and Regulatory Investigation Readiness

AI-related complaints and regulatory investigations are increasing globally. In the event of an AI-related incident, a discriminatory hiring decision, a privacy breach caused by AI processing, a misleading AI-generated communication, the organisation must be able to demonstrate that it had a reasonable governance and compliance framework in place. This defence of due diligence requires contemporaneous documentation: policies, training records, model validation reports, risk assessments and Board minutes reflecting appropriate oversight. The CS plays a critical role in ensuring that this documentation is created, maintained and accessible not assembled in haste after an incident has occurred.

## PART V: BUILDING AN AI COMPLIANCE FRAMEWORK – A PRACTICAL ROADMAP

The following eight-step roadmap provides a structured approach for Company Secretaries to establish or strengthen AI governance within their organisation, regardless of the organisation's current maturity level.

### Step 1: Conduct an AI Inventory

The starting point is knowing what AI systems the organisation currently uses, whether built in-house, procured from vendors, or embedded in software platforms. Many organisations are surprised to discover the breadth of AI already in their operations. The inventory should record the name and purpose of each AI system, the data it uses, the decisions it influences or makes, the vendor or developer and the business owner within the organisation.

### Step 2: Conduct a Risk Assessment

Against the AI inventory, conduct a risk assessment. Which AI systems make high-stakes decisions affecting individuals? Which systems process sensitive personal data? Which systems are regulated by sector-specific rules?

### Step 3: Develop and Approve an AI Policy

An organisation-wide AI Policy should articulate the Company's principles for responsible AI use; the governance structure and accountability framework; requirements for AI risk assessments before deployment; data governance standards for AI; acceptable use of third-party AI tools; and employee obligations and training requirements. The CS should ensure this policy is approved by the Board or a designated committee and is reviewed at least annually.

### Step 4: Establish Human Oversight Mechanisms

For every AI system that makes or significantly influences consequential decisions, there must be a defined human review process. This is not merely good practice, it is increasingly a regulatory requirement. The CS should document these oversight mechanisms as part of the governance framework and ensure they are embedded in operational procedures.

### Step 5: Build a Training and Awareness Programme

AI compliance is not solely the responsibility of the IT or legal department. Every employee who uses AI tools must understand their obligations. The CS should champion an AI literacy and compliance training programme proportionate to the roles of different employee groups.

### Step 6: Integrate AI Risk into the ERM Framework

AI risk should be a named risk category within the organisation's Enterprise Risk Management (ERM) framework, with defined risk owners, appetite statements, controls, key risk indicators and

escalation triggers. The CS, working with the Chief Risk Officer, should ensure that AI risk receives appropriate attention in the Board's risk oversight processes.

### **Step 7: Establish an AI Incident Response Process**

An AI incident, whether a biased output, a data breach, a regulatory inquiry, or reputational damage from AI-generated content requires a structured response. The CS should ensure the organisation has an AI-specific incident response plan that is integrated with the broader crisis management and regulatory notification framework.

### **Step 8: Engage Continuously with the Regulatory Landscape**

AI regulation is evolving rapidly. The CS should subscribe to updates from SEBI, MCA, RBI, and international bodies; participate in industry forums; and engage proactively with regulators on AI governance developments. Where regulations are unclear or evolving, the company should seek formal or informal regulatory guidance rather than waiting for enforcement action to define the compliance standard.

## **PART VI: ETHICAL AI — THE GOVERNANCE DIMENSION**

### **6.1 Beyond Compliance: The Ethics Imperative**

Compliance sets a floor, not a ceiling. An AI system can be technically compliant meeting all prescribed regulatory standards and still produce outcomes that are unfair, harmful, or contrary to the organisation's values. For Company Secretaries, who are custodians of the Company's governance culture, the ethical dimension of AI is as important as the legal dimension.

Organisations that take a minimum compliance approach to AI governance run two risks. First, they are poorly positioned when regulations tighten as they inevitably will. Second, they expose themselves to reputational and social licence risks that can damage shareholder value and stakeholder trust in ways not always captured by formal compliance metrics.

### **6.2 Responsible AI Principles**

Leading organisations are adopting Responsible AI Principles that go beyond regulatory requirements. These typically encompass: fairness (AI should not perpetuate or amplify unjust discrimination); transparency (the organisation should be open about when and how AI is used); accountability (humans must remain accountable for AI-influenced decisions); human dignity (AI should not be used in ways that demean or harm individuals); and sustainability (AI systems should be designed with environmental impact in mind). The CS should facilitate the Board's adoption of such principles, ensure they are reflected in the AI Policy and report on adherence to them as part of the company's governance and sustainability disclosures.

### **Conclusion: The Company Secretary as AI Governance Architect**

The age of AI presents the Company Secretary profession with one of its most significant governance challenges and opportunities in a generation. The CS who approaches AI as merely a technology matter, to be delegated entirely to the IT department, will find their organisation exposed to material compliance and reputational risks. The CS who positions themselves as the architect of AI governance briefing the Board, designing the framework, monitoring the regulatory landscape and ensuring robust documentation will add enormous value in a period of strategic uncertainty.

The core principles of good governance — accountability, transparency, integrity and the protection of stakeholder interests do not change in the age of AI. What changes is the complexity

of applying them. The Company Secretary's task is to ensure that complexity is met with rigour, that technology's pace is matched by governance's discipline and that the organisation's AI journey is conducted with the same probity and care as every other aspect of its corporate life.

The time to build this governance infrastructure is not after the first regulatory inquiry or AI-related incident, it is now.

### THE COMPANY SECRETARY'S AI COMPLIANCE CHECKLIST

	Item
<b>A. Board &amp; Governance</b>	
<input type="checkbox"/>	AI literacy sessions conducted for Board and senior management
<input type="checkbox"/>	Board-level AI governance accountability formally assigned
<input type="checkbox"/>	AI governance committee or oversight structure established with documented terms of reference
<input type="checkbox"/>	AI risk included in the Board's risk oversight agenda
<b>B. Policy &amp; Framework</b>	
<input type="checkbox"/>	AI Policy approved at Board or designated committee level
<input type="checkbox"/>	Acceptable Use Policy for generative AI tools in place
<input type="checkbox"/>	AI vendor contract standards (representations, audit rights, liability) established
<input type="checkbox"/>	AI risk formally incorporated into the Enterprise Risk Management framework
<b>C. Operational</b>	
<input type="checkbox"/>	AI inventory maintained and current
<input type="checkbox"/>	Risk assessments conducted for all high-risk AI applications
<input type="checkbox"/>	Human oversight mechanisms documented for all consequential AI decisions
<input type="checkbox"/>	AI model inventory and performance monitoring framework in place
<b>D. Data &amp; Privacy</b>	
<input type="checkbox"/>	Data governance standards for AI training and processing established
<input type="checkbox"/>	DPDPA / GDPR compliance confirmed for all AI applications processing personal data
<input type="checkbox"/>	Automated decision-making disclosures reviewed and updated
<b>E. Disclosure &amp; Reporting</b>	
<input type="checkbox"/>	AI-related risks and governance disclosed in Annual Report (MDA section)
<input type="checkbox"/>	BRSR disclosures reviewed for AI-related content
<input type="checkbox"/>	Regulatory filings and approvals for AI in regulated activities confirmed

F. Incident Readiness	
<input type="checkbox"/>	AI incident response plan established and integrated with broader crisis management
<input type="checkbox"/>	Documentation trail for AI governance decisions maintained
<input type="checkbox"/>	Regulatory notification procedures for AI-related incidents confirmed

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# Code, Counsel and Conscience: The Company Secretary as Compliance Architect in the Age of Artificial Intelligence

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*Practicing Company Secretary*

The question in most Indian boardrooms today is no longer whether to adopt artificial intelligence, it is how much of the business to hand over to it, and how quickly. What began two or three years ago as a narrow experiment inside the analytics team now runs through finance, human resources, procurement, sales, legal and, whether we have admitted it or not, the secretarial function itself.

For the Company Secretary, that shift is not a technology story. It is a governance event, and a significant one. AI changes what the company decides, the evidence those decisions leave behind, the risks it carries forward, and what the company will eventually have to disclose. It asks the board to exercise oversight over processes whose internal logic cannot always be fully articulated. And it places the company secretary, whose brief has always lived at the meeting-point of board process, legal compliance and institutional memory, at the centre of the response.

This article takes a practical view. Rather than forecasting where AI is going, it looks at what the Indian legal and governance framework already expects of companies using AI, what the new data-protection regime adds to that expectation, and how the Company Secretary can translate all of it into a working compliance architecture without building something the organisation cannot sustain.

## **Why AI is a Governance Question, Not an IT Question**

There is a natural instinct to treat AI as a problem for the Chief Information Officer (CIO). The instinct is wrong. An AI tool, once deployed, takes decisions or helps shape them. It handles personal and confidential information. Its output influence customer rights, employment outcomes, pricing, credit, and public disclosures. When something goes wrong, the company's liability is not reduced by the fact that the mistake came from a model.

Indian company law has never allowed accountability to be delegated away. Section 166 of the Companies Act, 2013 requires directors to exercise independent judgement and due care. Section 134(3)(n) obliges the Board's Report to describe the company's risk management policy, including risks that in the Board's opinion may threaten the company's existence. For listed entities, Regulations 17(9) and 21 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 place specific obligations on the Board and the Risk Management Committee in relation to, amongst other things, cyber security and data privacy. These provisions pre-date the AI conversation. They bind directors just as firmly in respect of AI-related risk.

So the arrival of AI has not created a new compliance regime. It has tested an existing one. The real question for the Company Secretary is whether the firm's governance rhythm, meaning its board agenda, risk register, policy library, minute-taking discipline and disclosure pipeline, has absorbed that test, or whether AI has simply found its way into the organisation below the level at which the law expects oversight to operate.

## The Legal Scaffolding already in Place

Before turning to AI-specific governance, it is worth acknowledging what the Indian regulatory framework already covers. A great deal of contemporary commentary on AI assumes the existence of a regulatory vacuum. The vacuum is smaller than often assumed.

*Fiduciary and disclosure duties under the Companies Act, 2013.* The directors' duty of care under Section 166, the Board's responsibility for internal financial controls under Section 134(5)(e), the obligation of accurate books of account under Section 128, and the discipline around board and committee minutes under Section 118 read with the ICSI Secretarial Standards all speak directly to AI use. Where AI has influenced a management representation, a board approval, a resolution, or a disclosure, the company's ability to stand behind that output is not an engineering question. It is a question under Section 166 and Section 134.

*Secretarial Standards.* SS-1 and SS-2 require minutes to be a fair and correct record of the proceedings. Where a board has leaned on AI-generated analysis, say a benchmarking summary, a risk heat-map, or a draft policy, the fact of that reliance and the extent of human deliberation around it belong in the minutes, at least where the AI output has materially shaped the decision. Treating AI-assisted board material as invisible in the record weakens the evidentiary quality that minutes are meant to provide.

*Information Technology Act, 2000 and CERT-In directions.* Section 43A of the IT Act obliges a body corporate handling sensitive personal data to maintain reasonable security practices. Section 72A criminalises disclosure of personal information in breach of a lawful contract. Section 79's intermediary safe harbour has been read increasingly narrowly. The CERT-In Directions of 28 April 2022, issued under Section 70B(6), require mandatory reporting of specified cyber incidents within six hours, log retention over stipulated periods, and identity-verification obligations for certain service providers. AI deployments, particularly those that ingest personal data, run in cloud environments, or use externally hosted language models, sit squarely inside this perimeter.

*The Digital Personal Data Protection Act, 2023.* The DPDP Act recasts the landscape. Every data fiduciary, which for most corporate AI deployments is the company itself, must process personal data for lawful purposes, on the basis of consent or legitimate use, with notice, with reasonable security, with purpose limitation, and with accountability to the Data Protection Board of India. A new tier, the Significant Data Fiduciary, carries heightened obligations: appointment of a Data Protection Officer, periodic Data Protection Impact Assessments, and independent data audits. Consent managers, data principal rights, grievance redressal, and penalties running into hundreds of crores complete the scheme. The rules made under the Act flesh out the operational detail. For any AI system that touches personal data, and very few do not, DPDP compliance is not optional. It is the baseline on which everything else rests.

*SEBI framework.* For listed entities, the LODR Regulations together with the SEBI (Prohibition of Insider Trading) Regulations, 2015 deserve particular attention. Regulation 30 of the LODR requires timely disclosure of material events, and a serious AI incident, whether a data breach, a regulatory action, or a systemic algorithmic failure affecting customers, can comfortably cross that threshold. The Insider Trading Regulations require structured digital databases for unpublished price-sensitive information and restrict its circulation. When employees paste financial projections, draft announcements, or deal documents into external AI tools, they may be breaching the Code of Conduct, confidentiality covenants, and in some cases the architecture of UPSI containment itself. I have seen this happen more than once in practice, rarely with any malicious intent, usually because the person drafting the note had a deadline and an open browser tab.

*Intellectual property.* AI-generated content, AI-trained content and AI-assisted drafting raise

genuinely unsettled questions under the Copyright Act, 1957 and the Patents Act, 1970. The law on authorship and patentability is evolving, in India and elsewhere. What is already clear is contractual. Feeding proprietary source code, client lists, licensed databases, or third-party copyrighted material into external AI systems can put the company in breach of its own licensing, non-disclosure and service agreements. In AI matters, contractual IP exposure usually arrives before the statutory kind.

Taken together, the scaffolding is substantial. Making it visible is the Company Secretary's first task.

### **The Risks, the Board must Actually See**

A governance framework is valuable only if it helps the board clearly understand the risks the company faces, so they can take meaningful action. AI-specific risks, translated into board language, cluster around five heads, though they rarely stay neatly in their boxes.

**Data risk** is the most obvious. Models are only as disciplined as the data they consume. Personal data, customer records, financial information, and confidential commercial material move in and out of AI systems, often without the information-security function's knowledge, and sometimes without any written policy at all. A breach of the DPDP Act, the IT Act, or a contractual confidentiality obligation can follow from a single prompt entered in a hurry.

**Decision risk** sits close behind. AI can produce outputs that are biased, inaccurate, or wrong in ways a human reviewer does not immediately detect. A credit model that discriminates by proxy. A hiring algorithm that filters disproportionately by gender or age. A chatbot that makes representations the company cannot honour. A pricing engine that drifts quietly into anti-competitive behaviour. Each is a legal, regulatory or reputational incident waiting to be recognised.

**Third-party risk** is equally real. Few Indian companies build their own foundation models; most consume AI through cloud services, SaaS platforms, and API integrations. The company's exposure is therefore shaped as much by vendor contracts as by its own conduct. Contract terms on data processing, confidentiality, indemnity, audit rights, breach notification, service levels and exit become first-order compliance instruments, not procurement afterthoughts.

**Disclosure risk** deserves more attention than it usually receives. AI shapes numbers, narratives, and forecasts. Where those flow into the financial statements, the Board's Report, the Management Discussion and Analysis, BRSR responses, stock-exchange filings, or investor communications, directors are signing a document that is partly a product of machines. Whether adequate human verification took place before signature is a question the company secretary is often better placed to answer than anyone else in the room.

**Conduct risk** completes the list. The behaviour of directors, KMP and employees is regulated by the Code of Conduct, the Insider Trading Code, the Whistleblower Policy, and the HR framework. AI creates new modes of breach: unauthorised disclosure through AI tools, fabrication of work product, impersonation through deepfakes, and automation that quietly bypasses internal controls. A code that does not speak to any of this cannot protect the company from any of it.

The Company Secretary's job is to ensure that these risks reach the audit committee, the risk management committee, and the board in terms those bodies can act on, with honest metrics and pre-agreed escalation triggers. Anything less invites the uncomfortable conversation after an incident, during which the directors ask, reasonably enough, why this was never on their agenda.

### **A Small Vignette from Practice**

A brief observation may illustrate the point. Over the past two years, in advisory work with corporate clients, one pattern has recurred often enough to count as a trend. Draft resolutions, confidential compliance notes, even working versions of investigation reports find their way into consumer-

grade AI tools. They are pasted there by busy professionals looking for a clean second draft. The company's AI Use Policy, where one exists, has usually not contemplated this. The Code of Conduct, the Insider Trading Code and the standard confidentiality undertakings each speak to the same conduct in different language, but none of them has been mapped onto the specific act of putting sensitive text into a chatbot. The gap is rarely deliberate. It is the ordinary gap between written policy and lived practice, widened by the speed at which these tools have entered the workplace. Closing it is not a project for the IT function. It is a secretarial one.

### **The Compliance Architecture: What a Company Secretary Can Actually Build**

Theory is only useful where it produces practice. Five building blocks distinguish companies that have meaningfully absorbed AI risk from those that have merely filed a policy.

**An AI Use Policy that actually bites.** A single policy, board-approved, defining which AI tools may be used, for what purposes, by whom, with what data, under what approvals, and with what human oversight. It must identify prohibited uses: feeding UPSI or privileged material into consumer AI tools; generating content that impersonates real persons; allowing AI to take final decisions on customer rights without human review. Most importantly, it should interlock with the Code of Conduct, the Information Security Policy, the Data Protection Policy, the Insider Trading Code, and the Whistleblower Policy, so that a breach of the AI Use Policy is automatically a breach of a framework that already carries disciplinary consequences.

**A board charter update.** The Risk Management Committee's charter and the Audit Committee's terms of reference need amendment so that AI risk, data protection, and cyber resilience become standing items rather than occasional ones. Reporting frequency, the metrics presented, and escalation thresholds should be spelled out. Otherwise AI risk gets discussed sporadically, usually after something has already gone wrong.

**DPDP readiness, substantively owned.** Whether or not the company is notified as a Significant Data Fiduciary, the discipline the DPDP Act demands, which includes notice, consent architecture, data principal rights, purpose limitation, retention, security, grievance redressal, and breach notification, is a company-wide project. In most Indian corporates the Company Secretary is the natural owner, because the rhythms of policy approval, board minuting, disclosure, and committee reporting already flow through the secretarial function. Whether the DPO is formally appointed or functionally identified, the company secretary's presence in the data-protection architecture is a matter of governance hygiene, not turf.

**Vendor discipline with legal teeth.** AI vendor contracts are governance instruments. DPDP-compliant data-processing agreements. Confidentiality and non-use clauses that survive termination. Audit rights. Breach-notification windows aligned with CERT-In and DPDP obligations. Limits on the vendor training on the company's data. IP indemnities for AI outputs. Localisation or cross-border transfer safeguards, where appropriate. Proper exit and data-return obligations. These belong in the master agreement, not in a vaguely-worded annexure nobody signs. The company secretary's involvement in the contract-approval matrix is the opening through which governance can be embedded in procurement at the point where it matters.

**Human-in-the-loop, documented.** The single most effective protection against AI-induced error is meaningful human review of consequential outputs. Saying that a human reviews the AI's work is not enough. The process must specify who reviews, against what benchmarks, with what power to override, and with what record. When the board has to explain later why a decision was taken, the presence of a documented human review is what separates defensible governance from an indefensible abdication. The Secretarial Standards already require minutes to reflect deliberation. That same principle, pushed down into the operational layer, is what turns AI from a liability into a productivity tool.

## The Company Secretary's Own AI Moment

AI is no less transformative for the secretarial function itself. Board-pack summarisation. First-draft minuting. Compliance-calendar automation. Peer benchmarking of disclosures. Pattern detection in insider-trading surveillance. Drafting assistance for notices, resolutions, and reports. Each is a real productivity gain, and the Practicing Company Secretary who learns to use these tools well will produce better work, faster, with greater analytical depth.

Two cautions, though, deserve to be flagged.

First, the secretarial function is itself a producer of UPSI, privileged correspondence, and confidential board material. The temptation to drop a draft agenda or a sensitive resolution into a consumer chatbot for polishing is, in effect, a temptation to breach the very standards the secretary is there to uphold. Privacy-preserving, professional-grade tools used under proper contract, with no training on the company's data, appropriate retention, and localisation where required, are the only defensible environment for such work.

Second, AI does not substitute for judgement. A minute drafted by AI still needs a human professional to verify that it fairly summarize the deliberation. A resolution produced by AI still needs a legally trained mind to test it against the Companies Act, the Articles, and the scope of power delegated. A compliance calendar generated by AI still needs cross-checking against amendments in real time. The Company Secretary's signature, and with it the professional responsibility that sits behind it, is not outsourceable. AI is an apprentice, never a partner.

## Disclosure and the Question of Candour

One of the quieter changes AI is forcing on governance is in the disclosure conversation. Investors, lenders, auditors, regulators, and customers now ask not just whether a company uses AI, but how it governs that use. The BRSR framework under the LODR Regulations is the natural vehicle for disclosures on digital risk, data privacy, and technology governance. Annual Reports already carry narrative on cyber resilience and data protection. AI is the next frontier.

Candour is underrated here. A measured disclosure, setting out which AI tools are used in which functions under which governance arrangements and with which residual risks, builds credibility with investors and regulators far more effectively than silence followed by crisis management. The Company Secretary's instinct for disclosure discipline, neither overselling nor underselling, is exactly the instinct this moment requires. The drafting must be sober, specific, and capable of being audited later.

## Stewardship in the Age of the Algorithm

The Conference theme rightly ties AI to stewardship. Stewardship is not a proxy-voting slogan. It is the older and deeper idea that those entrusted with the care of an enterprise must look after it for the long term, with an eye on consequences that extend beyond the next quarter's results.

AI magnifies both the possibilities and the consequences. Used well, it extends the reach of compliance, frees professionals from repetitive drudgery, and allows governance to focus where governance actually matters. Used carelessly, it scales error at the speed of computation, exposes the company to regulatory and reputational damage that can be hard to reverse, and slowly erodes the very trust on which markets, customers, and employees depend.

Few professionals are as well placed as the Practicing Company Secretary for this transition. Section 205 of the Companies Act already speaks the language: a duty to report to the board on compliance with the law. The Secretarial Standards already offer the template for the kind of human-in-the-loop record-keeping AI governance requires. Board process is the natural vantage point from which oversight of AI must be designed. And the professional obligation to uphold

institutional integrity, regardless of how rapidly the instruments change, is the orientation that an era of algorithmic governance most needs.

## Conclusion

It would be a mistake to treat the AI moment as a project that ends with a policy document. It is, more accurately, a shift in the centre of gravity of the compliance function. The company secretary who recognises that shift, and responds to it with the calm, structured work that has always characterised this profession, will find that AI does not displace the role. It elevates it.

The boards of the next few years will increasingly ask three questions of their company secretaries. *Do we know where AI is being used in this company? Are we satisfied that its use is lawful, safe, and aligned with our values? Can we defend, on the record, the decisions taken with its help?* The company secretary who can return honest, documented answers to those three questions will have discharged the obligations under Section 166, Section 134, the LODR Regulations, the DPDP Act, and the Secretarial Standards all at once. The company, in its turn, will have acquired something far more durable than a technology advantage. It will have acquired trust of the quiet, cumulative kind that only good stewardship produces.

That, in the end, is the work of the Practicing Company Secretary. The instruments have changed. The calling has not.

## References / Authorities Relied Upon :

### A. Statutes

1. The Companies Act, 2013 (Act No. 18 of 2013), particularly Sections 118, 128, 134(3)(n), 134(5)(e), 166 and 205.
2. The Information Technology Act, 2000 (Act No. 21 of 2000), particularly Sections 43A, 70B(6), 72A and 79.
3. The Digital Personal Data Protection Act, 2023 (Act No. 22 of 2023).
4. The Copyright Act, 1957 (Act No. 14 of 1957).
5. The Patents Act, 1970 (Act No. 39 of 1970).

### B. Subordinate Legislation, Rules and Regulations

6. The Digital Personal Data Protection Rules, 2025, notified by the Ministry of Electronics and Information Technology, Government of India, under the Digital Personal Data Protection Act, 2023.
7. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, notified under Section 43A of the Information Technology Act, 2000.
8. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, particularly Regulations 17(9), 21 and 30, and the BRSR (Business Responsibility and Sustainability Reporting) framework prescribed thereunder.
9. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, including the structured digital database obligations relating to unpublished price-sensitive information.

### C. Standards Issued by the Institute of Company Secretaries of India

10. Secretarial Standard on Meetings of the Board of Directors (SS-1), issued by the ICSI under Section 118(10) of the Companies Act, 2013.

11. Secretarial Standard on General Meetings (SS-2), issued by the ICSI under Section 118(10) of the Companies Act, 2013.

**D. Regulatory Directions**

12. Directions of the Indian Computer Emergency Response Team (CERT-In) dated 28 April 2022, issued under sub-section (6) of Section 70B of the Information Technology Act, 2000, relating to information security practices, procedure, prevention, response and reporting of cyber incidents.

# Dharma in the Digital Age: The Company Secretary as the Conscience of the Algorithm

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## ABSTRACT

*Artificial Intelligence is no longer a futuristic prospect for Indian corporations, it is an operational reality reshaping decision-making, compliance functions, risk management and board governance. As listed entities integrate algorithmic tools across treasury operations, credit risk models, regulatory reporting, investor communication and internal audit, a fundamental question arises: who guards the algorithm? This article argues that the Company Secretary, by training, institutional position and professional mandate, is uniquely positioned to serve as the governance architect and ethical anchor of AI deployment within Indian corporates. Drawing on the principles of the Companies Act, 2013, SEBI's regulatory framework, the Digital Personal Data Protection Act, 2023, and the rich tradition of classical Indian governance philosophy, the article charts a comprehensive compliance paradigm for the age of AI and articulates the transformative leadership role that the Company Secretary must now embrace to remain relevant, indispensable and purposeful in the governance ecosystem of tomorrow.*

## 1. INTRODUCTION: THE ALGORITHM ENTERS THE BOARDROOM

The integration of Artificial Intelligence (AI) into corporate life has accelerated at a pace that regulatory frameworks have struggled to match. From algorithmic trading systems supervised by SEBI to AI-powered Know Your Customer (KYC) engines deployed by RBI-regulated entities, from generative AI drafting board reports to machine learning models scoring creditworthiness, Indian corporates across sectors are now governed, in part, by the code they do not fully understand.

This reality presents a profound governance challenge. Traditional compliance frameworks were built around human accountability, a director who signed a resolution, an auditor who certified accounts, a Company Secretary who confirmed statutory adherence. In an AI-mediated organisation, accountability fragments. A procurement recommendation may emerge from a model no individual explicitly endorsed. A regulatory disclosure may be generated by an engine whose logic is opaque even to its deployers. A board-level decision may rest on analytics whose biases are invisible and whose assumptions are untested.

There is a further structural risk. As AI becomes embedded in governance workflows, the risk of 'compliance theatre' increases i.e., the appearance of systematic compliance without its substance. An organisation may maintain an elaborate AI-driven compliance monitoring system that generates dashboards, flags exceptions and produces reports, while the underlying governance culture remains unreformed. The Company Secretary who signs off on such a system without interrogating its integrity risks being the professional face of a governance illusion.

## 2. THE AI LANDSCAPE IN INDIAN CORPORATE GOVERNANCE

To appreciate the compliance challenge, it is necessary first to understand the depth to which AI has permeated Indian corporate functions. Four domains merit particular attention: financial markets and treasury, regulatory compliance and reporting, board governance and human resources.

### 2.1 Financial Markets and Treasury Operations

SEBI's framework for Algorithmic Trading, articulated through circulars issued since 2012 and refined through the Master Circular for Stock Brokers (SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/007 dated January 5, 2023), acknowledges that algorithmic systems now account for a substantial proportion of order flow on Indian exchanges. Beyond trading, AI-powered systems are deployed for treasury optimisation, interest rate risk modelling and liquidity management in banking entities regulated by the Reserve Bank of India. The RBI's evolving consultative framework on AI in Banking signals an emerging regulatory consciousness about the systemic risks embedded in AI-mediated financial decisions, including model risk, herding behaviour in AI-driven markets and the amplification of systemic stress.

### 2.2 Regulatory Compliance and Reporting

The use of AI in drafting and reviewing regulatory filings, managing compliance calendars and conducting document review has expanded significantly. Generative AI tools are increasingly used to prepare Board Reports, Annual Reports and Secretarial Audit Reports. Natural language processing (NLP) tools assist in monitoring stock exchange announcements for Material Information triggers under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations). XBRL filings with SEBI and MCA increasingly benefit from AI-assisted data mapping. The use of AI in Secretarial Audit, specifically in scrutinising large volumes of meeting minutes, resolutions and share transfer records, is already a subject of active professional discussion.

### 2.3 Board Governance and Decision Support

Board Information Systems are evolving into AI-powered Decision Support Systems. Directors are increasingly presented with AI-generated summaries of management accounts, risk dashboards that aggregate data from across the enterprise and scenario models that project regulatory outcomes based on proposed decisions. In the banking sector, the Board Credit Committee may receive loan proposals underwritten partly or wholly by AI-driven credit models. The Company Secretary, as the primary interface between management and the Board, routinely deals with the outputs of these systems without, in most organisations, a formal governance mandate to question their integrity or veracity.

### 2.4 Human Resources and Workplace Monitoring

The deployment of AI in HR functions including candidate screening, performance evaluation, attendance monitoring and workplace sentiment analysis raises distinct governance and compliance concerns. AI tools that process biometric data, analyse communication patterns or generate performance scores engage directly with the protections afforded by the Digital Personal Data Protection Act, 2023. In listed entities, adverse AI-driven employment decisions may also carry disclosure obligations if they relate to key managerial personnel or senior management whose removal could constitute a Material Event under Regulation 30 of the LODR Regulations. The Company Secretary who is unaware of the AI tools deployed in HR functions is, in governance terms, operating with incomplete situational awareness.

### 3. COMPLIANCE CHALLENGES IN THE AGE OF AI

The compliance challenges that AI creates for Indian corporates can be grouped under six heads:

#### 3.1 Algorithmic Accountability and Fiduciary Duty

Under Section 166 of the Companies Act, 2013, a Director owes a duty to act in the best interests of the company and its stakeholders, exercising independent judgment. When a board decision is materially influenced by an algorithmic recommendation that the director neither understands nor has the capacity to interrogate, the integrity of that independent judgment is compromised. Boards that adopt AI-generated recommendations without adequate explainability mechanisms risk a structural breach of the fiduciary standard. The company secretary responsible for advising boards on governance compliance must now grapple with whether "black box" AI systems constitute an abdication of the board's deliberative function. The responsibility is not merely academic: a regulatory inquiry or derivative action could pivot on the question of what due diligence the board exercised over the AI systems whose outputs it relied upon.

#### 3.2 Data Governance and the DPDP Act, 2023

The Digital Personal Data Protection Act, 2023 (DPDP Act) introduces a consent-based framework for the processing of personal digital data. AI systems deployed by corporates, whether for employee surveillance, customer profiling, investor communication analysis or regulatory compliance monitoring, necessarily process personal data. The DPDP Act imposes obligations on Data Fiduciaries to maintain purpose limitation, data minimisation and accuracy, and to implement appropriate technical and organisational measures. Significant Data Fiduciaries, a category yet to be fully notified, will face additional obligations including Data Protection Impact Assessments (DPIAs) and appointment of Data Protection Officers. Company Secretaries must understand the interplay between AI data pipelines and DPDP compliance obligations, particularly in large, listed banking and financial services entities where personal data flows are voluminous and the potential for harm from data breaches is significant.

#### 3.3 SEBI LODR and AI-Driven Disclosures

Regulation 30 of the LODR Regulations mandates prompt disclosure of material events and information to the stock exchanges. The deployment of AI in generating, filtering or scheduling such disclosures creates a new category of compliance risk: the risk that an automated system delays, misclassifies or omits a material disclosure. The consequences of a Regulation 30 failure can be severe, regulatory action by SEBI, reputational damage and in extreme cases, personal liability for the officers responsible for compliance. Similarly, the use of AI in generating the Connected Persons List for Insider Trading compliance under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) raises questions about the legal sufficiency of machine-generated determinations of who constitutes an "insider" under the code of fair disclosure framework.

#### 3.4 Intellectual Property and AI-Generated Content

The ICSI Secretarial Standards and the Companies Act provisions relating to the authentication of documents raise an important and unresolved question: can a Secretarial Audit Report drafted substantially by a generative AI tool be authenticated by the Company Secretary under Section 2(24) of the Companies Act, 2013, which defines "authentication" as the signing of a document in a specific capacity? Who owns the intellectual property in an AI-generated board presentation, legal opinion or compliance certificate? The Copyright Act, 1957, does not recognise machine authorship, and the position on computer-generated

works in an AI context remains judicially untested in India. These questions present practical risk to the practicing Company Secretary who uses such tools without a clearly articulated and documented policy framework governing their use.

### 3.5 Cybersecurity, SEBI CSCRF and Governance Obligations

SEBI's Cybersecurity and Cyber Resilience Framework (CSCRF), notified vide circular SEBI/HO/ITD-1/ITD\_CSC\_EXT/P/CIR/2024/113 dated August 20, 2024, casts obligations on all Market Infrastructure Institutions and Regulated Entities, including listed companies. For entities that are Banking Technology Infrastructure (BTI) providers or Self-Certified Syndicate Banks (SCSBs), the obligations are particularly granular. AI-powered systems form part of the "critical systems" universe under CSCRF. Governance over these systems, including risk assessments, third-party AI service dependencies, adversarial attack vulnerabilities and incident reporting protocols, is squarely within the compliance domain that the Company Secretary must coordinate and oversee.

### 3.6 AI and Related Party Transaction Oversight

Section 188 of the Companies Act, 2013 and Regulation 23 of the LODR Regulations prescribe detailed requirements for the approval and disclosure of Related Party Transactions (RPTs). As AI-driven procurement, vendor selection and pricing systems become prevalent, there is a risk that algorithmic outputs systematically favour related parties in ways that are difficult to detect through conventional RPT monitoring. AI systems trained on historical data may embed and perpetuate existing biases towards particular vendors or counterparties who happen to be related parties. The Company Secretary's oversight of the RPT identification and approval process must therefore extend to a critical assessment of the AI systems used in procurement and contracting workflows.

## 4. AN ANCIENT ANSWER TO A MODERN QUESTION: KAUTILYA, DHARMA, AND ALGORITHMIC GOVERNANCE

The Arthashastra of Kautilya, composed approximately in the 4<sup>th</sup> century BCE, contains what may be the world's earliest comprehensive treatise on governance, statecraft and institutional ethics. Book II of the Arthashastra addresses the Amatya, the high official who combines administrative expertise with moral integrity. Kautilya prescribes that the Amatya must be "intellectually adept, enthusiastic, enduring, morally inclined and of clean conduct" (Arthashastra 1.9.1). The Amatya is not merely a skilled technician; he is the embodiment of the institution's conscience.

The Company Secretary, as the professional conscience of the corporate, occupies in many ways an analogous role. But what is particularly instructive in Kautilya's framework for the present purpose is the concept of the Dharmastha, the "judge of right conduct" whose function is to ensure that institutional power is exercised within the bounds of Dharma (righteous order). Kautilya was acutely conscious that power without accountability becomes tyranny. He prescribed elaborate systems of oversight, inspections, audits, cross-referencing of accounts and confidential reporting mechanisms to ensure that those who wielded power remained answerable to a higher standard.

Translated into the AI governance context, the Dharmastha principle carries a striking contemporary resonance: if the algorithm is the new locus of institutional power, then there must be a Dharmastha for the algorithm. There must be a professional, institutionally positioned, ethically trained and legally mandated officer whose function is to ensure that AI systems operate within the bounds of corporate dharma which in modern terms means the articles of association of the company, its statutory obligations, its fiduciary duties and its ethical commitments to all stakeholders including shareholders, employees, customers and society.

The Mahabharata's Shantiparva further illuminates this principle in the verse that has echoed

through centuries of Indian governance thought: 'Dharmo rakshati rakshitah' (Shantiparva 12.110.11) - Dharma protects those who protect it. An organisation that builds robust AI governance, that upholds transparency, accountability and ethical deployment, builds not merely regulatory compliance but institutional resilience and sustainable stakeholder trust. An organisation that deploys AI recklessly, without governance oversight, invites regulatory action, reputational damage and systemic failure. The Company Secretary who embodies the Dharmashtha principle is not a bureaucratic obstacle to innovation; they are the guardian of sustainable value creation.

There is also resonance in the concept of Niti, prudent policy, as distinct from mere legality. In classical Indian thought, Niti encompasses not only what is prescribed by rule but what is wise, proportionate and appropriate to context. An organisation's AI governance framework must aspire not merely to technical compliance with the letter of emerging AI regulations but to the standard of Niti: deploying AI in ways that are genuinely aligned with the organisation's purposes, its stakeholders' interests and the broader public good. This is a standard that no checklist can fully capture and that only a professional with genuine ethical commitment can uphold.

## **5. THE COMPANY SECRETARY AS AI GOVERNANCE ARCHITECT**

Against this backdrop, the article proposes a reconceptualization of the Company Secretary's role in the AI age across three dimensions: as Compliance Architect, as Board Advisor and as Ethical Anchor.

### **5.1 Compliance Architect**

The Company Secretary must take ownership of mapping the organisation's AI ecosystem from a compliance standpoint. This involves identifying all AI tools deployed across business functions, categorising them by risk profile (high, moderate, or low), mapping each tool to applicable regulatory obligations under the DPDP Act, SEBI LODR, SEBI CSCRF, RBI guidelines and Companies Act and integrating AI-specific obligations into the Annual Compliance Calendar. In banking and financial services entities, the Secretarial Audit under Section 204 of the Companies Act, 2013 and under Regulation 24A of the LODR Regulations, should be expanded to include a review of the organisation's AI governance framework as part of the broader systems and controls assessment. The Secretarial Audit Report, which presently covers compliance with applicable laws and regulations, should progressively incorporate observations on the adequacy of AI governance structures as AI regulation in India matures.

### **5.2 Board Advisor**

The Company Secretary's role under Section 205 of the Companies Act, 2013 includes providing "guidance to directors" on matters of governance and compliance. This guidance function must now extend to AI literacy and AI governance. The Company Secretary should develop the capability to brief the board on: the nature of AI systems deployed across the organisation; the governance mechanisms in place to ensure these systems are auditable, explainable and monitored for bias and accuracy; the regulatory obligations triggered by AI deployment and the board's residual fiduciary accountability for decisions that rest on AI-generated outputs. The introduction of a standing AI Governance Report as a standing agenda item at the quarterly meeting of the Risk Management Committee, curated by the Company Secretary in consultation with the Chief Risk Officer and the Chief Information Security Officer, would be a practical and proportionate expression of this advisory function.

### **5.3 Ethical Anchor**

The concept of the Company Secretary as "Chief Governance Officer" has gained currency within professional development discourse. In the age of AI, this concept must carry explicit ethical content. The Company Secretary must champion the organisation's

adoption of ethical AI principles, transparency in algorithmic decision-making, fairness in AI-driven outcomes, accountability for AI failures, non-maleficence in AI system design and meaningful human oversight of consequential AI outputs. The CS should advocate for the creation of an AI Ethics Committee or a sub-committee of the Risk Management Committee mandated under Regulation 21 of the LODR Regulations, tasked with independent oversight of high-risk AI deployments. This is not a decorative governance structure; it is a substantive risk management mechanism that would, in due course, provide the board with the assurance it needs that algorithmic power is being exercised responsibly.

## **6. THE REGULATORY LANDSCAPE: WHERE INDIA STANDS**

India does not yet have a dedicated AI governance legislation. However, several existing and emerging frameworks create a composite regulatory environment within which AI governance obligations arise:

### **6.1 SEBI's Evolving Framework**

SEBI has been a relatively proactive regulator in the context of algorithmic and AI-driven systems. Its framework for Algorithmic Trading (2012 onwards), the SEBI (Research Analysts) Regulations, 2014 as applied to AI-generated investment research, the SEBI (Investment Advisers) Regulations, 2013 in the context of robo-advisory services, and the Master Circular for Stock Brokers all contain provisions with direct bearing on AI-mediated market activity. SEBI's engagement with consultation processes on AI and ML in financial services signals the regulator's intent to move towards more specific AI governance norms for capital market intermediaries and listed entities. Company Secretaries of listed entities should monitor this space closely and ensure that evolving SEBI expectations are reflected in the organisation's AI governance policies.

### **6.2 RBI's Approach**

The RBI has been developing its approach to AI governance in regulated financial entities through both formal consultative papers and supervisory guidance. Principles of model risk management, explainability of AI-driven credit decisions, bias testing for credit scoring models and human oversight requirements for consequential automated decisions are central to the RBI's emerging framework. For Company Secretaries in banking entities, these norms are directly relevant to the structure of Board Committees, the terms of reference of the Board Risk Management Committee, and the content of Annual Report disclosures relating to risk management.

### **6.3 Digital Personal Data Protection Act, 2023**

The DPDP Act creates direct obligations for AI-deploying corporates as Data Fiduciaries. The rules under the DPDP Act are anticipated to prescribe consent management mechanisms, data localisation requirements for certain categories of sensitive data and grievance redressal obligations. The intersection of DPDP compliance with AI data pipelines is complex but unavoidable, particularly in large listed entities where personal data is processed at scale by multiple AI systems. The Company Secretary must ensure that AI procurement processes include a mandatory DPDP compliance assessment and that the Board is periodically briefed on the organisation's data governance maturity.

### **6.4 Global Benchmarks and Convergence**

While India has not adopted the European Union's AI Act (which became fully applicable in August 2024), the global direction of AI regulation is clearly towards a risk-tiered governance model. The OECD Principles on AI (2019, updated 2023), the G20 AI Principles (2023), and the ISO/IEC 42001:2023 AI Management Systems Standard provide governance frameworks that

Indian companies with international operations, cross-listed securities or significant foreign institutional investor bases must increasingly align with. The Company Secretary advising the board on AI governance should be conversant with this global regulatory trajectory and should advise the board on the reputational and investor relations implications of governance gaps relative to international best practice.

## **7. A PRACTICAL AI GOVERNANCE FRAMEWORK FOR LISTED ENTITIES**

Drawing on the above analysis, the following framework is proposed for adoption by listed entities, to be championed and coordinated by the Company Secretary:

### **7.1 AI Inventory and Risk Classification**

The organisation should maintain a comprehensive AI Inventory, a living register of all AI and machine learning tools deployed across business functions, including third-party AI services embedded in enterprise software platforms. Each tool should be classified by risk level: High Risk AI (deployed in credit decisions, regulatory filings, board governance and investor communication), Moderate Risk AI (deployed in operational optimisation, internal audit support and HR analytics), and Low Risk AI (deployed in routine process automation). The AI Inventory should be reviewed at least annually by the Board or its Risk Management Committee. The Company Secretary should be designated as the custodian of this register, working with the Chief Information Officer and Chief Risk Officer.

### **7.2 AI Governance Policy**

The Board should adopt an AI Governance Policy that codifies the organisation's approach to AI procurement and vendor due diligence, explainability and transparency requirements for High-Risk AI, data governance obligations under the DPDP Act, cybersecurity obligations under SEBI CSCRF and the human oversight mechanisms that must be in place before any AI output is acted upon in a governance or compliance context. The Company Secretary should be designated as the Governance Coordinator for this policy, responsible for its periodic review, for training board members and senior management on its provisions, and for monitoring its implementation.

### **7.3 Explainability in Board Governance**

For any AI-generated recommendation or analysis placed before the Board or a Board Committee, the accompanying Board Note must include: a plain language description of the AI tool used and the nature of its outputs; the data inputs on which the recommendation is based; a disclosure of material limitations, assumptions, or known biases of the model and a confirmation that the recommendation has been reviewed and endorsed by a competent human professional before presentation to the Board. The Company Secretary, as the drafter and custodian of Board Notes and Agenda Papers, is directly and personally responsible for ensuring this explainability standard is consistently met.

### **7.4 Secretarial Audit Expansion**

The scope of the Secretarial Audit Report under Form MR-3, prescribed under Section 204 of the Companies Act, 2013, should at a minimum include an observation on whether the company has adopted an AI Governance Policy, whether a documented AI Inventory is maintained and whether material AI-related compliance obligations under SEBI CSCRF, the DPDP Act and applicable RBI guidelines have been met. While this expansion awaits formal regulatory mandate, Company Secretaries can adopt this practice as a matter of professional best practice, anticipating the direction in which the regulatory framework is moving.

### 7.5 AI Ethics and Grievance Mechanism

The organisation should establish a clearly defined mechanism for reporting concerns about AI-related governance failures including unexplained or biased outcomes, unreliable outputs presented as authoritative, data breaches arising from AI system vulnerabilities or regulatory non-compliance arising from AI-generated filings. This mechanism should be accessible to employees, directors and where appropriate, external stakeholders. Concerns raised through this mechanism should be reported periodically to the Stakeholder Relationship Committee and in banking entities, to the Board Customer Service and Grievance Committee. The existence of this mechanism should be disclosed in the Annual Report as part of the corporate governance section.

## 8. THE ROAD AHEAD: BUILDING THE AI-READY CS PROFESSIONAL

The governance challenges described above cannot be addressed without a corresponding and sustained investment in the professional capacity of Company Secretaries.

Firstly, the Company Secretary who advises a board on AI governance must command not only statutory knowledge but also a working understanding of how AI systems function, what can go wrong, and what governance mechanisms are available to detect and correct failures.

Secondly, there is a need to build AI literacy among members of the profession through seminars, workshops and collaborative programmes with technology institutions, management schools and regulatory bodies. The format of responsive professional development, drawing on real-world case studies, regulatory developments and cross-disciplinary perspectives is a model that serves the profession well and should be extended to AI governance as a priority domain.

Thirdly, the practicing Company Secretary must develop the institutional courage to raise AI governance concerns at the board level, even when doing so is uncomfortable or inconvenient. The fiduciary to whom the CS ultimately owes professional allegiance is not the management team that deploys a problematic AI system, but the Board and the shareholders who bear the consequences of governance failure. Professional independence in the face of institutional pressure is not a theoretical value; it is the practical test of governance integrity.

Fourthly, active engagement with regulators like SEBI, MCA and RBI is essential in development of AI governance norms for bringing the distinctive governance perspective of Company Secretaries to regulatory consultations and policy dialogues. The profession has a direct stake in ensuring that AI regulation in India is governance-centric rather than purely technology-centric, that it creates clear accountability mechanisms rather than opaque technical standards that governance professionals cannot meaningfully implement or assess.

Fifthly, the Company Secretary of the AI age must be a leader in the fullest sense of that word, not merely a recorder of decisions but a shaper of the governance ecosystem in which decisions are made. Leadership in the context of AI governance means intellectual engagement with complexity, professional independence in the face of institutional pressure, constructive collaboration with technology professionals and the moral clarity to ask the question that no algorithm can answer: is this the right thing to do?

## 9. CONCLUSION

The integration of AI into corporate governance is not reversible and those who wait for comprehensive AI legislation before engaging with its governance implications are already behind. The compliance architecture of the AI age requires a professional who sits at the intersection of law, ethics, technology and governance, one who understands the board's fiduciary obligations,

the regulator's expectations, the organisation's risk appetite and the ethical principles that must constrain technological ambition.

That professional is the Company Secretary.

Kautilya's Amatya was enjoined to serve as the guardian of Dharma within the state apparatus, not merely executing instructions but ensuring that power was exercised with wisdom, accountability and restraint. The Company Secretary of the 21<sup>st</sup> century is called to no less a standard. In the age of AI, the Company Secretary must become the conscience of the algorithm: the institutional voice that asks not only "can the technology do this?" but "should it?"; not only "is it legal?" but "is it right?"; not only "does it comply?" but "does it serve the purposes for which the organisation exists and the stakeholders to whom it is accountable?"

The 27<sup>th</sup> National Conference theme "Company Secretaries as Leaders: AI, ESG & Stewardship" is not merely aspirational rhetoric. It is a professional mandate whose time has come. The leadership that India's corporate governance ecosystem needs in the age of AI is already latent in the training, the institutional position and the ethical commitment of the Company Secretary. What remains is to claim that leadership, to exercise it with confidence and to demonstrate through action that the profession is not merely a custodian of the past but an architect of the future.

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# From Data to Deed: The Company Secretary as Architect of Genuine ESG Stewardship in Indian Automotive Manufacturing

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## 1. The Room Nobody Talks About

Every Company Secretary working in Indian manufacturing knows the ESG compliance drill. Sometime in the third or fourth quarter, a data call goes out to plant heads, HR managers, EHS officers, and procurement teams. The responses arrive piecemeal, in inconsistent formats and covering inconsistent periods. Someone in the secretarial team stitches the figures together into the mandated BRSR template. A sustainability consultant may be engaged to cross-check the format. The Board approves the final document at the same meeting where it reviews quarterly financials, devoting a fraction of the time to each. The document is uploaded. The year's ESG obligation is deemed fulfilled.

This is not a criticism of any individual. It is a structural description of how BRSR operates in most Indian manufacturing organisations today. The framework was designed with ambition: to embed environmental, social, and governance accountability into the mainstream of corporate decision-making, to make sustainability performance as visible and as consequential as financial performance. What it has produced, in practice, is an additional annual compliance task, consuming effort without generating action.

The question this paper addresses is not whether this gap exists- any practitioner knows it does, but what will close it, and who is best placed to do so. The answer emerging from ground-level experience in India's automotive component manufacturing sector is clear, if uncomfortable: genuine ESG change in Indian manufacturing will not come from the intrinsic motivation of regulatory compliance. It will come from two directions simultaneously, the hard financial logic of carbon exposure in European export markets and the equally hard financial logic of energy cost. The Company Secretary who understands both directions, and who has the governance tools to build the architecture that converts external pressure into internal strategy, is the professional this moment requires.

## 2. What BRSR was Designed to do, and What it Actually does

SEBI's introduction of the Business Responsibility and Sustainability Reporting framework in May 2021, and its mandatory application to the top 1,000 listed entities by market capitalisation from FY 2022-23, represented a meaningful step forward in Indian corporate governance. The BRSR replaced its predecessor, the Business Responsibility Report, which had become a largely narrative and aspirational document with a structured, quantitative framework organised around nine principles drawn from the National Guidelines on Responsible Business Conduct (NGRBC). For the first time, Indian listed companies were required to disclose greenhouse gas emissions across Scopes 1, 2, and 3; water withdrawal and consumption by source; waste generation and disposal methodology; and a structured assessment of supply chain ESG practices.

SEBI's subsequent introduction of BRSR Core - mandatory for the top 150 listed entities from FY 2023-24, with mandatory third-party assurance on specified Key Performance Indicators, signalled a further and deliberate escalation. SEBI's Consultation Paper of 2023 explicitly referenced alignment with the International Sustainability Standards Board's IFRS S1 and S2 frameworks as a medium-term

objective, indicating an intention to bring Indian sustainability disclosure into the mainstream of global investor-grade reporting. This trajectory is not speculative; it reflects a considered regulatory direction that will progressively raise the credibility threshold for sustainability disclosure in India.

Against this regulatory ambition, the implementation reality in manufacturing organisations is deflating. Three structural conditions sustain the gap between BRSR's intent and its impact. The first is ownership: in most manufacturing companies, sustainability reporting rests with the Company Secretary's function as a compliance obligation, without a designated management owner who carries ESG performance as a personal accountability. The second is consequence: unlike a financial misstatement, which carries direct legal and regulatory consequence, an ESG disclosure that is generic, unverified, or understated attracts minimal scrutiny for companies outside the BRSR Core universe. The third is integration: BRSR data lives in a reporting system, not a management system. It does not feed into production planning, capex decisions, procurement strategy, or Board-level risk assessment in the way that financial data does.

The result is an annual document that absorbs organisational energy without producing organisational change. Resources are consumed on disclosure rather than invested in performance. BRSR grows longer and more elaborately formatted each year while the sustainability behaviour of the organisation remains substantially unchanged. This is not a reflection on SEBI's framework; rather, it underscores a governance leadership responsibility – one that the Company Secretary is uniquely positioned and professionally entrusted to address.

### **3. CBAM: The Consequence that Regulation has not Provided**

For an automotive component manufacturer that exports the overwhelming majority of its output to European markets, the EU's Carbon Border Adjustment Mechanism is not an abstract policy development to monitor at a distance. It is a live commercial pressure that is already reshaping supply chain qualification conversations with European OEM customers, and whose financial implications will become progressively more concrete through the remainder of this decade.

Established through Regulation (EU) 2023/956, CBAM works by imposing a carbon cost on imports of specified goods into the EU, calculated to match the price that would have been incurred under the EU Emissions Trading System had those goods been produced within the EU. The initial sectoral coverage- cement, iron and steel, aluminium, fertilisers, electricity, and hydrogen directly implicate the embedded material content of automotive components. Aluminium die castings, steel stampings, and fabricated structural components are among the highest-volume product categories in India's automotive export trade with Europe; their embedded carbon intensity is exactly what CBAM measures and prices.

The CBAM transitional reporting phase, which ran from October 2023 through December 2025, required EU importers to report embedded emissions without financial adjustment. From January 2026, the financial mechanism enters its phase-in, with EU importers required to purchase CBAM certificates corresponding to the embedded carbon of their imports. As EU ETS free allowances are progressively withdrawn through the decade, the schedule targets complete withdrawal by 2034, the financial gap between low-carbon and high-carbon supply will widen year upon year. For a company whose European revenues constitute the near-entirety of its export business, the carbon intensity of its manufacturing processes is becoming a pricing and competitiveness variable of the same order of magnitude as labour cost or material efficiency.

European customers are responding to this by cascading CBAM documentation obligations down their Indian supply chains. They are requesting verified Scope 1 and Scope 2 emission inventories at the component level, process-level emission factor data, and in some cases ISO 14064-1 compliant greenhouse gas verification. This is precisely the ESG performance measurement infrastructure that BRSR envisions but has not compelled. CBAM does in the export market what BRSR has not achieved

domestically: it makes carbon accountability a condition of continued commercial engagement, not merely a reporting obligation.

Two further regulatory developments extend the international compliance landscape. The United Kingdom's own carbon border mechanism, announced with a 2027 implementation target on a comparable sectoral basis, will amplify these pressures for Indian manufacturers with UK market exposure. And the EU's Corporate Sustainability Due Diligence Directive (CS3D), which requires large EU-headquartered companies to conduct structured ESG due diligence on their supply chains, will extend sustainability accountability requirements to Indian suppliers of EU OEMs irrespective of the supplier's own domestic regulatory status. The arc of international trade regulation is unambiguous: Indian automotive manufacturers exporting to developed markets will face ESG accountability requirements that are more demanding, more verifiable, and more financially consequential than domestic regulation currently imposes.

The Company Secretary working in an automotive manufacturing organisation with significant European exposure should be presenting this analysis to the Board not as background information in a regulatory update section of a quarterly report, but as a quantified strategic risk with a capital allocation dimension. What is the company's current carbon exposure under CBAM pricing? What is the trajectory of that exposure as EU ETS carbon prices evolve? What is the investment required to reduce it, and over what payback period? These are questions that convert CBAM from a compliance matter into a Board-level governance agenda item. Framing them is the Company Secretary's work.

#### **4. When ESG and Economics Speak the Same Language**

If CBAM represents the stick that is compelling genuine carbon accountability in export-oriented manufacturing, a parallel dynamic is operating from the other direction: in specific and increasingly significant domains, investments that deliver ESG improvement also deliver direct and near-term financial return. The most consequential current example is the transition to renewable energy procurement.

In several major Indian industrial states, the per-unit cost of electricity supplied through the state distribution network has risen consistently over the past decade. A combination of legacy infrastructure costs, accumulated regulatory assets of distribution companies, and cross-subsidisation obligations that burden commercial and industrial consumers has pushed effective industrial tariffs to levels that, in many states, now exceed the landed cost of solar power procured through open access mechanisms or group captive structures. The arithmetic is not subtle. A manufacturing company that can access solar power at below Rs. 3.50 per unit through open access, against a prevailing industrial grid tariff of Rs. 6.50 to Rs. 8.00 per unit in the same state, does not require an ESG argument to justify the switch. The capital expenditure decision is justified entirely on a discounted cash flow basis, with payback periods that many management committees find entirely acceptable.

The ESG benefit, a reduction in Scope 2 greenhouse gas emissions, an improvement in the company's renewable energy share disclosed under BRSR, and a meaningful reduction in CBAM-relevant carbon intensity for energy-intensive production processes is a co-benefit of a decision that was made for financial reasons. This co-benefit is real and reportable; it also illustrates a principle of wider strategic importance. The assumption that ESG improvement and financial performance are structurally in tension is wrong in a growing number of operational domains. Energy is the most prominent current example. Water recycling in water-stressed manufacturing regions, waste heat recovery systems, material efficiency improvements that simultaneously reduce input costs and waste disposal expenditure, and logistics route optimisation that reduces both freight cost and fuel-based emissions are additional candidates. Each represents an investment that a rigorous

capital budgeting analysis can justify on financial grounds alone, with ESG improvement as the accompanying outcome.

India's Carbon Credit Trading Scheme (CCTS), notified by the Ministry of Power in June 2023 and under active implementation through the Bureau of Energy Efficiency, adds a further financial dimension. Manufacturing companies that can demonstrate verified greenhouse gas emission reductions through accredited methodologies will be eligible to generate carbon credits tradeable within a domestic carbon market. For an automotive manufacturer that has already invested in renewable energy procurement for financial and CBAM compliance reasons, these investments may generate an additional revenue stream through CCTS credits improving the financial case for the initial investment further and creating an ongoing incentive for continuous reduction rather than one-time compliance.

The Company Secretary is the professional most naturally positioned to identify, evaluate, and present these ESG-financial intersections to management and the Board. The governance mandate of the CS encompasses the full spectrum of organisational risk and opportunity not merely the legal and compliance dimensions. An ESG Opportunity Audit, a structured annual review that maps each significant ESG initiative against its financial return, CBAM exposure impact, and CCTS credit potential is a governance product that only the CS is positioned to own. It transforms the ESG conversation in management committees from a values discussion to an investment analysis: the language that Boards and finance committees respond to with action.

### **5. The Company Secretary as Governance Architect: Four Capabilities that Matter**

The Companies Act, 2013 places the Company Secretary in the same tier of Key Managerial Personnel as the Managing Director and the Chief Financial Officer. SEBI's Listing Obligations and Disclosure Requirements Regulations (LODR) vest the CS of a listed entity with specific responsibilities in compliance, disclosure, and investor relations. Secretarial Standards issued by the ICSI carry statutory recognition under the Act. These designations are not ceremonial. They reflect a legislative judgement that the Company Secretary occupies a governance role with Board-level accountability not a support function with administrative responsibilities.

This positioning creates both the authority and the obligation for the CS to lead ESG stewardship in manufacturing organisations. Four specific capabilities define why the CS is better placed to do this than any other professional in the organisation.

The first is multi-domain regulatory literacy. ESG governance in the current environment requires simultaneous fluency in SEBI's BRSR framework and its BRSR Core extension; the Companies Act's provisions on Board reporting and Director responsibility for material risk; environmental regulation under the Environment (Protection) Act and sector-specific environmental clearance conditions; international trade compliance under CBAM and CS3D; the evolving ISSB-aligned disclosure framework that SEBI has signalled as its medium-term direction; and the emerging domestic carbon market under CCTS. No other professional function within a manufacturing organisation, not finance, not EHS, not legal and not procurement is trained to hold this regulatory span simultaneously. The Company Secretary is. This is not an accident of training; it is the defining characteristic of the CS's governance role.

The second is Board-level access in every governance cycle. ESG cannot be elevated from a compliance task to a strategic priority without Board ownership. The Board must receive ESG performance data as a governance agenda item, not merely as an appendix to an annual report. The Board must own the organisation's material ESG risks and opportunities just as it owns financial risks. The Board must set ESG targets and hold management accountable against them. The Company Secretary is the only professional with institutionalised, routine access to the Board in every meeting cycle. The CS controls the Board agenda, prepares Board papers, and has a direct

governance relationship with independent directors. This access, used deliberately, is the most powerful lever available for repositioning ESG from the compliance calendar to the governance calendar.

The third is cross-functional coordination authority. BRSR data collection already gives the CS a legitimate mandate across every function in the organisation. The challenge is to convert this data collection mandate into a performance management mandate: to move from asking departments for retrospective figures to working with departments on forward-looking ESG targets, measurement systems, and management accountability. The CS who repositions the BRSR coordination function as the engine room of an integrated ESG management information system with monthly data, variance analysis, and management action tracking has done more to advance genuine ESG performance than any amount of more elaborate annual reporting.

The fourth is governance architecture capability. The Company Secretary is trained, and professionally practiced, in building institutional structures that embed accountability and survive personnel changes: Board committee charters, policy frameworks, compliance monitoring systems, disclosure protocols. ESG stewardship will not become a permanent organisational capability through individual effort or personal conviction. It must be institutionalised. The CS who establishes a Board-level ESG or Sustainability Committee with a defined charter and reporting obligations; who integrates ESG KPIs into the performance evaluation framework for senior management; and who embeds sustainability disclosure within the Annual Report in a way that directly connects ESG metrics to financial risks and capital allocation decisions, that CS has built something that outlasts any individual and creates durable organisational value.

## **6. A Stewardship Framework Built for Manufacturing Reality**

### ***Pillar I – A Materiality Assessment Anchored in the Business, Not the Template***

The foundation of genuine ESG stewardship is a materiality assessment that identifies which ESG factors represent real financial and operational risk or opportunity for this organisation specifically. For an automotive component manufacturer whose business is almost entirely dependent on European export markets, CBAM-related carbon risk is not one item among many on a materiality checklist, it is a material risk of the highest order, financially quantifiable and commercially immediate. A Board-approved materiality matrix that identifies carbon intensity, renewable energy exposure, water stress in manufacturing locations, and supplier ESG qualification as priority governance items and that distinguishes these from the full universe of BRSR disclosures gives the organisation a focused ESG agenda rather than an undifferentiated compliance obligation.

### ***Pillar II – ESG Data as a Live Management Tool***

Monthly or quarterly tracking of energy consumption by source, greenhouse gas emissions, water consumption, and waste generation, with variance analysis against targets and prior periods, presented in management reporting alongside financial performance data is qualitatively different from an annual BRSR data collection exercise. It requires investment in measurement infrastructure: sub-metering of energy consumption by production process, calibrated emission factor databases, water accounting at the plant level. The business case for this investment is straightforward: it simultaneously enables CBAM documentation at the component level, positions the company for CCTS credit generation, and prepares the organisation for the third-party assurance requirements that will accompany any future ISSB-aligned disclosure obligation. This is not an ESG cost. It is a compliance infrastructure investment that delivers multiple returns.

### ***Pillar III – CBAM as a Capital Allocation Decision***

The Company Secretary should model the organisation's CBAM financial exposure at current carbon intensity levels, and project that exposure under plausible EU ETS carbon price pathways

through 2030 and 2034. The output, a range of financial exposure scenarios calibrated to the company's actual production volumes and embedded material content gives the Board a quantified strategic risk that demands a capital allocation response. For each major carbon reduction initiative under consideration (renewable energy procurement, process efficiency improvement, material substitution), the CS should present the investment required, the CBAM exposure reduced, the CCTS credit value generated, and the net financial return over a defined period. This is the governance language that converts environmental performance from aspiration to decision.

#### **Pillar IV – Board Architecture for ESG Accountability**

A Board-level ESG or Sustainability Committee, with a defined charter, clear membership including at least one independent director with sustainability expertise, a quarterly meeting schedule, and a reporting obligation to the full Board, is the institutional mechanism that elevates ESG from management responsibility to Board governance. This committee should receive the ESG management information system data, review progress against the materiality matrix priorities, approve the annual BRSR and any enhanced sustainability disclosure, and oversee the organisation's CBAM compliance posture. ESG KPIs, carbon intensity per unit of production, renewable energy share, CBAM certificate cost per unit exported, and water intensity should be included in the performance evaluation framework for the Managing Director and relevant functional heads, creating executive accountability for outcomes rather than merely for disclosure.

#### **Pillar V – Supply Chain ESG Governance**

BRSR's value chain disclosure requirements, CS3D's supply chain due diligence obligations, and ISSB S2's Scope 3 emission reporting framework collectively require that ESG accountability extend beyond the organisation's own manufacturing footprint to its supplier base. For an automotive component manufacturer, this means developing supplier ESG qualification criteria covering greenhouse gas emission intensity, environmental management system certification, and key labour standards and integrating these criteria into supplier selection, contract terms, and periodic performance reviews. This is governance work squarely within the Company Secretary's cross-functional mandate. The manufacturer that can demonstrate a verified, low-carbon supply chain to European OEM customers gains a qualification advantage that competitors with higher supply chain carbon intensity will find difficult to close quickly.

### **7. Governing Ahead of the Regulatory Wave**

India's ESG regulatory trajectory carries a simple message for any manufacturing company that takes a medium-term view of its governance obligations: the floor is rising. BRSR Core coverage will expand beyond the current top 150 listed entities. SEBI's alignment with ISSB standards will, in time, introduce climate-related financial risk disclosure as a mainstream financial reporting requirement rather than a standalone sustainability annexure. The CCTS will mature into a functional domestic carbon market in which demonstrated emission reductions carry real financial value. The RBI's framework on Climate Risk and Sustainable Finance signals an environment in which lenders and investors will increasingly price ESG credibility into financing terms and investment decisions. Each of these developments rewards organisations that have invested in genuine governance infrastructure and penalises those that have treated ESG as a disclosure exercise.

In International markets, the pressure is equally directional. CBAM will expand its sectoral coverage through successive EU reviews. The UK mechanism will come into force in 2027. CS3D will cascade ESG due diligence obligations through European supply chains, reaching Indian manufacturers regardless of their domestic regulatory status. The generation of global investors and institutional shareholders that now treats ESG performance as a material input into investment and credit decisions is growing in influence, not shrinking. For Indian automotive manufacturers oriented

toward global markets and global capital, the question is not whether ESG governance will matter financially- it already does. The question is whether the governance architecture to respond will be ready when the consequences arrive.

The Company Secretary who understands this trajectory can frame it for the Board not as a forecast of future obligations but as a present governance risk: the risk of being structurally unprepared for regulatory and market developments that are already in motion. This framing, grounding ESG stewardship in the same risk management logic that governs every other Board decision, is what converts ESG from a values conversation into a governance imperative. It is among the most important contributions a CS can make to the organisation's long-term resilience.

## 8. Conclusion

Leadership in ESG is not produced by a more comprehensive BRSR disclosure or a more elegantly formatted materiality matrix. It is produced by governance: the Board committee with a real charter, the management KPI with real consequences, the capital allocation framework that makes carbon reduction a business decision rather than a sustainability aspiration, the supply chain standard that makes ESG accountability a condition of commercial partnership.

An automotive manufacturer with near-total European export exposure, operating in an environment where renewable energy is already the financially rational choice and where CBAM is actively pricing carbon intensity into competitive position, is not short of reasons to pursue genuine ESG improvement. What it is frequently short of is the governance architecture required to make that improvement systematic, verifiable, and durable. Building that architecture is the Company Secretary's work. It always was. The difference today is that the financial and regulatory consequences of failing to build it are arriving faster than most Boards have anticipated and the Company Secretary who has built it will have delivered something of lasting strategic value to the organisation they serve.

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# Greenwashing Liability in India: Regulatory Architecture, the Company Secretary's Role and a Practical Governance Toolkit

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## ABSTRACT

*Greenwashing has crossed the line from reputational embarrassment to enforceable liability. Indian consumers, institutional investors, and global supply-chain partners now weigh environmental credentials in real purchasing and capital-allocation decisions, and Indian regulators have caught up. The Consumer Protection Act, 2019, SEBI's BRSR framework, and the CCPA's 2024. Greenwashing Guidelines together create concurrent exposure for any company whose public sustainability claims outrun its actual practice. For the Company Secretary, who holds the pen on board minutes and signs off on listed-entity disclosures, this is now a frontline issue with little ambiguity. This article maps the anatomy of greenwashing, surveys the three Indian regulatory regimes The Securities and Exchange Board of India (SEBI), The Advertising Standards Council of India (ASCI) and The Central Consumer Protection Authority (CCPA) that may apply to the same conduct, traces the personal liability that flows to directors and Key Managerial Personnel, and closes with a seven-tool governance toolkit that the Practicing Company Secretary (PCS) can deploy directly.*

## I. Introduction: The Rise of the Green Economy and its Shadow

Investor and consumer behavior has shifted decisively toward environmental consciousness, and that shift is reshaping the global economy. Indian consumers, institutional investors, and global supply-chain partners now factor environmental credentials into purchasing choices and capital-allocation decisions, pushing sustainability from a soft preference to a hard expectation. Environmental, Social and Governance (ESG) criteria have moved from peripheral reporting add-ons to a core measure of corporate accountability and performance.

This rising demand has produced an opportunistic response in corporate communication. Companies increasingly deploy labels such as "eco-friendly," "ESG-aligned," "carbon-neutral" and "planet-positive" as marketing instruments aimed at sustainability-conscious investors and consumers, often without corresponding changes in the underlying practice. Where these claims lack adequate evidence, are exaggerated, or are only partially true, they fall into what is now widely recognized as greenwashing.

Greenwashing, simply stated, is the practice of projecting a green image while either causing environmental harm or only superficially meeting the standards implied by that image. SEBI gave the term a regulatory definition in its Circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated February 3, 2023, *Dos and Don'ts relating to Green Debt Securities to avoid occurrences of Greenwashing*, bringing the concept squarely within the domain of enforceable regulatory compliance.

This problem of greenwashing is growing at rapid scale in India. In its Annual Complaints Report 2024-25, the Advertising Standards Council of India (ASCI) reported that all 211 advertisements it examined for environmental claims required modification due to inadequate substantiation, a

six-fold increase over the previous year. The cases were concentrated in homecare, fashion and personal-care, but the pattern extends further: from FMCG brands marketing “natural” formulations to financial institutions promoting ESG funds that still channel capital to polluting industries. The result is a wide spectrum of greenwashing practices with real consequences for market integrity, consumer trust and regulatory scrutiny.

For Company Secretaries, the implications are direct and material. As custodians of corporate governance frameworks, compliance systems and board-level disclosures, the CS must understand not only what greenwashing is, but also the legal and reputational risks it creates for the company, its directors and its officers. The role now extends to designing and overseeing governance mechanisms, internal controls, disclosure protocols, due-diligence processes and board reporting structures that prevent greenwashing, ensure sustainability claims are evidence-based, and align corporate communication with genuine environmental performance rather than mere branding.

## II. Understanding Greenwashing: Anatomy and Typology

Before turning to liability, it helps to map the conceptual terrain. The widely cited typology developed by TerraChoice (now part of Underwriters Laboratories) in its 2007 report and expanded in 2009 identifies seven recurring patterns of greenwashing. The categories are not Indian in origin, but Indian advertising and disclosure practice has absorbed them through findings of the ASCI Consumer Complaints Council and CCPA notices. The table that follows summarizes the typology with illustrative Indian and global cases.

Type	Description	Indian or Global Illustration
Hidden Trade-offs	Promoting one green feature while ignoring broader environmental harms	Promoting an appliance's BEE star-rating energy efficiency without disclosing the producer's extended-producer-responsibility (EPR) shortfall under the E-Waste (Management) Rules, 2022 (illustrative).
No Proof	Environmental claims lacking accessible, verifiable evidence	Godrej No. 1 soap advertised as “100% natural” (ASCI Consumer Complaints Council, 2015), complaint upheld; advertisement modification recommended after evidence showed synthetic ingredients.
Vagueness	Broad, undefined terms like “eco-friendly,” “green,” or “sustainable”	FMCG products marketed using absolute terms such as “eco-friendly” or “sustainable” without specifying the part of the product or life-cycle stage to which the claim attaches are expressly prohibited by ASCI's February 2024 Environmental Claims Guidelines absent life-cycle substantiation.
False Labels	Falsely suggesting third party certification or endorsement	Displaying logos resembling the BIS Ecomark (Indian Standard IS 14024) or other accredited eco- labels without an underlying certification is addressed in ASCI's 2024 Guidelines, Clause 6.
Irrelevance	Highlighting a banned or trivially compliant feature as an environmental benefit	Marketing a vehicle as “BS-VI compliant” or “greener” merely because it meets the prevailing emissions standard mandated for all new vehicles since April 2020 under the Central Motor Vehicles Rules, 1989.

Lesser of Evils	Claiming relative sustainability within an inherently harmful category	Marketing a single-use plastic bottle variant as "100% recyclable" relative to the producer's other variants, where the underlying category remains environmentally intensive and the recyclability claim has no end-of-life recovery substantiation.
Outright Fibbing	Fabricated claims or data manipulation	Volkswagen India: National Green Tribunal order dated March 7, 2019 imposing a penalty of Rs. 500 crores for use of "defeat devices" that falsified diesel-emissions performance in vehicles sold in India (parent company's cumulative global Dieselgate-related penalties and settlements are reported at approximately USD 34 billion across multiple jurisdictions, 2015–2024).

Green claims also extend to forward-looking commitments and blanket statement assertions such as "carbon neutral by 2030", "Green company by 2030" etc., which under the new Indian guidelines must be supported by clear, actionable plans setting out how the stated goals will be achieved. An aspirational claim without a credible roadmap now falls within the definition of greenwashing under the Indian regulatory framework.

### III. The Indian Regulatory Architecture: A Three-Lens Framework

India does not regulate greenwashing through a single statute. Three major regulators police the space concurrently, namely SEBI, ASCI, and the CCPA under the Consumer Protection Act, 2019, each with its own mandate, standard of proof, and remedial toolkit. A single misleading green claim can therefore become a SEBI disclosure violation, an ASCI Code breach, and a CCPA misleading advertisement offence simultaneously.

#### (A) SEBI: BRSR, Materiality, and Capital-Markets Discipline

SEBI's Business Responsibility and Sustainability Report (BRSR) framework, mandatory for the top 1000 listed entities, requires standardized disclosure across nine NGRBC principles. The BRSR Core, introduced in 2023, is a sub-set of KPIs subject to independent reasonable assurance, phased from the top 150 listed entities in FY 2023-24 to the top 1000 by FY 2026-27 (SEBI Circular dated July 12, 2023). Value-chain assurance, originally from FY 2025-26, was deferred by SEBI in December 2024 and converted to a comply-or-explain basis. A misstated emissions figure, an overstated renewable-energy share, or an unsubstantiated diversity narrative now becomes an assurance qualification, and a candidate for regulatory inquiry equivalent in gravity to financial misstatement

Above this sits the Regulation 30 of the SEBI (LODR) Regulations, 2015 layer. An environmental incident, such as a spill, a regulatory notice, the loss of a major ESG certification, or the abandonment of a publicly announced assertive ESG commitment, that crosses the Schedule III materiality threshold must be disclosed within 30 minutes (for board-meeting outcomes) or 24 hours (for other material events). Silence is also considered a violation in the face of material change.

For sustainable-finance issuances, SEBI's framework rests on two companion circulars dated February 3 and February 6, 2023. Circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated February 3, 2023, Dos and Don'ts relating to Green Debt Securities to avoid occurrences of Greenwashing, lays down the substantive framework, and Circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/023 dated February 6, 2023, Revised Disclosure Requirements for Issuance and Listing of Green Debt Securities, imposes the continuous disclosure obligations on issuers and mandates the appointment of an independent third-party reviewer to certify the categorization, project evaluation and use

of proceeds. The third-party reviewer requirement, initially on a comply-or-explain basis until April 1, 2025, is now in force on a mandatory basis. Any divergence between stated green objectives and the actual deployment of proceeds is treated as greenwashing under the capital-markets framework.

### **(B) Advertising Standards Council of India (ASCI): The Substantiation Gatekeeper**

On February 15, 2024, ASCI issued its *Guidelines for Advertisements Making Environmental/Green Claims*, codifying global best practice from the UK CMA Green Claims Code, the US FTC Green Guides, and the EU Green Claims Directive proposal. Absolute claims (“eco-friendly”, “sustainable”, “planet-positive”) must be substantiated across the full life cycle; aspirational claims must carry a verifiable plan with interim milestones; comparative claims need a clear comparator and methodology; and certifications must come from independent, credible bodies (Clause 6).

ASCI is a self-regulatory body without the power to impose monetary penalties. Its Consumer Complaints Council issues findings, refers misleading advertisements to the Ministry of Information and Broadcasting, and, critically, produces the factual foundation on which subsequent CCPA proceedings frequently rely. In practice, an ASCI finding is often the prelude to a CCPA proceeding.

### **(C) CCPA: The Statutory Enforcer**

The Consumer Protection Act, 2019 supplies statutory teeth. Section 2(28) defines “misleading advertisement” broadly to capture any false description, false guarantee, deceptive representation, or deliberate concealment of material information. Section 10 establishes the CCPA. Section 21 empowers it to investigate, issue directions, impose penalties (Rs. 10 lakhs for the first offence and Rs. 50 lakhs for repeat), and prohibit endorsers for up to one year, extendable to three years on repeat violations. Section 89 carries criminal exposure of up to two years’ imprisonment for the manufacturer or service provider causing a false advertisement.

The cornerstone instrument is the *Guidelines for Prevention and Regulation of Greenwashing or Misleading Environmental Claims, 2024*, issued by the CCPA on October 15, 2024, under Section 18 CPA. They mandate substantiation through independent studies or third-party certifications; prohibit absolute claims unless the full life cycle supports them; require comparators in comparative claims; require forward-looking commitments to be supported by actionable, time-bound plans; and extend liability to endorsers as well as primary advertisers. A celebrity or influencer who lends their face to a green claim without verifying its accuracy is personally exposed alongside the advertiser. The compliance perimeter for the Company Secretary therefore extends beyond the company itself, into endorser contracts that must carry substantiation warranties from the brand side and due-diligence attestations from the endorser side.

## **IV. The Three-Lens: Concurrent Exposure & Cumulative Liability**

Greenwashing liability operated through the three Lens regulatory framework is best understood through a hypothetical case: a listed FMCG company launches a packaging campaign claiming “100% recyclable” across digital, television, and in-store channels, while its BRSR filing discloses only a 60% recyclable share. The company is simultaneously exposed on three fronts. Under SEBI’s regime, the inconsistency between campaign and BRSR is material and triggers Regulation 30 disclosure obligations. Under ASCI’s regime, the absolute claim is unsubstantiated under the 2024 Guidelines. Under the Consumer Protection Act regime, the CCPA can initiate *Suo motu* investigation and impose penalties starting from Rs. 10 lakhs, alongside endorser liability for the brand ambassador. The three regimes are not mutually exclusive, they operate concurrently on the same facts, and coordinated cross- functional governance is the only practical defense. Justifying one regulation will be counterproductive in an argument of another creating a cumulative liability.

## V. Director and Officer Personal Liability

A frequently overlooked dimension is the personal exposure of directors and key managerial personnel. Under Regulation 30(5) of the LODR, the authorized KMPs determine materiality, and the determination follows them personally. Under Section 166(3) of the Companies Act, 2013, directors must exercise their duties with reasonable care, skill and diligence; tribunals interpreting that standard now look at what the director knew, what was asked, and what was recorded in the board papers. Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, read with Section 12A of the SEBI Act, 1992, catches misleading statements that induce investment, including ESG misstatements in offer documents and, where they materially affect trading decisions, in BRSR Core disclosures. The practical implication for the governance architecture is that it must begin with documented board minutes recording the substantiation basis on which targets and claims are approved.

## VI. The Company Secretary's Toolkit: From Principles to Practice

The Company Secretarial function is the only function in a listed entity that carries an overall oversight across investor relations, corporate communications and board reporting. That is why the seven-tool toolkit below is built for direct adoption by the office of the Company Secretary. Each tool specifies the owner, the frequency, and the deliverable format. Each is intended to be tabled at the Audit Committee or a dedicated Risk/ESG Committee, adopted by resolution, and kept regular oversight.

### Tool 1: The Claims Substantiation Register (CSR)

Every public-facing environmental claim made by the company is logged in a single repository, with the claim text, the channel, the substantiation reference, the BRSR Core line item, the named owners, the risk rating, and the review status all recorded. The Register is what survives a regulatory enquiry. Maintained by the CS's office in coordination with the sustainability function. Reviewed quarterly by the Audit Committee. The fields are set out in the table below.

Field	Description / Required Content
Claim ID	Unique reference; cross-linked to BRSR Core line item
Claim text (verbatim)	Exact wording used in the advertisement, label, investor deck, or social-media post
Claim category	Absolute / qualified / comparative / forward-looking (per ASCI 2024 Guidelines taxonomy)
Channel(s)	Print, TV, OTT, social media, on-pack, investor presentation, annual report
Effective from / to	Live dates
Substantiation reference	LCA report, third-party certification number, assurance letter, BRSR Core data point
Owner (business)	Named brand or sustainability lead
Owner (CS)	CS-office reviewer who cleared the claim
BRSR Core cross-reference	Principle and KPI line item (e.g., P6 / GHG Scope 1)
DPDP / data flow	If personal data is involved in supporting analytics
Last reviewed	Date of most recent quarterly review

Risk rating	Low / Medium / High based on absoluteness and audience reach
Status	Active / Withdrawn / Under review / Modified

### Tool 2: The Pre-Publication Clearance Form

Every external environmental claim runs through a three-function clearance: Marketing for brand consistency, Sustainability/ESG for technical accuracy, and Legal/CS for regulatory exposure. The clearance is captured on a single one-page form recording the claim text, the channel, the proposed live date, the substantiation reference (linked back to the Register), the three sign-offs with timestamps, and any conditions or qualifiers added during clearance. The completed form sits in the audit trail, ready to support any subsequent ASCI or CCPA response.

### Tool 3: The Target-Claim Approval Memo

Forward-looking targets (“net-zero by 2045”, “100 percent recycled packaging by 2030”) carry higher legal risk than descriptive claims. Before any such target is publicly communicated, the CS tables an approval memo containing:

- (i) the proposed target and the public-communication channel,
- (ii) the implementation plan with 3, 5 and 10 year milestones,
- (iii) the named accountable executive,
- (iv) the budget and capital-expenditure implications,
- (v) the assurance basis (third-party LCA, certification, or modelling),
- (vi) a contingency disclosure plan in case the target is missed or revised, and
- (vii) the recommended Regulation 30 trigger thresholds. The board resolution recording approval of this memo is the single most important document for the Section 166(3) due-diligence defense.

### Tool 4: The Endorser Contract Schedule

Standard schedule added to every endorser engagement contract, containing five clauses:

- (a) brand warranty of the factual basis of every green claim the endorser is asked to make,
- (b) endorser warranty of due diligence (review of the substantiation summary, absence of contrary knowledge),
- (c) indemnity from endorser to brand for false representations made beyond approved script,
- (d) claw back of fees on a CCPA endorser-prohibition order and
- (e) Entitling the brand to require immediate withdrawal of any communication on regulatory notice. The Schedule is reviewed annually against CCPA Guidelines updates.

### Tool 5: The Quarterly BRSR–Marketing Reconciliation Worksheet

The worksheet lists each public-marketing claim, the BRSR Core line item it maps to, the variance, and the proposed action: marketing correction, BRSR narrative update, or both. A variance above the materiality threshold escalates to a Regulation 30 disclosure review. The reconciliation is a board-reportable metric.

### Tool 6: The Greenwashing Incident Response Decision Tree

A pre-defined protocol for a greenwashing complaint or notice. The decision tree starts with the channel of receipt (ASCI complaint, CCPA notice, SEBI inquiry, media query) and routes to:

- (i) Factual review by Sustainability,
- (ii) Legal-exposure assessment by Legal/CS,
- (iii) Decision matrix on voluntary withdrawal versus defense,
- (iv) Regulation 30 materiality assessment,
- (v) External communication plan,
- (vi) Board notification thresholds.

Timelines for the response: ASCI response timelines are 5–10 working days; CCPA expects responsive engagement; LODR Regulation 30 requires disclosure within 30 minutes to 24 hours. The protocol is circulated annually through a notice.

### **Tool 7: The Annual Training and Culture Calendar**

Mandatory annual training to directors and senior management (governance and personal liability), marketing teams (substantiation discipline and ASCI Guidelines), sustainability teams (BRSR Core methodology), investor relations (ESG disclosure consistency), and endorsers (where contractually retained). Training completion is itself a board-reportable metric. Each year's calendar is updated to reflect SEBI, ASCI, and CCPA regulatory developments. Create "don't overclaim" as a corporate value in the training.

## **VII. Conclusion**

Greenwashing in India has crossed the reputational column to a regulatory one. SEBI now demands assured ESG disclosures; ASCI polices environmental advertising claims through a sharpened code; the CCPA enforces statutory penalties under the Consumer Protection Act. A company that overclaims today does not face one problem but three on the same set of facts: an assurance qualification on its BRSR Core, an upheld complaint at ASCI, and a penalty order from the CCPA, with personal liability flowing to its officers under Section 166(3) of the Companies Act and the SEBI framework. The Company Secretary, holding the unique vantage across legal, board and operational domains, is the natural architect of the cross-functional defense. The seven-tool toolkit set out above is offered not as guidance but as deployable infrastructure: one Register, one Form, one Memo, one Schedule, one Worksheet, one Decision Tree and one Calendar. Together, they form the audit trail that converts the aspirational language of corporate sustainability into the documented language of legal substantiation.

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# From Crisis to Confidence: How ESG and Stewardship Are Reshaping Long-Term Capital

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In recent years, the global economy has faced a series of overlapping crises – from the COVID19 pandemic and prolonged lockdowns to heightened geopolitical tensions and conflict-driven disruptions in gas and oil markets linked to the U.S.–Iran situation. These shocks have strained supply chains, increased energy price volatility, and tested the resilience of businesses worldwide. In this challenging environment, ESG compliant companies have clearly stood apart. By diversifying energy sources, reducing dependence on fossil fuels, prioritising employee wellbeing, and embedding strong governance frameworks, these organizations have been better insulated from severe disruptions. Their commitment to sustainability and social responsibility has not only lowered risk exposure but also strengthened stakeholder confidence.

ESG isn't just about “doing good” – it's about building resilience, trust, and adaptability when the world is unstable. Today's investors are not only looking for companies that can endure crises; they are increasingly focused on those that can convert disruption into opportunity. ESG-aligned organizations distinguish themselves through their ability to anticipate and manage emerging risks. When gas and oil supply disruptions push up costs, these companies rely on renewable energy investments and efficiency measures to protect margins. When pandemics or geopolitical uncertainty disrupt workforces, strong social policies help maintain engagement and productivity. And when volatility tests governance systems, transparency and accountability reinforce market trust. For investors, ESG compliance is therefore not just a defensive safeguard – it is a forward-looking strategy that drives sustainable growth, attracts long-term institutional capital, and positions companies at the forefront of global transformation.

Unlike traditional organizations that may be forced into reactive measures – cutting jobs, scaling back operations, or reverting to unsustainable practices – ESG leaders benefit from investor loyalty that keeps their business continuity intact. The result is that crises do not derail their long-term strategies; instead, they accelerate their relevance. Investors recognize that these companies are not only surviving but positioning themselves for future growth, making ESG compliance a magnet for capital in uncertain times. In essence, continuous investor support ensures that ESG compliant companies remain resilient, competitive, and largely unaffected by the turbulence that destabilizes less prepared peers.

## **ESG and Stewardship: Shaping LongTerm, Sustainable Capital**

The term “ESG” was formally introduced in 2004 through the United Nations Global Compact report “Who Cares Wins – Connecting Financial Markets to a Changing World”<sup>1</sup>. This landmark report states that ultimately, successful investment depends on a vibrant economy, which depends on a healthy civil society, which is ultimately dependent on a sustainable planet. In the long-term, therefore, investment markets have a clear self-interest in contributing to better management of environmental and social impacts in a way that contributes to the sustainable development of

1. <https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf>

global society. Better inclusion of environmental, social and corporate governance (ESG) factors in investment decisions will ultimately contribute to more stable and predictable markets, which is in the interest of all market actors.

In 2006, the Principles for Responsible Investment (PRI) were introduced, offering investors a global framework for implementing ESG principles, thereby enabling them to systematically incorporate ESG considerations into their investment processes.

Over the past decade, the investor landscape has undergone significant transformation. Today, investment decisions are no longer based solely on financial performance; instead, non-financial considerations – particularly those related to Environmental, Social, and Governance (ESG) factors – have become increasingly important. According to the Principles for Responsible Investment (PRI), stewardship is defined as “the use of investor rights and influence to protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social, and environmental assets on which their interests depend.”<sup>2</sup> Integrating ESG considerations into a company’s strategy positions the organization as a preferred choice for investment within the investor community.

By reinforcing stewardship practices, companies are more likely to attract stable, long-term capital – often referred to as “patient capital” – which supports sustainable business growth. Moreover, the three pillars of ESG serve as essential tools for companies to proactively identify and assess potential long-term risks that could threaten their sustainability. Therefore, ESG integration is not merely optional; it acts as a catalyst for effective risk management, helping organizations ensure resilience and long-term success in an evolving market environment.

### **The Roadblocks Are Real – But So Are the Rewards**

While ESG integration offers substantial long-term benefits, many organizations face practical challenges in embedding these principles into their business strategies. Common obstacles include limited engagement from top management and key stakeholders, inadequate expertise or resources, and the absence of standardised reporting frameworks. In addition, resistance to change within organizational culture, short-term business pressures, the cost of implementation, and difficulties in measuring and quantifying ESG impacts can slow progress.

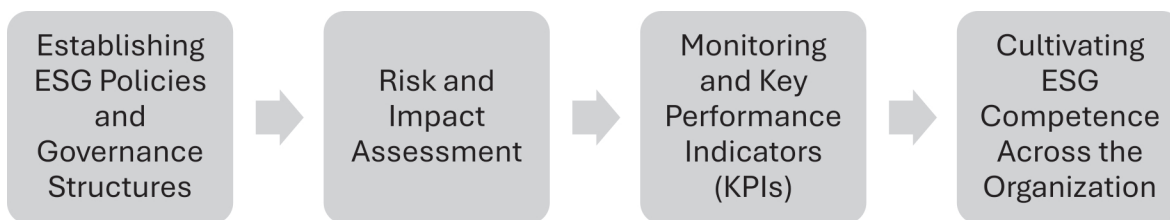
Navigating evolving regulatory requirements and ensuring the accuracy, consistency, and reliability of ESG data further add to the complexity. As disclosure expectations increase across jurisdictions and reporting standards continue to evolve, companies often struggle to keep pace while maintaining alignment across functions and geographies. These challenges can result in fragmented approaches to ESG implementation if not addressed through strong governance and coordination.

Despite these roadblocks, organizations that successfully integrate ESG principles stand to gain significant advantages. These include enhanced reputation and credibility, improved operational efficiencies, stronger relationships with stakeholders, and greater access to stable, long-term capital. As highlighted throughout this article, ESG integration ultimately supports more resilient business models and positions organizations for sustainable growth in an increasingly uncertain and competitive environment.

### **Building ESG Into the DNA of an Organization**

Companies can adopt a systematic process, as outlined here, to effectively integrate ESG into their business strategy:

2. <https://www.unpri.org/responsible-investment/about-stewardship>



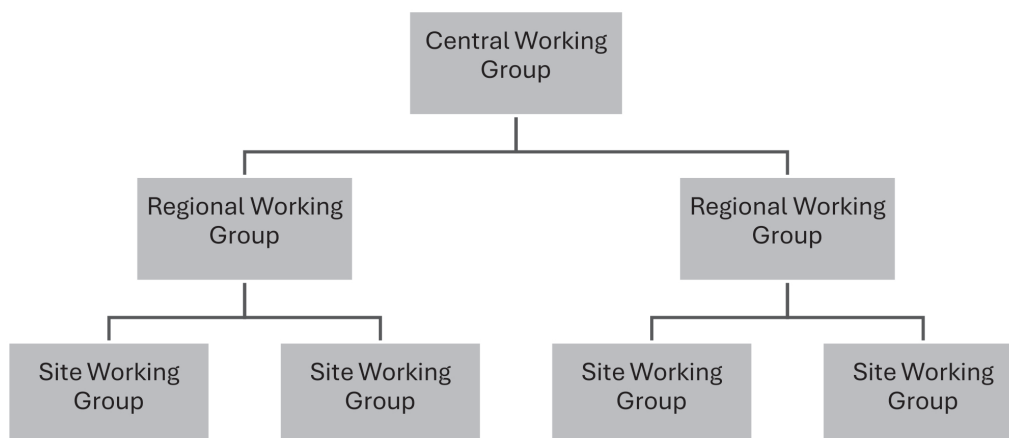
**Establishing ESG Policies and Governance Structures**

To successfully embed Environmental, Social, and Governance (ESG) principles into business operations, organizations should establish clear policies and a strong governance structure.

There are several approaches to ensure effective ESG oversight. One option is to create a dedicated ESG or Sustainability Subcommittee at the board level, allowing senior leadership to focus specifically on these priorities.

Alternatively, organizations may assign responsibility for ESG matters to an existing board-level committee, such as the Risk Management Committee, leveraging its expertise for focused oversight and accountability.

A third approach is to form a designated ESG team based at the company's headquarters. This team would directly report to the Risk Management Committee, ensuring that ESG-related risks and initiatives are managed centrally and effectively, while maintaining a direct line of communication with board-level oversight.



This approach can further be enhanced by forming a Central Working Group at headquarters. This central body is further supported by Regional Working Groups and Project or Site-level teams, enabling the company to address ESG matters comprehensively across all functions and geographies. Such a structure allows for tailored strategies that are responsive to local requirements while maintaining alignment with the overarching ESG objectives of the organization.

To ensure the effectiveness of this ESG governance structure, it is important that these groups include representatives from every department and business unit. This broad participation guarantees that ESG strategies are communicated and implemented at all levels. Additionally, regular meetings provide opportunities for reviewing progress, addressing emerging challenges, and refining action plans as necessary. Through this collaborative and structured approach, organizations can sustain momentum and continuously enhance their ESG performance.

**Risk and Impact Assessment**

Organizations should conduct a materiality assessment to pinpoint the most significant ESG issues

relevant to their business. The Global Reporting Initiative (GRI) provides a structured framework for identifying these material topics, helping companies focus their efforts where they matter most.

Once key issues are identified, the board should ensure thorough baseline studies are conducted and set clear, measurable goals divided into short-term, medium-term, and long-term objectives. These targets should be documented within an ESG Action Plan, which may include both quantitative and qualitative benchmarks to guide progress.

Based on the materiality assessment, relevant Key Performance Indicators (KPIs) can be established to track progress and measure the effectiveness of ESG initiatives over a period of time.

### **Monitoring and Key Performance Indicators (KPIs)**

Once KPIs are defined, they should be monitored at least on a quarterly basis. This means that organizations should schedule dedicated reviews every three months to evaluate progress against their ESG targets. During these reviews, data and results are analyzed to determine whether the company is meeting its established benchmarks and objectives. If any areas are found to be lagging or underperforming, corrective actions – such as revising strategies, reallocating resources, or implementing new initiatives – can be identified and put into place. These regular reviews not only help maintain momentum but also ensure that the ESG Action Plan remains relevant and effective, enabling organizations to adapt quickly to emerging challenges and opportunities for continuous improvement.

Some organizations take their commitment further by linking ESG-related KPIs to employee performance evaluations. In practice, this involves integrating specific ESG goals – such as reducing energy usage, improving workplace diversity, or increasing community engagement – into the criteria used to assess employee performance. Employees may be incentivized through bonuses, promotions, or recognition programs when they help the organization achieve or exceed its ESG targets. By making ESG a shared responsibility and tying it directly to individual and team outcomes, organizations drive greater participation and commitment to their ESG goals.

### **Cultivating ESG Competence Across the Organization**

This plays a pivotal role in ensuring the successful integration of ESG principles throughout an organization. By investing in targeted training programs, workshops, and continuous education, organizations empower employees at all levels to understand ESG concepts, recognize their relevance to daily operations, and actively contribute to the achievement of sustainability goals. This foundational knowledge enables staff to identify potential risks and opportunities related to environmental, social, and governance issues, fostering a culture of accountability and proactive engagement.

Moreover, capacity building reduces structural barriers between departments and business units, fostering cross-functional collaboration and the exchange of best practices. When employees are equipped with the skills and tools necessary to embed ESG considerations into their decision-making processes, it accelerates the adoption of ESG strategies and enhances overall organizational performance.

### **Navigating the Reporting Landscape**

One of the most practical challenges facing ESG-conscious organizations is choosing how to report. The landscape of reporting frameworks is crowded, and each framework serves a distinct purpose.

### **Global Reporting Initiative (GRI)**

The GRI is among the most widely recognised frameworks for sustainability reporting worldwide. Its

Standards provide a comprehensive set of universal, sectorspecific, and topicspecific disclosures that guide organizations in reporting their sustainability impacts. The GRI Standards are designed to be applicable to organizations of all sizes and types – whether public or private – enabling them to consistently and credibly assess and disclose their impacts on the economy, the environment, and society. By doing so, GRI enhances transparency and accountability, while highlighting an organization’s contribution to sustainable development. Beyond corporates, the GRI Standards are also highly relevant to a broad range of stakeholders, including investors, policymakers, capital markets, and civil society.

### **Sustainability Accounting Standards Board (SASB)**

The SASB Standards focus on sustainability factors that are financially material and are tailored to specific industry sectors. They emphasise the link between sustainability performance and financial outcomes, making them particularly effective for identifying and managing ESG-related risks in investment decision-making. Following the merger of the Sustainability Accounting Standards Board (SASB) and the International Integrated Reporting Council (IIRC) into the Value Reporting Foundation, and its subsequent consolidation into the IFRS Foundation, the International Sustainability Standards Board (ISSB) is now responsible for maintaining, updating, and further developing the SASB Standards.

### **Task Force on Climate-related Financial Disclosures (TCFD)**

The TCFD has developed a set of climate-related financial disclosure recommendations aimed at improving the quality and consistency of information available to markets. These disclosures support greater transparency and enable more informed capital allocation decisions by investors and other stakeholders. The recommendations are organised around four core thematic pillars – governance, strategy, risk management, and metrics and targets – which reflect the fundamental ways in which organizations assess, manage, and disclose climate-related risks and opportunities

### **Carbon Disclosure Project (CDP)**

The CDP provides a globally recognised platform for organizations to disclose information on key environmental issues such as climate change, water security, and deforestation. Through its structured disclosure framework and scoring methodology, CDP enables companies to benchmark their environmental performance, demonstrate transparency, and showcase leadership in addressing critical environmental challenges.

CDP emphasises that robust environmental disclosure is a vital tool for building resilient business models, as it helps uncover risks and identify untapped opportunities for sustainable growth. Comprehensive and high-quality data offers a clear picture of progress, empowering organizations to develop informed action plans and make decisions that contribute positively to the planet.

### **United Nations Global Compact (UNGC)**

The UNGC promotes responsible business practices by encouraging organizations to align their operations with ten core principles covering human rights, labour standards, environmental protection, and anti-corruption. Participating companies are expected to report on their commitment to these principles and on the progress made in advancing broader sustainability objectives, including contributions to the United Nations Sustainable Development Goals (SDGs).

### **International Sustainability Standards Board (ISSB)**

The Trustees of the IFRS Foundation formed the International Sustainability Standards Board (ISSB)

for developing – in the public interest – standards that will result in a high-quality, comprehensive global baseline of sustainability disclosures focused on the needs of investors and the financial markets.

### Corporate Sustainability Reporting Directive (CSRD)

Mandated by the European Union, the Corporate Sustainability Reporting Directive (CSRD) significantly strengthens the scope, consistency, and quality of corporate sustainability reporting across the EU. The directive requires companies to disclose detailed, decision-useful sustainability information as part of their mainstream annual reports, thereby embedding ESG considerations into corporate reporting and governance. CSRD aligns disclosures with globally recognised frameworks and standards, such as GRI and SASB, ensuring greater comparability, reliability, and transparency for investors and other stakeholders.

#### ESG Framework Landscape and Mapping

Framework	What it is (purpose)	Primary audience	Primary focus / lens	Output / disclosures typically include	Best suited for
GRI (Global Reporting Initiative)	Global sustainability reporting standards to disclose an organization's impacts on economy, environment, and people	Broad stakeholders (investors, regulators, employees, communities, civil society)	Impact materiality ("insideout" impact)	Policies, targets, performance metrics, impact narratives, topic-specific disclosures	Companies seeking comprehensive ESG reporting and stakeholder transparency
SASB (Sustainability Accounting Standards Board)	Industry-specific standards for financially material ESG topics	Investors, lenders, capital markets	Financial materiality ("outsidein" enterprise value)	Comparable metrics tied to financial outcomes and sector risks	Investor-focused ESG disclosures; risk and performance comparability
TCFD (Task Force on Climate-related Financial Disclosures)	Framework for consistent climate-related financial risk disclosure	Investors, regulators, financial markets	Climate risk and opportunity disclosure	4 pillars: Governance, Strategy, Risk Management, Metrics & Targets	Companies strengthening climate risk reporting and investor confidence
CDP (Carbon Disclosure Project)	Global disclosure platform and scoring system for environmental performance	Investors, customers, stakeholders	Environmental performance, benchmarking & disclosure quality	Questionnaires, emissions/targets, risk assessments, transition plans; CDP scores	Organizations seeking environmental benchmarking and market credibility

Framework	What it is (purpose)	Primary audience	Primary focus / lens	Output / disclosures typically include	Best suited for
UNGC (UN Global Compact)	Voluntary initiative to align business with 10 principles (human rights, labour, environment, anti-corruption)	Broad stakeholders; UN ecosystem; customers and partners	Principles-based responsibility & ethical conduct	"Communication on Progress" style disclosures; SDG alignment narrative	Companies formalising responsible business commitments and SDG linkage
ISSB (International Sustainability Standards Board)	Global baseline standards for investor-focused sustainability disclosures	Investors and capital markets	Enterprise value / financial materiality	Standardised sustainability risk/opportunity disclosure, connected to financial reporting	Companies aiming for global investor-grade disclosure and consistency
CSRD (Corporate Sustainability Reporting Directive – EU)	EU regulation mandating detailed sustainability reporting and assurance	Regulators, investors, stakeholders	Double materiality (impact + financial)	Detailed sustainability statements in annual reports, standardised metrics, governance and due diligence disclosures	Companies with EU presence / EU reporting obligations

The selection of ESG reporting frameworks should be driven by strategic alignment, stakeholder expectations, regulatory obligations, and organizational readiness. No single framework meets all objectives; therefore, a complementary, multi-framework approach delivers the most robust, decision-useful, and future-ready ESG reporting.

Best-Practice ESG Framework Pairings

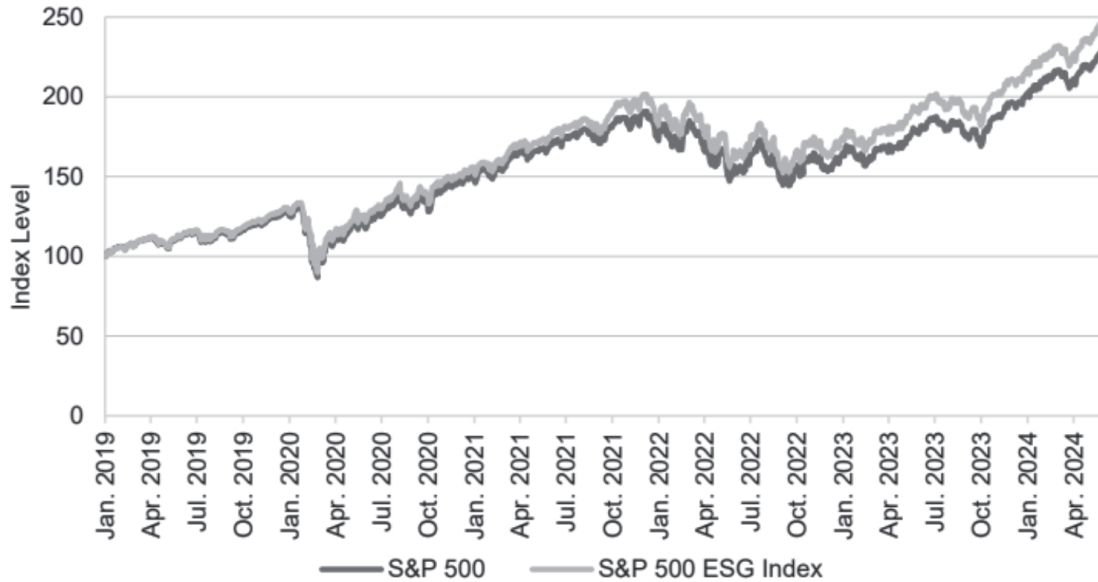
Organizational Objective	Recommended Framework Set
Investor confidence & capital markets	ISSB + SASB + TCFD
Broad sustainability & impact reporting	GRI + UNGC
Climate leadership & benchmarking	TCFD + CDP
EU regulatory compliance	CSRD (mapped to GRI & ISSB)
Integrated value creation narrative	ISSB + Integrated Reporting

**The Performance Case: ESG and Financial Returns**

The investment landscape has witnessed a significant shift toward sustainability in recent years, with growing emphasis on ESG considerations without sacrificing performance. At global level, S&P 500 ESG Index is a broad-based, market-capitalization-weighted index designed to measure

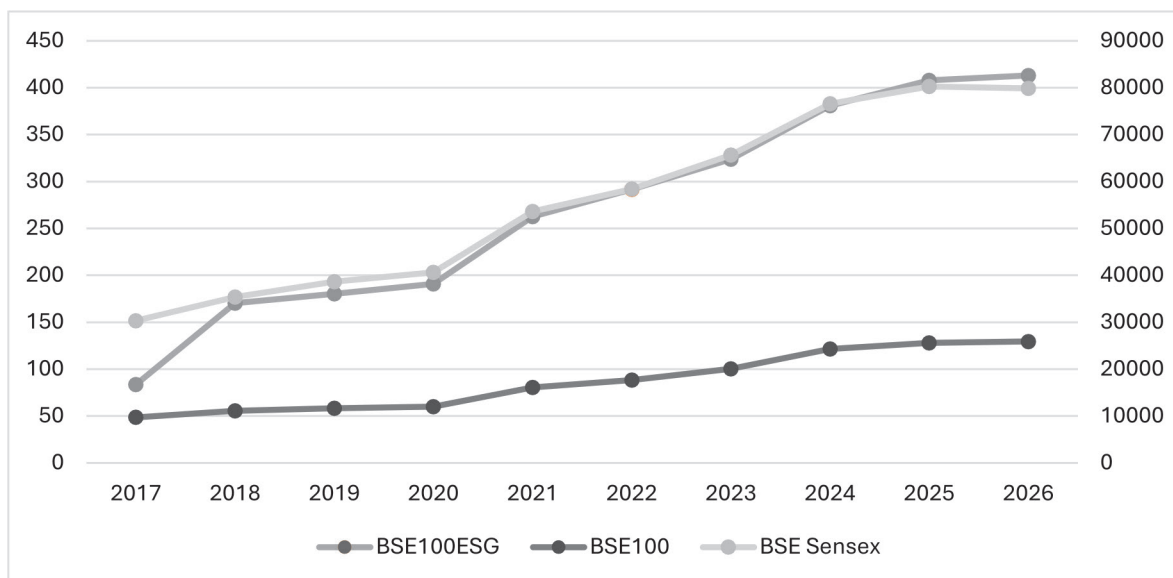
the performance of securities from the S&P 500 that meet specific sustainability criteria. This has emerged as a remarkable benchmark, improving ESG scores while also performing similarly to or even better than the S&P 500 since its launch, more than five years ago.<sup>3</sup>

**4Performance of the S&P 500 ESG Index and the S&P 500**



Whereas in India there are two prominent indices i.e. Nifty100 ESG Index and BSE 100 ESG Index. The Nifty100 ESG Index is designed to reflect the performance of companies within Nifty 100 index based on Environmental, Social and Governance (ESG) risk score. The BSE 100 ESG Index is designed to measure securities that meet sustainability investing criteria while maintaining a risk and performance profile similar to the BSE 100.

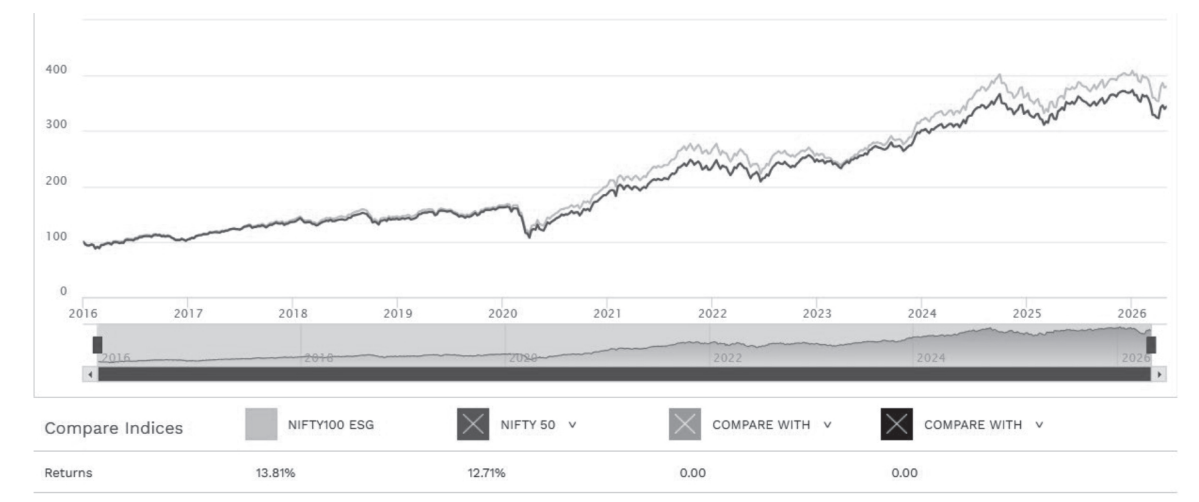
**Performance of BSE 100 ESG Index Vs BSE 100 Vs BSE Sensex**



3. <https://www.spglobal.com/spdji/en/documents/research/research-a-systematic-approach-for-identifying-companies-with-economic-moats.pdf>

4. <https://www.spglobal.com/spdji/en/research/article/charting-new-frontiers-the-sp-500-esg-index-s-outperformance-of-the-sp-500/>

### 5 Performance of Nifty100 ESG Index and Nifty 50 performance



As demonstrated by the comparative performance of major ESG indices, such as the S&P 500 ESG Index, Nifty100 ESG Index, and BSE 100 ESG Index, firms with robust ESG integration consistently deliver competitive and often superior, financial returns relative to their peers. Ultimately, embedding ESG considerations at the heart of business operations creates a durable foundation for long-term value creation and a measurable advantage in an evolving investment landscape.

To conclude, the momentum behind ESG-driven investment strategies has clearly transformed the financial landscape, shifting sustainability from an optional add-on to a central pillar of long-term business success. The evidence presented by the resilient performance of global and regional ESG indices – such as the S&P 500 ESG Index, Nifty100 ESG Index, and BSE 100 ESG Index – demonstrates that a meaningful commitment to environmental, social, and governance considerations does not come at the expense of returns. In fact, it increasingly appears to provide a competitive edge. As a result, companies that weave ESG into the fabric of their core operations are not only responding to heightened expectations for transparency and accountability, but also positioning themselves to better manage risks, unlock new opportunities, and sustain value for both investors and society. In my view, embracing ESG principles is more than a responsible business choice; it is a forward-looking strategy that equips organizations to thrive in a rapidly evolving world, delivering resilient growth in a landscape where values and value creation are inextricably linked.

5. <https://www.niftyindices.com/market-data/advanced-charting?lname=%20NIFTY100%20ESG>

# Strengthening Stewardship through ESG Integration: The Evolving Role of Company Secretaries in Sustainable Corporate Governance

**CS Ragini Ravichandran**

Practicing Company Secretary

The role of a Company Secretary has changed quietly but significantly in recent years. Earlier, the profession was primarily associated with statutory compliance, maintenance of registers and records, drafting of minutes, filing of forms and ensuring that board and shareholder procedures were properly followed. However, the expectations attached to the profession have widened considerably. Today, a Company Secretary is increasingly seen not only as a compliance professional, but also as a governance enabler, a board adviser, a coordinator across business functions and a professional who helps institutions respond to changing regulatory and stakeholder expectations.

One area where this shift is becoming clearly visible is ESG, namely Environmental, Social and Governance. In the Indian context, ESG is no longer treated as a peripheral or optional subject to be discussed only in investor presentations or sustainability brochures. It is increasingly becoming a part of mainstream corporate governance. Investors, regulators, lenders, customers, employees and the community at large are paying closer attention to the manner in which companies conduct their affairs and not merely to the profits reported at the end of the year. A Company may show strong financial performance, but concerns relating to pollution, employee welfare, unethical business conduct, weak internal controls or poor board oversight can still adversely affect its credibility and long-term value.

As a Practicing Company Secretary, this changing landscape is visible in day-to-day professional work. Clients are no longer concerned about return filing or entering of minutes in the minutes book within the prescribed period. They are also asking broader questions. How should ESG responsibility be placed within the organisation? What kind of reporting system should be created? How should non-financial data be collected and reviewed? How can board discussions on sustainability and responsibility be properly structured? How can the Company prepare itself for increasing disclosure expectations? These questions naturally bring the Company Secretary into a wider governance role.

ESG performance is shaped by business decisions, operational practices, human resource culture, supply chain standards and management commitment. The Company Secretary plays a distinct and meaningful role in ensuring that the governance framework supporting ESG is properly designed, documented, monitored and reported. In that sense, the profession has a natural and significant connection with ESG integration.

Having said this, now in this article I attempt to discuss ESG in simple terms and examine how Company Secretaries can contribute to strengthening stewardship through ESG integration. The discussion is based not only on legal and governance principles, but also on practical realities commonly seen in Indian Companies.

## Understanding ESG in Practical Terms

ESG stands for Environmental, Social and Governance. At a basic level, it is a framework for evaluating how responsibly a Company operates. Traditional business analysis focused mainly on financial indicators such as turnover, profit, cash flow, earnings per share and market capitalization. While these indicators remain important, they do not fully capture the broader impact of corporate activity. ESG expands the lens by looking at how business decisions affect the environment, employees, communities and the overall governance system of the Company.

### Environmental

The environmental component concerns the impact of a Company on natural resources and the broader ecological system. This may include energy consumption, emissions, waste management, use of water, pollution control, recycling practices, sustainable sourcing and climate-related risk management. A manufacturing Company may be evaluated based on fuel efficiency, emissions and waste disposal practices. A service company may be assessed on energy efficiency, paper usage and its sustainability initiatives. The underlying question is simple : ***Is the business operating in a manner that is environmentally responsible and sustainable over the long term?***

### Social

The social component focuses on people and relationships. It includes employee welfare, health and safety, labour practices, diversity and inclusion, customer responsibility, community engagement, human rights and CSR-related initiatives. This aspect recognises that the quality of a Company's relationship with its employees, customers, suppliers and surrounding communities affects not only reputation, but also long-term stability. A Company with poor labour standards, unsafe working conditions or weak customer grievance mechanisms may face significant legal and reputational consequences.

### Governance

The governance component concerns the manner in which the Company is directed and controlled. This includes board structure, independence of directors, ethical conduct, internal controls, transparency, accountability, risk oversight, disclosure practices, anti-corruption measures and compliance culture. Governance is the dimension most closely connected with the traditional domain of the Company Secretary. In fact, for many Indian Companies, ESG discussions often begin from the governance pillar because governance systems form the foundation on which environmental and social reporting can meaningfully stand.

In simple words, ESG asks three broad questions: ***Is the Company environmentally responsible? Does it deal fairly and responsibly with people? Is it governed in a transparent, ethical and accountable manner?*** When these questions are answered properly, ESG becomes less of a slogan and more of a structured governance approach.

### Why ESG Has Become Important

The increasing importance of ESG is not accidental. It has developed due to a combination of regulatory pressure, investor expectations, financing trends, stakeholder awareness and global business practices. Over time, the conversation has moved from voluntary good practice to structured disclosure and accountability.

- First, investors are increasingly interested in the sustainability profile of Companies. Large institutional investors, domestic funds and global investors are not looking only at short-term profit. They also want to know whether the business model is resilient, whether governance

systems are trustworthy, whether social controversies are likely and whether environmental exposure may create future liabilities. ESG performance is often considered as a proxy for long-term business discipline.

- Second, regulators have created formal disclosure expectations. In India, the Securities and Exchange Board of India (SEBI) has introduced the Business Responsibility and Sustainability Reporting framework, commonly known as BRSR, for the top listed entities. This has moved ESG from broad discussion into structured, reportable and reviewable information.
- Third, lenders and financial institutions are increasingly taking ESG factors into account in risk evaluation. This is especially relevant in sectors involving significant environmental exposure, large employee bases or public-facing operations. Weak ESG practices may indicate potential disputes, penalties, operational disruption or reputational risk.
- Fourth, public awareness has increased. Information now travels quickly through digital platforms. Concerns relating to pollution, labour practices, workplace safety, data privacy or board misconduct can affect public confidence far more rapidly than before. A Company may comply technically with financial reporting norms and yet suffer major damage if its ESG conduct is perceived to be poor.

These developments have made ESG relevant not only for large listed entities but also for unlisted Public Companies, Private Companies seeking investment, subsidiaries of multinational groups and businesses operating in regulated sectors. Even where formal reporting is not yet mandatory, the governance direction is clear.

### **Regulatory Framework: BRSR and the Indian Position**

In India, ESG reporting has acquired formal shape through SEBI's BRSR framework. The purpose of BRSR is to standardise sustainability disclosures, improve consistency, increase comparability across companies and bring greater discipline to non-financial reporting.

For listed entities falling within the prescribed scope, BRSR requires disclosure of information on various ESG parameters aligned with the National Guidelines on Responsible Business Conduct. These disclosures include policy commitments, governance structures, employee-related information, environmental performance, community-related data, ethics mechanisms and other sustainability indicators. Over time, SEBI has also moved towards BRSR Core and value chain related disclosures, thereby indicating that the reporting framework is likely to deepen further.

From a practical perspective, BRSR has changed the internal functioning of many companies in at least five ways as stipulated hereunder:

- First, Companies must identify non-financial data points that were previously not collected in a structured manner.
- Second, internal responsibility for such data must be clearly assigned across departments such as human resources, operations, administration, finance, legal and compliance.
- Third, internal validation and consistency checks become necessary because sustainability disclosures cannot be treated casually once they form part of a regulated reporting framework.
- Fourth, the board and senior management need to be briefed on the significance of such disclosures and their implications.
- Fifth, reporting now requires a more mature governance system in which documentation, accountability and review are built into ordinary business functioning.

This is precisely the space where the Company Secretary's role becomes particularly relevant. While the Company Secretary may not generate operational ESG performance, the professional is often central to ensuring that the reporting structure and governance support around ESG are properly established.

## **The Expanding Role of the Company Secretary**

The Company Secretary has always occupied an important place in corporate governance. The profession is built on discipline, procedural clarity, legal understanding, documentation standards and ethical responsibility. ESG integration does not alter this core identity, rather, it expands its application.

### **1. Governance Structuring**

One of the first contributions of the Company Secretary in ESG integration is governance structuring. Many Companies begin ESG work without a clear internal framework. Responsibility may be diffused, ownership may be unclear and reporting lines may be uncertain. The Company Secretary can help create order by identifying where ESG oversight should sit, whether through the board, a committee, senior management reporting lines or cross-functional working groups.

This contribution appears simple, but in practice it is highly valuable. Unless the organisation knows who is responsible for what, ESG remains only a discussion point and does not become an operating system.

### **2. Board Process Support**

The board is increasingly expected to engage with sustainability matters. However, meaningful board engagement does not happen automatically. Matters must be placed before the board in a structured manner, relevant information must be circulated in advance, discussions must be properly recorded and follow-up actions must be tracked. These are functions that naturally align with the strengths of a Company Secretary.

A Company Secretary can support the board by ensuring that ESG-related matters are appropriately included in the agenda, explanatory notes are prepared in a clear manner, management submissions are properly documented and deliberations are captured accurately in the minutes. In this way, ESG moves from abstract concern to actual governance record.

### **3. Disclosure and Reporting Coordination**

A large part of ESG implementation in Indian Companies currently revolves around disclosures. Collection of data, collation of information, review of narrative explanations and consistency between policies and reported practice, all require patient coordination. Since the Company Secretary already works at the intersection of compliance, management communication and board reporting, the role is naturally suited to coordinate these processes.

The work may include circulating data formats, setting reporting timelines, obtaining confirmations from departments, reconciling inconsistencies, following up on missing information and helping management shape the final disclosure document in an orderly manner.

### **4. Policy Alignment**

Many ESG disclosures are closely linked with internal policies. Codes of conduct, whistle blower mechanisms, related party controls, diversity policies, risk management policies, CSR frameworks, sexual harassment prevention systems and supplier standards, all contribute to

the Company's ESG profile. The Company Secretary can review whether existing policies are aligned with regulatory expectations and practical realities.

This is not merely a drafting exercise. Often, policies exist in form but not in effective operation. A governance-minded review can identify such gaps and encourage stronger implementation.

## 5. Building Compliance Culture

ESG cannot succeed where compliance culture is weak. A Company may prepare a polished report, but if record keeping is poor, departments do not cooperate, internal controls are loose and ethical standards are casually treated, ESG disclosures will remain fragile. Company Secretaries contribute to ESG by strengthening the broader culture of compliance, accountability and procedural discipline within the organisation.

This is perhaps one of the less visible but more enduring contributions of the profession.

### Practical ESG Workflow in Organisations

In actual organisational settings, ESG implementation is usually not a single event but a process that develops over time. Based on practical experience, a typical ESG workflow often includes the following stages:

- First, the Company identifies the scope of reporting and the relevant data points required.
- Second, responsibility for each data point is mapped to specific departments or individuals.
- Third, historical and current data is collected from internal systems, records or management estimates.
- Fourth, the information is reviewed for completeness, consistency and reasonableness.
- Fifth, narrative disclosures are drafted to explain the systems, policies and outcomes associated with the data.
- Sixth, the compiled material is internally reviewed by senior management.
- Seventh, the final version is placed before the board or the relevant governance body for review and noting or approval, as the case may be.
- Eighth, the disclosure is published or filed in the prescribed form.

At almost every stage of this workflow, the Company Secretary can play an anchoring role by maintaining timelines, ensuring coordination and keeping the process aligned with governance requirements.

### ESG Implementation Challenges and Ground Realities in Indian Companies

This is perhaps the most important practical aspect of the entire discussion. ESG appears conceptually attractive and increasingly necessary, but actual implementation in Indian Companies often faces significant difficulties. These difficulties should be openly acknowledged, because ignoring them creates unrealistic expectations. Major challenges are stipulated as under:

#### 1. Data Availability and Data Quality

The first major challenge is the absence of structured non-financial data. Financial reporting systems are usually well developed because they have evolved over decades under legal compulsion, audit discipline and management attention. ESG reporting, by contrast, is still developing in many Companies. Data relating to energy usage, water consumption, waste,

diversity, employee training, safety incidents or grievance redressal may not be maintained in a centralised and standard format.

Sometimes data exists, but it is scattered across departments and maintained for different purposes. In other situations, data is available only in approximate form and not in verifiable format. This creates obvious difficulty in preparing reliable disclosures.

## **2. Lack of Awareness at the Operational Level**

Another practical issue is limited awareness among personnel who actually generate or control the relevant information. Senior management may understand ESG at a broad level, but staff at operational levels may not immediately appreciate why such data is being requested, how it will be used or why accuracy is important. As a result, responses may be delayed, incomplete or inconsistent.

This problem is especially visible when ESG is introduced for the first time. The organisation may require training, repeated follow-up and a period of adjustment before the reporting process becomes reasonably smooth.

## **3. Coordination Across Functions**

ESG is cross-functional by nature. Environmental data may lie with administration or operations department. Social indicators may lie with HR department. Governance information may lie with legal, compliance, finance or secretarial departments. When inputs are spread across multiple departments, coordination becomes one of the biggest challenges.

In many companies, departments are accustomed to working within their own defined boundaries. ESG reporting requires them to collaborate in a structured manner, sometimes for the first time. This can create delays, misunderstandings and inconsistency unless there is a clear coordinator. In practice, the Company Secretary often becomes that coordinator.

## **4. Evolving Standards and Interpretational Differences**

Unlike conventional financial reporting, ESG reporting in India is still at a comparatively evolving stage. Companies, professionals and even internal teams may have different interpretations of how a particular disclosure should be understood, measured or narrated. Questions arise regarding the extent of reporting, the methodology used, the level of estimation acceptable and the treatment of value chain information.

Such interpretational issues make ESG implementation more difficult, particularly where internal systems are not mature. This is why governance oversight and careful documentation becomes important.

## **5. Time-Bound Compliance Pressure**

Regulatory timelines do not always wait for internal preparedness. Companies may still be setting up systems while reporting deadlines approach. In such circumstances, teams are forced to work under pressure, and the risk of inconsistency increases. If ESG work is treated as a last-minute annual exercise rather than an ongoing process, the quality of disclosures is likely to suffer.

## **6. Resource Constraints**

Larger Listed Companies may be able to engage consultants, implement data systems and allocate dedicated teams for ESG. However, medium-sized entities and many growing businesses may not have the same level of resources. In such cases, the compliance and governance function often bear a disproportionate share of coordination responsibility.

This increases the importance of practical, efficient and realistic systems rather than overly theoretical models.

## 7. Cultural Resistance

Another challenge, though less openly discussed, is cultural resistance. Some managements still view ESG as a fashionable or externally imposed concept with limited relevance to real business. Others may accept the reporting requirement but remain hesitant to treat it as a genuine governance priority. In such environments, the Company Secretary has to perform a careful balancing role by presenting ESG not as moral preaching, but as a matter of governance quality, regulatory preparedness, business credibility and long-term risk management.

### Role of Company Secretary in managing the Challenges

In all the above challenges, the Company Secretary contributes value not by claiming expertise in every operational area, but by bringing discipline to the process. That discipline includes clarity of responsibility, standardisation of reporting formats, documentation of assumptions, timely escalation of delays, careful review of disclosures and proper governance reporting.

A Company Secretary can create checklists, circulate standard templates, conduct follow-up meetings, align management submissions, highlight inconsistencies, record board deliberations and ensure that the final report is not merely descriptive but also defensible from a governance perspective. This is where stewardship becomes visible in action.

### ESG and Risk Management

ESG also has a direct connection with risk. In fact, one of the strongest ways to understand ESG is to view it as an extension of enterprise risk management. Poor environmental practices may result in regulatory penalties, shutdowns or operational disruption. Weak social practices may lead to employee attrition, labour disputes, consumer distrust or reputational damage. Weak governance may create fraud risk, litigation, disclosure failures or investor concern.

When ESG is viewed through the lens of risk, its relevance becomes more immediate for boards and management. It is no longer seen only as a reporting framework but as a tool for identifying vulnerabilities that can materially affect the organisation.

A Company Secretary can contribute here by ensuring that ESG concerns are not kept isolated from mainstream governance discussions. Where appropriate, ESG-related concerns may be linked with risk registers, board reporting, compliance review processes and internal control discussions. This integration gives ESG practical significance.

### ESG and the Idea of Stewardship

The concept of stewardship is deeply relevant to the profession of Company Secretary. Stewardship implies responsible management of resources, institutions and trust. It involves acting not merely for immediate convenience, but with a view towards long-term responsibility, accountability and continuity.

In corporate settings, stewardship is reflected in the way governance processes are maintained, decisions are documented, risks are escalated, disclosures are made honestly and organisational conduct is shaped by responsibility rather than expediency. ESG complements this idea because it asks companies to think beyond short-term profit and consider the wider and longer-term consequences of business decisions.

For a Company Secretary, stewardship in ESG context is not about taking over management's strategic function. It is about ensuring that the systems through which decisions are considered,

recorded, monitored and disclosed remain credible, transparent and responsible. This is entirely consistent with the ethos of the profession.

### **ESG as an Extension of Good Governance**

ESG is not a separate field standing apart from Corporate Governance. In reality, ESG is increasingly becoming an extension of governance itself. Environmental and social performance can only be meaningfully sustained if governance structures are sound. Policies, oversight mechanisms, accountability frameworks, internal controls, ethics processes and board engagement all forms the necessary foundation.

This understanding is particularly important for Company Secretaries. It means that ESG should not be seen as an entirely foreign subject requiring the profession to reinvent itself. Rather, it should be seen as an expanded field in which existing governance competencies become even more valuable.

From this perspective, the Company Secretary's role evolves naturally. The professional already understands documentation, procedural legitimacy, committee processes, statutory discipline, disclosure sensitivity and governance accountability. ESG integration allows those competencies to be applied in a broader and more contemporary context.

### **The Way Forward**

For Practicing Company Secretaries, ESG presents both responsibility and opportunity. It is a responsibility because stakeholders increasingly expect governance professionals to understand and support sustainability-related disclosure and oversight systems. It is also an opportunity because ESG is creating a new area of professional relevance in advisory, compliance support and governance structuring.

Some practical focus areas for the profession may include the following:

- Building a working understanding of ESG concepts, BRSR requirements and sustainability-related governance expectations.
- Developing the ability to coordinate across departments and obtain structured non-financial information.
- Strengthening internal documentation systems so that ESG-related disclosures are supported by records and process clarity.
- Keeping track of evolving regulatory developments, particularly in the listed entity space.
- Assisting boards and managements in treating ESG not as a cosmetic disclosure exercise, but as a governance discipline.
- Encouraging Companies to move from annual reporting mindset to year-round monitoring and data readiness.

For young practitioners, including those with a few years of COP, this area is especially meaningful. The profession is changing and clients increasingly value professionals who can combine traditional compliance strength with contemporary governance understanding. A practitioner who can explain ESG in simple business language, structure processes realistically and support credible disclosures will be seen as adding practical value.

### **Conclusion**

ESG is gradually becoming an integral part of Corporate Governance in India. It reflects a broader shift from a narrow financial view of business to a more balanced, accountable and sustainable

understanding of corporate performance. Regulatory developments, investor focus and public expectations are all contributing to this transition.

For Company Secretaries, this shift does not alter the core foundation of the profession. The essential role remains rooted in compliance, governance, ethics, documentation and accountability. What has changed is the range of issues to which those professional strengths now apply. ESG has expanded the field within which Company Secretaries can contribute meaningfully.

A Company Secretary may not control emissions, manage factories or design social programmes, but the professional can ensure that governance systems around these matters are credible, structured and transparent. Through board process support, disclosure coordination, policy alignment, compliance discipline and risk visibility, Company Secretaries play an important role in integrating ESG into the governance fabric of organisations.

In that sense, ESG is not a departure from the profession's traditional identity, it is a natural extension of it. As Companies move towards more responsible and sustainable conduct, the stewardship role of the Company Secretary becomes even more relevant. That relevance should be recognised not only as a matter of compliance necessity, but as a contribution to better Corporate Governance in the truest sense.

**References:**

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- Relevant provisions of the Companies Act, 2013.

# Stewardship in Action: Embedding ESG into Investment Decisions, Not Just Disclosures

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## ABSTRACT

*ESG has evolved from a disclosure obligation into a core component of the contemporary capital markets, but ESG has little impact on genuine investment choices. This disconnection is indicative of a fundamental disconnect in which ESG is viewed as an exercise of reporting, and not a force of stewardship and capital allocation. The paper fills this gap by suggesting a structured, decision-oriented framework that incorporates the financially material ESG factors in investment processes. The framework leverages ESG as a source of information by incorporating ESG into valuation, portfolio construction, and active ownership practices, thus turning ESG into action. It shows that to achieve meaningful stewardship, disclosures are not sufficient, they must be translated into investment choices and engagement plans, and, in the process, enhance accountability, improve capital allocation, and facilitate sustainable long-term value creation. Finally, the paper states that ESG does not influence markets through disclosures, but with the decisions it makes.*

## 1. Introduction

In the last ten years, the idea of Environmental, Social, and Governance (ESG) has shifted from the background to the main stage of corporate reporting in the global capital markets. Today, companies are generating large volumes of sustainability disclosure, which is facilitated by the development of new regulatory frameworks and the growing interest of investors in disclosures. Nevertheless, even with this fast growth, the impact of ESG on real investment choice and capital allocation is small. In most instances, ESG is used as an exercise in parallel reporting as opposed to being part of financial decision-making.<sup>1</sup>

The lack of information is not the true constraint of ESG today, but its lack of proper application in decision-making. Although disclosures have been enhanced, these disclosures usually do not yield to meaningful changes in the allocation of capital, risk assessment, or interaction by investors with companies. This loophole makes ESG a compliance-based activity, which weakens its ability to affect the actual economic performance.

In its simplest definition, stewardship is the role of investors to proactively monitor and participate in the investee companies in order to create sustainable and long-term values. This is not just a passive ownership but an informed decision making, observational constant monitoring, and positive interaction with the management and boards. A successful stewardship means that investors must integrate all financially material aspects, such as ESG, into their investment procedures and take action on them via voting, engagement and capital allocation choices.

Nonetheless, ESG is often regarded as a checklist driven exercise, with ratings, rankings, and disclosures at its core instead of insights to be implemented. In the absence of a meaningful incorporation of ESG factors into valuation, risk evaluation, and portfolio construction, they do not affect capital flows. This means that capital can still be deployed to firms with inherent governance vulnerabilities or uncontrolled environmental and social risks, which can further increase the risk of value destruction and financial instability.

<sup>1</sup> I. Kotsantonis, Pinney, and Serafeim (2016)

The implications are great. Ineffective integration of ESG in investment choices may result in mispricing of risks, inefficient allocation of capital and ineffective governance which erodes investor trust. Conversely, a systematic integration of ESG into decision-making can increase market discipline, improve accountability, and help with the resilient economic growth.

It is against this background that this paper aims to reposition ESG as a decision-based rather than disclosure-based mechanism of stewardship, bridging the gap between information and action to facilitate sustainable value creation.

## 2. Conceptual Foundation

In capital markets, Stewardship is the fiduciary duty of investors to serve the best interest of beneficiaries through sustainable long-term value creation. It is more than passive ownership to a form of active ownership in which investors participate in investee companies, exercise their voting rights and influence strategic and governance decisions.<sup>2</sup> Stewardship, thus, is not merely about performance monitoring but instead it entails influencing corporate behaviour towards the achievement of long-term financial and societal results.

The basis of stewardship is fiduciary duty.<sup>3</sup> Conventionally viewed through a strictly financial prism, this obligation is also becoming progressively viewed in terms of all financially material risks and opportunities, such as those relating to environmental, social, and governance (ESG) factors. Direct implications on cash flows, cost of capital, and long-term viability may include issues like climate risk, governance failures, and social disruptions.<sup>4</sup> As a result, the inability to factor in ESG consideration could in itself lead to the fiduciary risk caused by risk evaluation that is not thorough.

There is a key difference which needs to be made between ESG and stewardship. ESG is a collection of inputs in the form of data, disclosures, metrics, and ratings that shed light on the non-financial performance of a business, as well as the levels of risk to which it is exposed. Stewardship, however, is action-oriented, the use of this information to make investment options, pursue the companies, and impact the results. ESG is informational without stewardship and transformational with stewardship.

This difference forms the main argument of this paper:

**ESG without stewardship is information; ESG with stewardship is transformation.**

In order to operationalise this relationship, the paper presents the **ESG Stewardship Decision Loop**:

ESG Inputs → Financial Translation → Investment Decisions → Stewardship Actions → Value Creation

Within this framework, ESG data is converted into financial insights that are relevant to decision-making, including the choice of securities, increasing or decreasing the valuation, or allocating funds to a portfolio. Such decisions in turn stimulate stewardship behaviours such as engagement, voting behaviour and strategic dialogue with management. The feedback as a result impacts corporate behavior, risk management, and market performance.

Such a conceptual underpinning places ESG not as a goal, but as a tool to make effective stewardship and disciplined capital allocation possible.

## 3. Regulatory & Market Context

Regulatory pushback and evolved views toward the responsibility of boards and stakeholders have fostered the development of integrated ESG principles within the investment process and stewardship approach throughout global and Indian capital markets over the last decade or

2. UK Financial Reporting Council (2020)

3. Principles for Responsible Investment (PRI) (2019)

4. Friede, Busch, and Bassen (2015)

more, spurred by regulators and standard setters globally. Transparency, fairness and shareholder representation have been priority areas for regulations over time, leading to the substantial extension of sustainability disclosures and stewardships.

The United Kingdom Stewardship Code and Japan Stewardship Code, among others, have established explicit expectations about this stewardship duty, requiring large investors and companies to reveal how they've exercised active ownership. This has the effect of ensuring investors take seriously their responsibilities beyond mere investment and are expected to exercise their ownership rights over companies, rather than simply investing in them and forgetting them. The advent of sustainability disclosure standard - setting bodies, such as the International Sustainability Standards Board (ISSB), with their IFRS S1<sup>5</sup> and IFRS S2<sup>6</sup> disclosures (the first two disclosures to become mandatory under these rules globally), means that investors will soon need much better - quality data, especially as companies worldwide are now being subject to a common standard on sustainability and climate - related disclosures. Complementing these, the Task Force on Climate-related Financial Disclosures (TCFD) has introduced forward-looking, scenario-based approaches to assessing climate risks, strengthening the link between ESG factors and financial performance.<sup>7</sup>

The same has been seen in India also. The Business Responsibility and Sustainability Reporting (BRSR) framework was introduced by the Securities and Exchange Board of India (SEBI), making fundamental improvements in ESG disclosure requirements for listed entities.<sup>8</sup> Moreover, the requirements for how institutional investors engage with investee companies – through active ownership and responsible exercise of voting rights as well as stewardship activity disclosures by mutual funds have been codified in SEBI's Stewardship Code.<sup>9</sup>

Still, one major gap remains. Regulatory initiatives have enhanced the depth, consistency and comparability of ESG disclosures; however, their translation to investment decisions remains inconsistent. Just because the number of ESG-labelled investment products has increased, it does not mean that meaningful stewardship actions have necessarily occurred – this might include active engagement or voting behaviour consistent with ESG objectives. In numerous cases, ESG is still limited to reporting frameworks or monitoring filters as opposed to having pertinence in valuation models and capital allocation decisions.

This highlights a fundamental limitation: regulation has been effective in improving what companies disclose, but not necessarily in influencing how investors act. Bridging this gap requires a shift from disclosure-driven compliance to decision-oriented ESG integration, where stewardship becomes the mechanism that converts information into measurable financial and governance outcomes.

## **4. CORE SECTION: ESG in Investment Decision-Making**

### **4.1 ESG as a Decision Variable**

ESG must be a decision variable in the investment process, rather than an add-on rating or disclosure measure, for it to play a stewardship role. This involves converting ESG considerations into financially meaningful inputs to the investment decision-making process. Ultimately, ESG should guide investment decisions on whether to buy, hold or sell, based on whether a firm's risk-return profile aligns with long-term investment goals.

Beyond a yes-or-no approach, ESG should also guide position sizing, with higher allocations to firms with good governance, sustainable strategies and robust risk management. By contrast,

5. *International Sustainability Standards Board (2023a)*

6. *International Sustainability Standards Board (2023b)*

7. *Task Force on Climate-related Financial Disclosures (2017)*

8. *Securities and Exchange Board of India (2021)*

9. *Securities and Exchange Board of India (2020)*

companies with unaddressed ESG risks may deserve lower allocations or divestment. ESG factors are also integral to determining risk premiums, such as when governance issues, regulatory risk, or environmental risks create greater uncertainty and downside.

Importantly, ESG integration requires financial translation - integrating ESG analysis into valuation, risk and return models. Without translation, ESG is descriptive; with translation, ESG is decisional.<sup>10</sup>

#### **4.2. Integrating ESG into the Investment Process**

ESG integration should be done systematically throughout the investment process. The first step is screening, where the investable universe is narrowed using negative screening (screening out companies that engage in damaging and risky practices) and positive screening (screening in companies with strong ESG performance, or companies with convincing sustainability strategies). Screening defines the universe of investment opportunities, but it does not, in and of itself, represent ESG integration.

The second stage is due diligence, which includes an analysis of ESG risks and opportunities. This includes ESG risk mapping, which includes considerations such as governance ratings, regulatory risks, environmental risks and social risks. The goal is to identify short-term concerns and long-term risks that can impact value.

This knowledge then needs to be incorporated into valuation models. ESG issues may affect cash flow projections through regulatory costs or efficiency gains or changes in consumer preferences. Alternatively, ESG risks may be reflected in discount rates through adjustments to risk premiums or the volatility of earnings. This brings ESG integration into line with traditional valuation theories by embedding ESG considerations in intrinsic value, rather than as separate overlays.<sup>11</sup>

Lastly, ESG integration is reflected in portfolio management, with investment decisions reflecting ESG-adjusted risk-return characteristics. Weights are adjusted to favour sustainable, resilient firms and to avoid firms with ESG risks. This means that ESG factors play a role in capital allocation.

#### **4.3 ESG and Capital Allocation Discipline**

In financial markets, the integration of ESG into the investment process is a means for capital allocation discipline. The available institutional capital goes to the right kind of businesses, the sturdy, well-governed and sustainable ones. They are better placed to steer through risks and regulatory changes which helps them earn sustainable profits, hence making them more attractive in a risk-adjusted return context.

On the other hand, firms with high ESG risks (such as poor governance, environmental or social non-compliance, and social controversies) face implicit costs in the form of lower trust from investors and limited access to capital. This affects the cost of capital, with a higher perceived risk prompting investors and lenders to demand higher returns.<sup>12</sup>

Over time, this effective capital allocation results in a more efficient market, favouring sustainable practices and punishing value-destroying actions. It also promotes long-term return generation as portfolios are more likely to be invested in businesses with better governance, risk and operational practices.

#### **4.4 Stewardship Actions Driven by ESG**

The true value of ESG integration is achieved when it drives stewardship activities. Investors must translate ESG insights into actions with investee companies and use their ownership rights. This is

<sup>10</sup>. Damodaran (2023)

<sup>11</sup>. Damodaran (2012)

<sup>12</sup>. El Ghouli et al. (2011)

the journey from knowledge to action, and how ESG creates accountability and affect change in corporate behaviour.

Voting is a key stewardship activity, in which investors exercise their rights to vote in favour or against board elections, remuneration, and other proposals from a perspective that considers ESG factors. ESG voting drives accountability at the board level.

Engagement is also essential, where investors engage with management around sustainability strategies, risks and disclosure practices. Engagement can result in policy changes and improved ESG outcomes over time.

If issues remain unresolved, investors can escalate their concerns through calls for board accountability, such as changes to governance or management. In the last resort, exit options (such as divestment) provide a means to redirect capital and send a signal.

ESG does not add value through disclosure, but through action and engagement.

#### **4.5 Measuring the Impact of ESG-Driven Stewardship**

ESG-based stewardship needs to be assessed by both financial and governance metrics. Risk-adjusted return is one such measure, with ESG-integrated portfolios expected to exhibit greater stability in their returns due to the consideration of non-financial risks. Rates of return can be assessed using ratios such as Sharpe ratios and downside risk.

Likewise, lower volatility could be an indicator of greater risk management, especially in firms with good governance and ESG processes. Beyond financial returns, improvements in governance arrangements such as improvements in board independence, disclosure and oversight, reflect effective stewardship.

We also need to acknowledge the short-term vs long-term dimension. ESG initiatives may incur short-term expenses, such as compliance costs, or opportunities foregone. These choices, however, can lead to improved long-term sustainability and value.

In conclusion, ESG integration should be evaluated not just in terms of short-term financial performance, but in terms of how it enhances accountability, mitigates risks and enables long-term value creation.

### **5. Case Illustrations**

The value of integrating ESG issues into stewardship becomes apparent when we examine patterns in capital markets. The following examples, which are based on some well-known developments in the market, illustrate the impact of active stewardship (or its absence) on investment performance.

#### **Case 1: Governance Failure and Value Erosion (Negative Illustration)**

A leading private sector financial institution enjoyed strong growth, and attracted significant investor attention as a result of its growing balance sheet and market position. Despite positive financial metrics, there were early signs of governance issues. This involved centralisation of decision making, ineffective board governance, growth strategies considered aggressive, and variable disclosure practices.

These ESG indicators could be seen in disclosures, market commentary, and general observations. But investors were primarily focused on short-term profits. While institutional shareholders had the mandate and the power to do so, they displayed minimal interaction with the company and passive voting.

These governance deficiencies eventually led to financial and regulatory issues. The bank suffered increased scrutiny, market distrust and ultimately its value decreased. External intervention was

needed, highlighting the risks of governance breakdowns in financial firms.

This is a case of stewardship failure. ESG metrics were present, but not used to inform actions or investment decisions to manage risk. This led to a failure to manage risks in a timely way and significant value loss.

**The problem was not disclosure, but investor failure to act.**

*Case 2: Active Stewardship and Value Creation (Positive Illustration)*

By contrast, take a large, multi-faceted industrial company in an environmentally and regulatory risk-prone industry. It was under heightened scrutiny due to increasing emissions intensity, changing regulatory requirements and stakeholder expectations on sustainability.

ESG reporting raised the visibility of these risks, leading long-term institutional investors to review their investment strategies. Rather than divest, these investors switched to an active stewardship approach, factoring ESG into their valuations, risk management and portfolio positioning.

More significantly, investors engaged in deliberate dialogue with management. This centred on an effective transition plan, enhancing disclosure, and mobilising capital to support long-term sustainability goals. Over time, investors pushed for setting environmental KPIs, improving governance oversight and incorporating ESG metrics into management remuneration.

These measures had an impact. The firm enhanced efficiency, minimised regulatory risks and improved sustainability. With improved governance and transparency, investors gained confidence, leading to stabilised performance and progressive re-rating of value.

This example shows how ESG, by being actively managed in the day-to-day business and with follow-up stewardship actions, can help create long-term value.

**Value was driven by ESG actions, not reporting.**

Key Insight

The two stories highlight a key insight:

ESG does not create value in a vacuum - it creates value when integrated into investment decision-making and stewardship actions.

Consequently, the success of ESG integration is not about the information being available, but rather how it affects accountability, business practices and the allocation of capital in practice.

**6. Challenges & Limitations**

While the adoption of ESG integration and stewardship is increasing, there are a number of structural issues that restrict the use of ESG in the investment process. One is inconsistent data, as ESG reporting standards and practices differ between companies, industries and countries. Variations in standards, metrics and methods used to report and rank ESG performance diminish comparability and hinder the ability to pinpoint material risks to financial performance.

A related concern is ESG ratings variability, where different rating agencies tend to provide materially different ESG ratings for the same company.<sup>13</sup> This creates confusion for investors and reduces the value of ESG metrics as inputs for investing.

Greenwashing also presents a problem. Firms can provide a positive ESG statement by selectively disclosing information without actually changing their operations, which erodes the quality of information.

<sup>13</sup> Berg, Koelbel, and Rigobon (2022)

A further hurdle is the balance between short-term returns and longer-term stewardship goals. Investors may not follow through on ESG concerns if perceived short-term negative impacts on performance occur, reducing engagement incentives.

Finally, there is a need for consistency in ESG's integration in valuation methods, which may not be applied consistently across investment processes. These challenges underline the need to enhance data quality, approaches, and the integration of ESG with financial analysis.

## 7. Way Forward

To enhance stewardship by integrating ESG, there is a need for greater action across all investment stakeholders. Investors need to integrate ESG into their decision-making processes rather than simply overlaying the factors. This involves incorporating ESG into valuation, risk management and portfolio allocation, as well as embracing active rather than passive investment strategies. Investors should routinely vote their shares, implement engagement strategies, and threaten escalation in cases of inaction on ESG issues.

For regulators, the next step is to transition from disclosure-based to accountability-based regimes. Although sustainability reporting has improved transparency, regulators should promote stewardship reporting by mandating institutional investors to disclose the ESG factors they consider in their investment decisions, engagement strategies and voting patterns. This will enhance market discipline and move beyond disclosure to action.

Corporate ESG practices must transition from compliance to business strategy. This includes embedding sustainability into strategies, investment decisions and governance. Linking remuneration to ESG, and enhancing board oversight, can also cement accountability.

Together, these measures can make ESG a decision-oriented approach that drives stewardship, capital allocation and value creation.

## 8. Conclusion

ESG is still on its journey from information to decision-making. ESG has made progress in reporting and disclosure, but it is still not delivering on the real task at hand - driving decision-making and capital allocation. ESG in itself is information; its purpose is to inform action.

Stewardship is the key linchpin here. By integrating ESG into investment processes and translating this knowledge into active engagement, investors can progress from information gathering to influence. This ensures that ESG factors are considered not just in the disclosure but in the pricing of risks, allocation of capital and shaping of corporate conduct.

When done right, ESG-influenced stewardship enables sustainable capital allocation, enhances financial resilience and drives long-term value. The future of ESG will not be defined by what is disclosed, but by what is decided.

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# Catalysing Growth for MSMEs & Start-ups: Governance, AI, and the Role of Company Secretaries

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## ABSTRACT

*India has over 26 million registered MSMEs. Thousands of start-ups are launched every year. Yet a large number do not survive long and generally struggle beyond the five-year mark. The common assumption is that they fail due to money problems – poor credit, lack of funding, or difficult market conditions. In practice, that is rarely the full story.*

*This paper looks at a different reason: the absence of internal structure. Weak governance, poor information systems, and fragmented compliance are the silent killers of small enterprises – and they are entirely preventable.*

*The paper introduces the LED TV Metaphor to explain how enterprise architecture works and where AI fits in. It argues that AI without governance can do more harm than good. And it makes the case that Company Secretaries (CS) are best placed to lead this change – not just as compliance officers, but as trusted advisors and institutional builders for MSMEs.*

## 1. Introduction

As per Ministry of MSME data, India's MSME sector contributes nearly one-third of GDP and employs over 110 million people. The Start-up ecosystem is now among the world's third largest ecosystems. These are impressive numbers. But behind them lies a less comfortable truth.

Most MSMEs and start-ups struggle to cross the five-year mark. The answer to why usually points to external factors – the economy, credit, competition. But from experience of working with MSMEs across sectors, the real reason is almost always internal.

The most common cause of enterprise stress is not a bad market. It is a missing system. No one tracks receivables. Compliance is handled only when a notice arrives. The founder carries all the knowledge in their head. There is no reliable data for decisions. These are not market failures. They are governance failures.

This paper is written in the context of the 27<sup>th</sup> National Conference theme of "Company Secretaries as Leaders: AI, ESG & Stewardship." It addresses the sub-theme of Catalysing Growth for MSMEs & Start-ups and argues simply: growth without governance is not growth. It is just a longer route to failure.

## 2. The LED TV Metaphor: Looking Inside the Enterprise

Most people see only what a television shows on screen. They rarely think about what makes that image possible – the motherboard, the power supply, the software underneath. If any of these fails, the screen goes dark. Adjusting the brightness will not help.

An MSME works the same way. Revenue, growth, and market presence are just the screen. What makes them possible is invisible.

- The Screen – visible growth: revenue, valuation, market presence

- The Pixels – people and processes delivering that output
- The Motherboard – governance and internal controls
- The Software – MIS, reporting systems, decision protocols
- The Power Supply – financial strength and working capital
- The AI Processor – data analytics and decision intelligence

Add a powerful AI processor to a system with a strong motherboard and clean software, and everything improves. The picture is sharper. Decisions are faster. Risks are spotted earlier.

But add that same processor to a weak motherboard with corrupted software, and it processes bad information faster. The picture does not improve. It deteriorates with more apparent confidence.

“AI does not create intelligence in an enterprise. It amplifies whatever is already there – good or bad.”

### **3. What Government Does – and what it cannot do**

The government has built a strong support structure for MSMEs. CGTMSE has improved credit access. The Udyam portal has simplified registration. MSME Samadhan addresses delayed payments. SIDBI provides equity and debt financing. The PLI scheme has created new opportunities. The India AI Mission (2024) is now actively pushing MSME digitisation.

All of this is valuable. These schemes strengthen the financial foundation of the enterprise – the power supply, to stay with the metaphor.

But there is a gap that policy cannot fill. No scheme can install governance discipline inside a company. No credit facility creates a compliance culture. No incentive programme builds a working MIS. That work must come from within – and it requires professional guidance.

Enterprises that receive support without internal structure do not grow sustainably. The capital gets consumed. The incentives expire. The enterprise is left no stronger than before.

### **4. The Four Things That Go Wrong Inside MSMEs**

When we look closely at MSME failures, four problems appear repeatedly. These are:

#### **4.1 Everything Depends on One Person**

In most small enterprises, one person holds everything together. They know the clients, manage the bank, remember the passwords, and know where the files are. When they leave, there is no system to fall back on. There is a vacuum. Sustainable enterprises do not depend on memory. They depend on systems.

#### **4.2 Compliance Happens Only When There Is a Problem**

Ask most MSME owners when they last renewed a key licence. The honest answer is usually: when someone reminded them or a notice arrived. This reactive approach accumulates real damage – penalties, lapsed licences, exclusion from government schemes, and compliance gaps that become deal-breakers during investor due diligence. Compliance is not a task to complete. It is a system to maintain.

#### **4.3 No Reliable Information for Decisions**

Accounts are not current. Inventory is estimated. Receivables are tracked in a personal diary. Important decisions about hiring, expansion, and credit are made on instinct rather than data. Without a working MIS, the enterprise has no institutional memory and no basis for forward planning.

#### **4.4 No Oversight, No Accountability**

No board meeting. No management review. No documented decisions. Risks build quietly until they are no longer manageable. Governance in an MSME does not need to be complex. A monthly review meeting with a written record is governance. The complete absence of any such practice is the problem.

#### **5. Governance: The foundation that nobody sees**

Governance does not appear on a balance sheet. It generates no direct revenue. This is exactly why it gets ignored. Think of the electrical wiring in a building. We never see it. We never think about it – until it fails. And when it fails, nothing works.

Governance is the wiring of an enterprise. When it is in place, everything runs better – compliance, information systems, finance, risk management. When it is absent, everything eventually breaks down.

Good governance for an MSME does not mean a formal board or complex committee structures. It means having clear answers to simple questions: Who is responsible for what? How are decisions made and recorded? What happens when the key person is unavailable? How is performance reviewed? In most MSMEs, these questions have no clear answers. That is the problem.

#### **6. MIS and AI: Information first, intelligence second**

A Management Information System is a structured way of capturing, organising, and reporting the information an enterprise generates every day – sales, cash flow, inventory, compliance deadlines, staff records. These are not exotic tools. They are basic discipline, and any enterprise can implement them.

Without MIS, the enterprise has no memory. Problems are noticed only when they become crises. Decisions are made as if each month is the first.

AI tools are now genuinely useful and increasingly affordable for small businesses. They can flag cash flow risks, monitor compliance timelines, identify unusual financial patterns, and generate management reports automatically. These capabilities are within reach.

But AI needs clean, structured data to produce reliable outputs. If the MIS is weak or inconsistent, AI tools produce unreliable answers – and the enterprise acts on them with misplaced confidence. The sequence is non-negotiable: fix the data first, then apply the intelligence.

#### **7. Digital Transformation: Sequence matters**

Many MSME owners want to adopt AI. Some have tried and been disappointed. The reason is almost always the same: they skipped the foundational steps.

Digital transformation happens in stages. First, digitisation – moving from paper to digital records. Second, automation – using technology to handle routine tasks reliably. Third, AI integration – using intelligent tools to support decisions and anticipate outcomes. Jumping to stage three without completing stage one produces expensive, unreliable results.

Once the foundation is in place, the available tools are powerful: AI-driven ERP systems, automated compliance tracking, real-time management dashboards, and risk scoring tools. These are no longer only for large companies. They are accessible, affordable, and increasingly easy to use. What they still require is governance and data quality to function properly.

Technology automates. AI augments. Governance controls. All three need to work together.

## 8. ESG: Build It In, Do Not Bolt It On

ESG has moved from a voluntary reporting exercise to a real factor in MSME access to credit, supply chain participation, and investor funding. SEBI's ESG disclosure framework, applied to listed companies, is now cascading to their vendor networks. If you supply to a listed company, you will be asked about your sustainability practices. If you seek institutional funding, your ESG position will be evaluated.

The good news is that ESG is not complicated for an enterprise with basic governance already in place. Track energy use. Maintain a fair employment policy. Pay vendors on time. Document your practices. These are governance habits with an ESG label – not a separate burden.

Enterprises that build with ESG in mind from the start find it natural and inexpensive. Those that add it later find it disruptive and costly. AI tools can support the process by automating data collection for energy, waste, and supply chain sustainability tracking.

## 9. The Company Secretary: From Compliance Officer to Governance Builder

The CS role has historically been defined by compliance – filings, board minutes, statutory registers. These remain important. But for MSMEs navigating governance, AI, and ESG requirements simultaneously, this description is no longer sufficient.

MSMEs need someone who can look at the whole enterprise and ask: is this business built to last? Is the information reliable? Is the structure sound? Is it ready for investment or growth? A CS is trained to answer these questions. What is needed now is for that expertise to be applied at the enterprise level – not just the filing level.

### 9.1 Building the Governance Framework

For most MSMEs, governance means clear written policies, a working compliance calendar, and a regular management review. The CS designs this structure and ensures it is actually used – not just documented and forgotten.

### 9.2 Protecting Data Quality

As AI tools are adopted, data reliability becomes critical. The CS, as custodian of institutional records, ensures that data feeding AI systems is accurate and governed in line with applicable regulations, including the Digital Personal Data Protection Act, 2023.

### 9.3 Managing AI and Compliance Together

Automated compliance tools still require oversight. The CS ensures they are accurate, current, and not generating false assurance. Management needs to understand the limits of AI-produced compliance outputs – and the CS provides that check.

### 9.4 Creating Forward-Looking Reporting

A CS who connects MIS with management reporting transforms decision-making. Instead of annual historical accounts, management gets regular, forward-looking reports. That is the difference between knowing what happened and knowing what to do.

### 9.5 Supporting Investment Readiness

When an MSME seeks funding, governance quality determines how investors respond. A CS who has built proper governance from the start becomes the most valuable asset during due diligence – because the answers are already documented and the records are clean.

“In today's environment, the Company Secretary is not just a guardian of compliance. They are a builder of institutional strength.”

## 10. Why this matters beyond the individual enterprise

Individual governance improvements may seem small in isolation. But when CS professionals build governance capacity across thousands of MSMEs, the national effect is real. Better-governed enterprises employ people more stably, borrow and repay more reliably, reduce NPA formation in the banking system, pay taxes more consistently, and attract more investment.

India's MSME sector has the scale to drive national economic transformation. What it needs, alongside financial support, is institutional strength. Government schemes provide the fuel. Governance provides the engine. CS professionals who build that engine across the sector are contributing directly to a more resilient economy.

## 11. What Practice Teaches: Some Real Cases

The following cases are drawn from professional practice and anonymised to preserve confidentiality. They are not exceptional situations. They are common ones.

### ***Case 1: When a Key Person Leaves and There Is No System***

A manufacturing company with over twenty years of operation lost its Finance Manager unexpectedly. This person had managed all financial records, banking relationships, and reporting entirely on their own, with no documentation and no system anyone else understood. For several months, management could not produce financial data. The bank suspended a credit line. A significant order was lost.

The fix was straightforward: a cloud-based MIS with role-based access, documented processes, and automated monthly reports. Operations were restored within three months. The loss was real, entirely avoidable, and the solution was not complicated.

### ***Case 2: When Compliance Gaps End a Funding Round***

A technology start-up with strong revenue and serious investor interest came close to closing a funding round. Then due diligence found lapsed regulatory filings, undocumented related-party transactions, and no board oversight on record. The fundamentals were strong. The governance was not. The investors withdrew.

Six months of governance remediation followed – compliance catch-up, board constitution, and documented policies. The company then raised funding at a valuation significantly above the failed round. The governance investment repaid itself many times over.

### ***Case 3: When Expansion Without Controls Creates a Crisis***

A trading business expanded aggressively on working capital debt with no cash flow monitoring, no receivables tracking, and informal inventory management. Within eighteen months the liquidity position became unmanageable. The bank- initiated recovery proceedings.

A structured governance intervention – cash flow MIS, receivables monitoring, and monthly financial reviews – stabilised operations within a year. A debt restructuring was negotiated. The business survived.

In all three cases, the market was not the problem. The system was. And each failure was entirely preventable.

## 12. A Simple Framework for Enterprise Maturity

Most MSMEs sit somewhere on a spectrum from completely informal to genuinely investor ready.

A CS can use this framework to assess where a client stands and build a practical path forward:

- Stage 1 – Informal: Operations depend on one or two people. Nothing is documented. Compliance is reactive.
- Stage 2 – Structured: Core processes are written down. A compliance calendar exists. Roles are defined.
- Stage 3 – Integrated: MIS is working. Reporting is regular. Basic digital tools are in use.
- Stage 4 – Institutionalised: Governance framework is active. Management reviews happen. AI tools are layered on a clean MIS.
- Stage 5 – Scalable: The enterprise is investment-ready. Systems are documented, tested, and reliable.

Most MSMEs are at Stage 1 or 2. Most investors expect Stage 4 or 5. The gap is real but bridgeable. The CS who helps a client move even two stages along this path delivers lasting value.

### 13. AI, Governance, and What Comes Next

AI is becoming genuinely useful for MSMEs faster than most people expected. Tools are cheaper, simpler, and more accessible every year. This is good news – with one important condition.

Enterprises that adopt AI without fixing governance and data quality are not upgrading. They are amplifying existing weaknesses. A poorly governed enterprise with unreliable data will make bad decisions faster and with more apparent confidence. The AI output looks authoritative. The underlying data is not. The result is systematic error.

An enterprise with clean data, clear governance, and maintained systems can use AI to compete at a level previously available only to larger players. The advantage is real – but it is earned, not installed.

It is worth acknowledging that the path is not always smooth or linear. Different sectors and ownership structures need different approaches. But the sequence holds universally: governance first, data quality second, AI third.

“AI without governance does not create efficiency. It scales whatever is already there.”

### 14. Conclusion

MSMEs do not fail primarily because the market was against them. They fail because they were not built to last. India has the market, the policy support, and the talent. What too many MSMEs still lack is internal structure – the governance, the systems, and the discipline that turn activity into a sustainable institution.

This is precisely the work that CS are trained to do. Not only filing returns and maintaining registers – though that matters – but building the foundations that allow enterprises to grow, attract capital, withstand shocks, and endure.

The AI era makes this work more important, not less. AI amplifies structure. Where structure is absent, it amplifies the absence.

CS professionals who step into the role of governance advisor and institutional builder for MSMEs are not just growing their practice. They are contributing to something larger – an MSME sector that is not merely numerous, but resilient; not just active but built to last.

“The journey of an MSME is not from small to large. It is from informal to institutional – and the CS can be the main architect of that journey.”

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# Catalysing Growth for MSMEs & Start-ups in India: Strengthening Legal, Compliance and Strategic Foundations

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*Micro, Small and Medium Enterprises (MSMEs) and Start-ups are central to India's economic development. Yet their growth must be built on a strong foundation of legal, compliance, and governance practices. This article argues that compliance should be viewed not as a regulatory burden but as a strategic tool that enables businesses to operate efficiently, build credibility, and manage risks effectively – and that Company Secretaries are uniquely positioned to lead this transformation.*

## 1. Introduction

Micro, Small and Medium Enterprises (MSMEs) and Start-ups have emerged as one of the most dynamic components of the Indian economy. They are not only contributing significantly to employment generation and GDP growth but are also driving innovation, entrepreneurship, and regional economic development.

In recent years, policy initiatives such as Start-up India, Digital India, and various MSME-focused schemes have improved access to capital, ease of doing business, and digital infrastructure. As a result, the number of new ventures has increased substantially, and the entrepreneurial ecosystem has matured across industries.

However, the journey from starting a business to building a sustainable enterprise is not straightforward. While founders are often focused on product development, market expansion, and revenue generation, the legal and compliance framework governing the business tends to receive less attention during the early stages.

As businesses grow, the absence of proper legal structures, compliance systems, and governance mechanisms can lead to operational inefficiencies, regulatory challenges, and increased risk exposure. In this context, legal and compliance advisory services is not merely a regulatory requirement but a critical enabler of sustainable growth.

## 2. The Evolving Landscape

The MSME sector in India is highly diverse, ranging from traditional manufacturing units and service providers to modern, technology-driven start-ups operating in sectors such as fintech, e-commerce, and software services.

Start-ups, are characterised by rapid growth, innovation-driven models, and high scalability potential. MSMEs, on the other hand, often focus on operational stability, consistent revenue streams, and long-term business continuity. Despite their differences, both share common challenges:

- Managing regulatory compliance across multiple laws
- Maintaining financial discipline and transparency
- Adapting to evolving legal frameworks
- Balancing growth with operational control

The increasing complexity of the business environment requires a structured approach where compliance and governance are integrated into the business model rather than treated as secondary functions.

### **3. Key Challenges in Growth & Compliance**

#### **3.1 Regulatory Complexity**

Businesses in India operate under a multi-layered regulatory framework. Depending on the nature and scale of operations, they may be required to comply with the Companies Act, 2013; the Limited Liability Partnership Act; Goods and Services Tax (GST) laws; FEMA regulations for cross-border transactions; and various labour laws and sector-specific regulations. Understanding the applicability and ensuring timely compliance across these laws can be challenging, particularly for small and growing enterprises.

#### **3.2 Lack of Structured Systems**

In the early stages, businesses often function with informal processes and limited documentation. While this may work initially, it becomes inefficient as the business grows. The absence of structured systems can lead to inconsistent financial records, poor documentation of decisions, and lack of accountability within teams – issues that impact both operational efficiency and compliance over time.

#### **3.3 Limited Awareness of Legal Implications**

Many founders are not fully aware of the legal implications of their decisions, especially in areas such as shareholding structures, contractual agreements, and regulatory filings. These gaps may not create immediate issues but can become significant obstacles during funding, audits, or legal disputes.

### **4. Reframing Compliance: From Burden to Enabler**

One of the most common issues observed in MSMEs and start-ups is the perception of compliance as an administrative burden – an activity that consumes time, requires cost, and does not directly contribute to revenue generation. This perspective is both incomplete and short-sighted.

“Compliance should not be treated as a reactive obligation. It should be integrated into the business model as a proactive function that supports growth, reduces uncertainty, and enhances credibility.”

A well-compliant organisation benefits in multiple ways. Firstly, it significantly reduces exposure to legal risks. Regulatory defaults, even if unintentional, can lead to penalties, litigation, or reputational damage. Secondly, compliance builds trust – investors, lenders, and business partners increasingly rely on documented and compliant records before entering into any engagement. Thirdly, compliance improves internal discipline: when a business maintains proper records, follows defined processes, and adheres to statutory timelines, it indirectly strengthens operational efficiency.

### **5. Legal & Compliance Framework: Practical Considerations**

#### **5.1 Entity Structuring**

The foundation of compliance begins with the choice of entity. Whether a business operates as a Private Limited Company, LLP, or Partnership has long-term implications. A Private Limited Company offers advantages in scalability, funding, and governance but comes with higher compliance requirements. An LLP may offer flexibility but may not always be suitable for businesses looking to raise equity investments. Entity selection should therefore be based not solely on ease of registration but on long-term business objectives.

## 5.2 Statutory Compliance Management

Compliance management involves more than just filing returns. It requires tracking statutory deadlines, ensuring accuracy in disclosures, and maintaining supporting documentation. Under the Companies Act, timely filing of annual returns, financial statements, and maintenance of statutory registers is essential. Under GST, regular returns, reconciliations, and proper invoicing are critical. Failure in these areas may not only result in penalties but also affect the credibility of the business.

## 5.3 Documentation and Record Keeping

Documentation is often overlooked in early stage businesses, yet becomes extremely important as the business grows. Proper documentation includes shareholder agreements, employment contracts, vendor agreements, and board resolutions. Well-drafted documents help in avoiding disputes and provide clarity in business relationships.

## 5.4 Regulatory Alignment

Laws and regulations are not static – they evolve with changes in the economic and business environment. Businesses must ensure that they remain aligned with these changes through continuous monitoring and timely adaptation.

## 6. Role of Company Secretaries

The role of Company Secretaries has undergone a significant transformation. They are no longer seen merely as compliance officers but as key contributors to corporate governance and strategic decision-making.

### 6.1 Governance and Compliance Advisory

Company Secretaries play a central role in ensuring that businesses comply with statutory requirements while maintaining proper governance standards. They ensure that the company operates within the legal framework while also maintaining transparency and accountability.

### 6.2 Board-Level Support

In growing organisations, decision-making becomes more structured. Company Secretaries facilitate board processes, ensure proper documentation of decisions, and guide directors on regulatory implications – building the institutional memory that growing enterprises critically need.

### 6.3 Risk Identification and Mitigation

One of the most critical contributions of a Company Secretary is identifying risks before they materialise. By reviewing compliance status, governance practices, and documentation, they can highlight potential issues and suggest corrective actions, acting as the organisation's first line of proactive defence.

Role	Key Contribution	Business Benefit
Governance & Compliance Advisory	Statutory adherence; transparency frameworks	Reduced regulatory risk
Board-Level Support	Decision documentation; director guidance	Legal protection for decisions
Risk Identification	Compliance reviews; corrective actions	Early risk mitigation
Strategic Advisory	Restructuring; M&A; regulatory strategy	Informed growth planning

## 7. Technology and Compliance

The compliance landscape has undergone a significant transformation with the adoption of technology, creating both new efficiencies and new expectations for businesses and their advisors.

### 7.1 Digital Filing Systems

Regulatory authorities have shifted towards digital platforms for filings and disclosures. This has improved efficiency while simultaneously increasing transparency and accountability – raising the bar for all businesses.

### 7.2 Automation and Compliance Tools

Businesses are increasingly using compliance management tools to track deadlines, maintain records, and automate filings. This reduces manual errors and improves consistency – a particular boon for resource-constrained MSMEs.

### 7.3 AI and Data-Driven Compliance

The integration of artificial intelligence is gradually changing compliance processes. Predictive analytics, automated alerts, and data analysis are helping businesses identify risks and ensure compliance proactively – enabling even small enterprises to achieve the compliance rigour previously available only to large organisations.

## 8. ESG Consideration

Environmental, Social, and Governance (ESG) considerations are becoming an important part of business evaluation, and even MSMEs and start-ups are not immune to this shift.

### 8.1 Governance

Strong governance practices ensure transparency, accountability, and ethical conduct. This is particularly important for businesses seeking investment, as institutional investors and lenders now routinely scrutinise governance frameworks before committing capital.

### 8.2 Social Responsibility

Businesses are expected to maintain fair practices in areas such as employee welfare, diversity, and community engagement. A business that invests early in its social licence to operate is better positioned to scale sustainably.

### 8.3 Environmental Responsibility

Sustainable practices are gaining importance, especially in industries with environmental impact. Even for MSMEs and Start-ups, adopting ESG principles early can create long-term competitive advantages – and increasingly, access to preferential financing.

**Table 2: ESG Dimensions and Their Relevance for MSMEs & Start-ups**

ESG Dimension	Relevance	Strategic Benefit
Governance	Transparency; board accountability	Investor confidence; legal protection
Social	Employee welfare; community relations	Reputational strength; talent retention
Environmental	Sustainable operations; carbon footprint	Access to green financing; regulatory compliance

## 9. Risk Management & Governance: A Judicial Perspective

Risk management is not merely about identifying potential threats. It is about building a structured framework that allows a business to anticipate, evaluate, and respond to risks in a controlled manner. For MSMEs and start-ups, this becomes even more critical, as they often operate with limited resources and high exposure to regulatory and financial uncertainties.

A strong governance framework typically includes clearly defined roles and responsibilities, proper internal controls and approval systems, periodic compliance reviews, and transparent financial reporting. Judicial pronouncements in recent years have further reinforced the importance of governance, compliance, and structured decision-making in business operations.

### 9.1 Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17

In this landmark judgment, the Hon'ble Supreme Court upheld the constitutional validity of the Insolvency and Bankruptcy Code, 2016 (IBC). The Court recognised the importance of a structured insolvency framework in ensuring financial discipline and protecting the interests of stakeholders. For MSMEs and start-ups, this judgment highlights a key principle: *timely compliance and financial discipline are essential for business continuity.*

**The decision also emphasised that businesses must operate within a transparent and accountable framework, where defaults are addressed systematically rather than being ignored or delayed.**

### 9.2 Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019) 16 SCC 479

This case further strengthened the framework under the IBC by reinforcing the concept of "commercial wisdom" of the Committee of Creditors (CoC). The Supreme Court clarified that business decisions, when taken within a structured governance framework, should not be unnecessarily interfered with by judicial authorities. *For MSMEs and start-ups, the takeaway is clear: well-documented decisions, supported by proper governance structures, carry legal weight and protection.*

### 9.3 Embassy Property Developments Pvt. Ltd. v. State of Karnataka (2019) 13 SCC 308

In this case, the Supreme Court clarified the jurisdictional boundaries between the National Company Law Tribunal (NCLT) and other statutory authorities. The Court held that while NCLT has wide powers under insolvency proceedings, certain matters relating to public law and statutory authorities remain outside its jurisdiction. The broader implication for businesses is that *regulatory compliance cannot be bypassed, even during restructuring or insolvency processes.* This reinforces the need for businesses to remain compliant with all applicable laws, irrespective of their financial or operational situation.

### 9.4 Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353

This case is particularly relevant for start-ups. The Supreme Court held that insolvency proceedings cannot be initiated where there exists a genuine dispute between parties. The Court emphasised that the IBC is not a recovery mechanism but a resolution framework. For MSMEs and start-ups, this highlights the importance of clear contractual agreements and proper documentation – well-drafted agreements and documented communication can prevent unnecessary litigation and misuse of legal provisions.

### 9.5 Practical Insights from Case Laws

These judicial decisions collectively highlight a few important principles that every MSME and start-up should internalise from the outset:

- Compliance and governance are not optional; they are fundamental to business sustainability
- Proper documentation strengthens the legal position of a business

- Financial discipline and transparency are essential for credibility
- Legal frameworks are designed to support structured business operations, not unregulated growth

**Table 3: Key Judicial Pronouncements and Their Implications for MSMEs**

Case	Key Principle	Implication for MSMEs & Start-ups
<i>Swiss Ribbons v. Union of India</i> (2019)	Validity of structured insolvency framework	Financial discipline is essential for continuity
<i>Essar Steel v. Satish Kumar Gupta</i> (2019)	Commercial wisdom of CoC; governance protection	Well-documented decisions carry legal weight
<i>Embassy Property v. State of Karnataka</i> (2019)	Regulatory compliance cannot be bypassed	Comply with all laws even during restructuring
<i>Mobilox Innovations v. Kirusa Software</i> (2018)	IBC is a resolution, not recovery, framework	Clear contracts prevent litigation misuse

## 10. From Reactive to Proactive Approach

Traditionally, many businesses have approached compliance reactively, addressing issues only when they arise. However, a proactive approach offers significant advantages: better planning and resource allocation, reduced stress and uncertainty, and improved decision-making. Businesses that adopt a proactive approach are more likely to maintain stability during periods of growth and emerge stronger from periods of stress.

"The most valuable contribution that a Company Secretary can make is often made before the problem begins – identifying early warning signs of financial or regulatory stress and advising on proactive restructuring options before the situation deteriorates."

## 11. Building a Sustainable Growth Model

Sustainable growth requires a balanced approach that integrates legal structure, compliance systems, financial discipline, and governance practices. When these elements are aligned, businesses are better equipped to scale effectively and handle future challenges – whether in the form of new regulations, funding requirements, or operational disruptions.

**Table 4: Pillars of Sustainable Growth for MSMEs & Start-ups**

Pillar	Key Elements	Outcome
Legal Structure	Entity choice; shareholding design; IP protection	Scalability; investor readiness
Compliance Systems	Statutory filings; documentation; deadlines	Reduced penalties; credibility
Financial Discipline	Transparent reporting; cash flow management	Lender confidence; credit access
Governance Practices	Board structure; internal controls; ESG	Resilience; long-term value creation

## 12. Conclusion

MSMEs and start-ups are central to India's economic development, but their growth must be supported by a strong foundation of legal, compliance, and governance practices. Compliance should not be viewed as a regulatory burden but as a strategic tool that enables businesses to operate efficiently, build credibility, and manage risks effectively.

The evolving role of Company Secretaries – as advisors, governance professionals, and strategic partners – further strengthens this ecosystem. In a rapidly changing business environment, enterprises that prioritise structure, compliance, and professional guidance will not only grow faster but also build sustainable and resilient organisations.

Enterprises that prioritise structure, compliance, and professional guidance will not only grow faster but also build organisations that are genuinely resilient – capable of withstanding regulatory scrutiny, investor due diligence, and the inevitable challenges of scale.

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# Catalysing Growth for MSMEs and Startups

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## Introduction

Micro, Small, and Medium Enterprises (MSMEs) and Startups have become central to India's economic progress. They contribute not only to GDP but also to employment generation, innovation and balanced regional development. In a diverse and evolving economy like India, these enterprises bridge the gap between opportunity and aspiration.

Over the past decade, India has witnessed a surge in entrepreneurial activity. Technology-driven startups are expanding across urban centres, while traditional MSMEs continue to thrive in semi-urban and rural regions. Government initiatives such as *Startup India, Make in India, Digital India, and Atmanirbhar Bharat* have further accelerated this momentum.

Despite this progress, structural, financial and regulatory challenges continue to limit their growth potential. Catalysing sustainable growth requires a coordinated approach that combines policy support, financial access, technological adoption and strong governance frameworks. This article explores these dimensions and highlights the critical role of professionals, particularly Company Secretaries, in enabling compliant and scalable growth.

## The Economic Significance of MSMEs and Startups

MSMEs contribute nearly 30% to India's GDP and employ over 110 million people, making them one of the largest source of employment after agriculture. Startups, while relatively new, are increasingly contributing to high-value job creation, especially in technology and services.

Beyond economic output, MSMEs play a crucial role in decentralising growth. Unlike large corporations concentrated in metropolitan cities, MSMEs operate across Tier II and Tier III regions, driving local development and reducing regional disparities.

Startups complement this ecosystem by introducing innovation, new business models and scalable solutions. Together, MSMEs and startups strengthen India's competitiveness in both domestic and global markets.

## Key Challenges Faced by MSMEs and Startups

### 1. Limited Access to Finance

Access to timely and affordable finance remains one of the most significant barriers. MSMEs often struggle to obtain credit from traditional banks due to lack of collateral, limited credit history and inadequate financial documentation. Many operate informally, which further reduces their credibility in the eyes of lenders.

Startups face a different but equally serious issue. While early-stage funding through angel investors may be available for promising ideas, many startups encounter a "funding gap" when they attempt to scale. This stage often referred to as the "Valley of Death" is where many ventures fail due to insufficient capital to expand operations, invest in technology, or enter new markets.

## **2. Regulatory Complexity**

Although India has made significant progress in improving the ease of doing business, the regulatory environment can still be overwhelming for small businesses.

MSMEs and startups must comply with multiple laws, including Company law, GST regulations, labour laws, environmental norms, and sector-specific requirements. Each of these involves multiple registrations, periodic filings and documentation.

Frequent changes in regulations add another layer of complexity. Small businesses often lack dedicated compliance teams, making it difficult to keep up with updates.

Overlapping jurisdictions and duplicative reporting requirements further increase the burden. Instead of focusing on growth and innovation, entrepreneurs often spend significant time and resources on compliance management.

## **3. Technological Gaps**

Technology adoption among MSMEs remains uneven. While some enterprises have embraced digital tools, a large number still rely on traditional, manual processes. Outdated machinery, lack of automation and limited use of digital platforms result in lower productivity and higher operational costs. This affects their ability to compete with larger, more technologically advanced players.

In rural and semi-urban areas, the problem is compounded by limited digital infrastructure and lack of awareness about available technologies. Startups, although generally more tech-driven, also face challenges in scaling their technology efficiently and securely, especially when resources are constrained.

## **4. Market Access Constraints**

Expanding beyond local markets is a major challenge for MSMEs. Many lack the resources and expertise required for branding, marketing and distribution. Accessing national and international markets involves understanding customer preferences, regulatory standards, logistics and competition. Without proper support, small businesses find it difficult to navigate these complexities.

Additionally, integration into organised supply chains is limited. Large corporations often have stringent quality and compliance requirements, which MSMEs may struggle to meet without adequate support.

Startups, while better positioned digitally, still face challenges in customer acquisition and market penetration, especially in highly competitive sectors.

## **5. Skill Deficit**

MSMEs often depend on semi-skilled or unskilled labour, which affects productivity and quality. Training programs are limited and employee retention is a constant challenge.

Startups require specialised talent in areas such as technology, data analytics, product development and digital marketing. However, attracting and retaining such talent can be difficult due to budget constraints and competition from larger firms. This skill gap directly impacts innovation, operational efficiency, and growth potential.

## **6. Infrastructure Bottlenecks**

Infrastructure limitations continue to hinder business operations, particularly in non-urban areas. Unreliable power supply can disrupt production. Poor road connectivity and inefficient logistics increase transportation costs and delivery timelines. Limited access to high-speed internet affects digital adoption and online business activities.

These constraints not only increase operational costs but also reduce competitiveness, especially for businesses trying to scale or enter new markets.

### **Policy Framework and Government Initiatives**

Recognising the importance of MSMEs and startups, the government has introduced several initiatives to support their growth. While these measures have created a strong foundation, their effectiveness depends on implementation, awareness and accessibility. Major initiatives are outlined as below:

#### **1. Startup India Initiative**

Launched to promote innovation and entrepreneurship, Startup India has played a key role in strengthening the startup ecosystem. It offers benefits such as tax exemptions, easier compliance norms, faster patent processing and access to funding through government-backed schemes. The initiative has also led to the creation of incubation centres and support networks across the country.

As a result, India has emerged as one of the leading startup ecosystems globally. However, challenges remain in ensuring that these benefits reach startups in smaller cities and at early stages.

#### **2. MSME Development Act and Udyam Registration**

The Micro, Small and Medium Enterprises Development Act, 2006 provides the legal framework for classification and support of MSMEs. The introduction of Udyam Registration has simplified the process of formalising businesses. Through a fully digital and self-declaration-based system, MSMEs can register easily and gain access to various benefits, including credit schemes, subsidies and protection under delayed payment provisions.

Formalisation also improves transparency and credibility, making it easier for businesses to access finance and participate in formal markets.

#### **3. Credit Guarantee Schemes**

Schemes such as the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) aim to address the issue of collateral requirements. By providing guarantees to lenders, these schemes reduce the risk associated with lending to small businesses. This encourages banks and financial institutions to extend credit to MSMEs without demanding collateral.

While these schemes have improved credit flow, their reach is still limited due to lack of awareness and procedural challenges.

#### **4. Production Linked Incentive (PLI) Scheme**

The PLI scheme is designed to boost manufacturing by offering incentives based on incremental production. Although primarily targeted at larger industries, MSMEs benefit indirectly by becoming part of supply chains for Companies participating in the scheme. This creates opportunities for increased production, technology transfer and integration into global markets.

The scheme also encourages domestic manufacturing, reducing dependence on imports and strengthening industrial capacity.

#### **5. Digital India and ONDC**

Digital India has laid the foundation for widespread digital adoption by improving internet connectivity, promoting digital payments and enabling online governance. Building on this, the Open Network for Digital Commerce (ONDC) aims to democratise e-commerce by creating an open network where businesses can connect directly with customers without being dependent on a few dominant platforms.

For MSMEs, this means:

- Lower entry barriers to online markets;
- Greater visibility and reach;
- Reduced platform dependency.

These initiatives are particularly important for small businesses seeking to expand beyond local markets and compete in the digital economy.

## Strategies to Catalyse Growth

### 1. Enhancing Access to Finance

Access to finance remains the most critical constraint for MSMEs and startups. Traditional lending systems rely heavily on collateral and past financial records, which many small businesses lack. This creates a significant credit gap.

**Strengthening FinTech solutions for Alternative Credit Scoring** - Fintech platforms are changing how creditworthiness is assessed. Instead of relying only on balance sheets, they use GST data, transaction history, digital payments and even utility records. This allows lenders to evaluate businesses with limited formal documentation. As a result, more MSMEs can access timely and unsecured loans.

**Expanding Venture Capital and Angel Networks** - Startups, especially in early stages, depend on risk capital rather than debt. A stronger network of angel investors and venture capital funds ensures that innovative ideas get the funding they need. Encouraging domestic investment participation is equally important to reduce reliance on foreign capital.

**Encouraging blended finance models** - Blended finance combines public funds, private investment and philanthropic capital. This reduces risk for private investors and channels funding into high-impact sectors like rural enterprises, green businesses and social startups. It is particularly useful for businesses that are viable but perceived as risky.

**Improving awareness of government schemes** - Many MSMEs are unaware of schemes such as CGTMSE, MUDRA and Stand-Up India. Even when aware, they often lack guidance on how to access them. Bridging this awareness gap through professional support and digital outreach can significantly improve credit flow.

### 2. Simplifying Regulatory Frameworks

Complex compliance requirements discourage formalisation and increase operational costs. Simplification is essential to improve ease of doing business.

**Single-window compliance systems** - A unified digital platform where businesses can complete all registrations, filings and approvals reduces duplication and saves time. It also minimizes interaction with multiple authorities, improving transparency.

**Reducing redundant filings** - Many businesses submit similar information across different departments (MCA, GST, labour authorities). Rationalising these requirements and enabling data sharing between departments can reduce compliance fatigue.

**Promoting self-certification mechanisms** - Allowing businesses to self-certify certain compliance requirements reduces inspections and administrative burden. This builds trust while enabling regulators to focus on high-risk cases.

**Leveraging technology for regulatory reporting** - Automation tools can simplify compliance through pre-filled forms, automated reminders and real-time reporting. This reduces errors and ensures timely adherence to laws.

### 3. Driving Digital Transformation

Digital adoption is a key driver of efficiency, transparency and scalability.

**Adoption of Cloud Computing and ERP systems** - Cloud-based solutions allow businesses to manage operations, inventory and finances in real time without heavy infrastructure investment. ERP systems integrate different business functions, improving decision-making and operational control.

**Use digital payments and accounting tools** - Digital payments improve cash flow visibility and reduce dependency on cash transactions. Accounting software ensures accurate financial records, which also helps in securing loans and attracting investors.

**Leverage e-commerce platforms** - Online marketplaces allow MSMEs to reach customers beyond their local geography. Platforms like ONDC further democratise access by reducing dependency on large aggregators.

**Invest in Cybersecurity** - As businesses go digital, they become vulnerable to cyber threats. Basic cybersecurity practices such as secure payment gateways, data protection, and regular system updates are essential to build trust and avoid financial loss.

**Role of Startups** - Startups play a crucial role by offering affordable SaaS tools, digital payment solutions and automation platforms tailored for MSMEs. This creates a symbiotic relationship where both sectors grow together.

### 4. Strengthening Market Linkages

Even efficient businesses cannot grow without access to markets. Expanding market reach is essential for scaling.

**Integration into global value chains** - MSMEs can become suppliers to large domestic and multinational Companies. This ensures steady demand, exposure to quality standards and opportunities for export.

**Participation in trade fairs and export promotion councils** - Trade fairs provide visibility, networking opportunities and direct access to buyers. Export councils help businesses understand international regulations, certifications and market trends.

**Building strong branding and digital presence** - In today's market, visibility matters as much as quality. A strong online presence, consistent branding and customer engagement through social media can significantly enhance market reach.

### 5. Skill Development and Capacity Building

A skilled workforce is essential for productivity, innovation and competitiveness.

**Industry-academia collaboration** - Closer collaboration ensures that educational institutions align their curriculum with industry needs. This reduces the skill gap and improves employability.

**Vocational training programs** - Skill-based training in areas such as manufacturing, digital tools and services equips workers with practical capabilities. This is especially important for MSMEs operating in labour-intensive sectors.

**Upskilling in digital and technical skills** - As businesses adopt technology, employees must be trained to use new tools effectively. Continuous learning ensures adaptability in a rapidly changing environment.

**Entrepreneurial training and mentorship** - Many entrepreneurs lack formal business training. Mentorship programs help them understand finance, compliance, marketing and scaling strategies, reducing the risk of failure.

## 6. Encouraging Innovation and R&D

Innovation is the foundation of long-term growth and global competitiveness.

**Tax benefits for R&D expenditure** - Providing incentives for research encourages businesses to invest in product development, process improvement, and technology adoption.

**Incubation and acceleration programs** - Incubators provide infrastructure, mentorship, and funding support to startups. Accelerators help scale existing businesses by refining their models and connecting them with investors.

**Collaboration between Startups and MSMEs** - Startups bring innovation, while MSMEs bring experience and scale. Collaboration between the two can lead to efficient production, new product development and improved market reach.

**Intellectual Property awareness and support** - Protecting innovations through patents, trademarks and copyrights is essential. Many small businesses lack awareness of IP rights, which limits their ability to commercialise innovations effectively.

### Role of Technology in Accelerating Growth

Technology has moved from being a support function to becoming a core driver of business growth. For MSMEs and startups, it acts as a force multiplier improving efficiency, reducing costs, enhancing decision-making and enabling access to wider markets. In a competitive and fast-changing environment, adopting the right technologies is no longer optional; it is essential for survival and scalability.

#### 1. Artificial Intelligence and Automation

Artificial Intelligence (AI) and automation are transforming how businesses operate by reducing manual effort and improving accuracy.

AI enables MSMEs and startups to streamline routine operations such as inventory management, customer service, and demand forecasting. For instance, AI-powered chatbots can handle customer queries 24/7, reducing the need for large customer support teams. Similarly, predictive analytics can help businesses anticipate demand patterns, optimise stock levels and reduce wastage.

Automation, on the other hand, improves operational efficiency by minimising human intervention in repetitive tasks. In manufacturing MSMEs, automation can enhance production speed and consistency while reducing errors. In service-based startups, automated workflows can simplify processes like billing, onboarding and compliance tracking.

Together, AI and automation not only improve productivity but also allow businesses to focus on strategic activities such as innovation and expansion.

#### 2. Blockchain for Transparency

Blockchain technology introduces a new level of transparency, security and trust in business transactions. It works as a decentralised and tamper-proof digital ledger where all transactions are recorded and cannot be altered without consensus.

For MSMEs, blockchain is particularly useful in supply chain management. It allows businesses to track the movement of goods from origin to delivery, ensuring authenticity and reducing fraud. This is especially valuable in sectors like agriculture, pharmaceuticals and exports, where traceability is critical.

In financial processes, blockchain can simplify and secure transactions by reducing intermediaries. Smart contracts self-executing agreements coded on blockchain – can automate payments once predefined conditions are met, reducing delays and disputes.

By improving trust and reducing transaction risks, blockchain enhances credibility, which is crucial for small businesses dealing with new partners and global markets.

### **3. Fintech Solutions**

Fintech has revolutionised access to finance, especially for MSMEs and startups that are often underserved by traditional banking systems. Digital lending platforms use alternative data such as GST filings, bank transactions and digital payment history to assess creditworthiness. This enables faster loan approvals, often without the need for collateral. As a result, businesses can access working capital more easily and manage cash flow efficiently.

Digital payment systems, including UPI and mobile wallets, have simplified transactions and improved financial transparency. They reduce dependency on cash, lower transaction costs and create a digital trail that helps in credit assessment.

Financial management tools offered by fintech companies also allow businesses to track expenses, manage invoices, monitor cash flow and ensure timely compliance. These tools provide real-time insights, helping entrepreneurs make informed financial decisions. Overall, fintech solutions bridge the gap between businesses and financial services, making capital more accessible and manageable.

### **4. Data Analytics**

Data has become one of the most valuable assets for modern businesses. Data analytics enables MSMEs and startups to convert raw information into meaningful insights that drive better decisions. By analysing customer behaviour, businesses can understand preferences, predict buying patterns and personalise offerings. This leads to improved customer satisfaction and higher sales.

Operationally, data analytics helps identify inefficiencies, optimise processes, and reduce costs. For example, analysing supply chain data can highlight delays or bottlenecks, allowing businesses to take corrective action.

Market trend analysis is another key benefit. Businesses can track industry developments, competitor strategies and demand shifts, enabling them to adapt quickly and stay competitive. Even small businesses can now access affordable analytics tools, making data-driven decision-making more accessible than ever before.

## **Role of Company Secretaries**

Company Secretaries play a crucial role in strengthening the MSME and startup ecosystem. Their expertise extends beyond compliance into strategic advisory and governance. They help businesses navigate complex regulatory frameworks, ensure timely compliance and reduce legal risks. They also assist in structuring businesses, facilitating funding, conducting due diligence and advising on corporate governance practices.

With increasing focus on sustainability and ESG, Company Secretaries are well-positioned to guide enterprises in adopting responsible business practices. By acting as trusted advisors, they enable businesses to scale in a compliant, transparent and sustainable manner.

## **Case Studies and Success Stories**

### **1. Digital Transformation of a Traditional MSME**

Consider a small manufacturing MSME operating in a semi-urban cluster, traditionally dependent on manual processes, local distributors and paper-based accounting. Like many such enterprises,

it faced issues such as inefficient inventory management, delayed order processing, limited market reach and inconsistent cash flows.

The turning point came with the adoption of digital tools particularly an Enterprise Resource Planning (ERP) system and entry into e-commerce platforms. By implementing an ERP system, the business was able to integrate its core functions - procurement, production, inventory, sales and finance into a single digital framework. This brought real-time visibility into operations. Inventory levels could be tracked accurately, reducing overstocking and stockouts. Production planning became more efficient, leading to better utilisation of resources.

Simultaneously, onboarding onto e-commerce platforms allowed the MSME to move beyond its local market and access customers across different regions. This significantly increased its customer base and reduced dependence on intermediaries. Digital payments and accounting tools improved financial discipline, enabling better cash flow management and easier access to credit due to improved financial records.

As a result, the MSME experienced:

- Increased operational efficiency;
- Reduction in cost and wastage;
- Improved customer reach and revenue growth;
- Enhanced competitiveness in a broader market.

This example highlights how even traditional businesses can achieve substantial growth by embracing digital transformation.

## **2. Startup Scaling through Innovation**

A fintech startup addressing the credit gap for MSMEs provides a strong example of innovation-led scaling. Recognising that many small businesses were excluded from formal lending due to lack of collateral and limited credit history, the startup developed an AI-based credit assessment model.

Instead of relying solely on traditional financial statements, the platform analysed alternative data sources such as GST filings, bank transactions, digital payment history and business activity patterns. This enabled a more accurate and inclusive assessment of creditworthiness.

The use of AI allowed the startup to process loan applications quickly, often within hours, compared to days or weeks in traditional systems. This speed and accessibility attracted a large number of MSME borrowers. Additionally, the platform offered end-to-end digital lending from application to disbursement making the process seamless and user-friendly.

As the model proved effective, the startup was able to:

- Scale operations rapidly across multiple regions;
- Partner with NBFCs and financial institutions;
- Attract investor funding due to strong growth potential;
- Build a large and diversified customer base.

This case demonstrates how leveraging technology and data can not only solve a critical problem but also create scalable and sustainable business models.

## **The Way Forward**

Catalysing growth for MSMEs and startups requires a coordinated and forward-looking approach.

Isolated efforts will not be sufficient; what is needed is an integrated ecosystem that supports businesses at every stage of their lifecycle.

### **1. Policy Consistency and Long-Term Vision**

Frequent regulatory changes and policy uncertainty can create confusion and discourage investment. A stable and predictable policy environment is essential for long-term planning. Consistency in taxation, compliance requirements and sectoral policies helps businesses make informed decisions and reduces risk. At the same time, policies should be designed with a long-term vision, focusing not just on immediate growth but on sustainability, innovation and global competitiveness.

### **2. Public-Private Partnerships**

Collaboration between the government and private sector is crucial for building a robust ecosystem. The government can provide policy support, infrastructure and funding frameworks, while the private sector can bring efficiency, innovation and market expertise. For example:

- Incubation centres supported by both government and industry;
- Skill development programs aligned with industry needs;
- Co-investment models for funding startups.

Such partnerships ensure that initiatives are practical, scalable and aligned with real business requirements.

### **3. Investment in Infrastructure**

Infrastructure plays a foundational role in business growth. This includes not only physical infrastructure such as roads, logistics, power supply and industrial parks but also digital infrastructure like high-speed internet and digital platforms.

Efficient logistics reduce transportation costs and delivery times, improving competitiveness. Reliable power supply ensures uninterrupted production. Digital infrastructure enables access to online markets, financial services and technology solutions. Improving infrastructure, especially in non-urban areas, can unlock significant growth potential for MSMEs.

### **4. Focus on Rural and Semi-Urban Entrepreneurship**

A large portion of India's entrepreneurial potential lies outside major cities. Rural and semi-urban areas offer opportunities in sectors such as agriculture, handicrafts, food processing and local services.

However, these regions often face challenges such as limited access to finance, lack of infrastructure, and skill gaps. Targeted support is required in the form of:

- Local incubation and training centres;
- Access to digital tools and marketplaces;
- Region-specific financing solutions.

Promoting entrepreneurship in these areas not only drives economic growth but also ensures balanced regional development and reduces migration pressures.

### **5. Strengthening the Innovation Ecosystem**

Innovation must be nurtured at every level from early-stage ideas to scalable enterprises. This requires:

- Strong incubation and acceleration networks;

- Access to research institutions and technical expertise;
- Funding support for experimentation and product development;
- A culture that encourages risk-taking and accepts failure as part of the process.

Collaboration between startups, MSMEs, academic institutions and large corporates can create a dynamic innovation ecosystem where ideas are continuously developed and commercialised.

### **Closing Perspective**

India is at a pivotal stage in its economic journey. The foundation for growth - policy support, digital infrastructure and entrepreneurial energy is already in place. What is needed now is deeper integration of these elements.

With the right combination of governance, finance, technology and skill development, MSMEs and startups can evolve from small-scale enterprises into globally competitive businesses. Their growth will not only strengthen the economy but also drive innovation, create employment and ensure inclusive development across the country. MSMEs and startups are not just economic entities; they are the embodiment of India's entrepreneurial spirit. They represent ambition, resilience and innovation. While challenges persist, the opportunities far outweigh them. By fostering a supportive ecosystem that combines finance, technology, policy and talent, India can unlock unprecedented growth.

Catalysing this growth is not the responsibility of the government alone; it requires collective effort from industry, professionals, institutions and entrepreneurs themselves. The future of India's economy lies in empowering its smallest businesses and visionary innovators.

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# Catalysing Growth: The Company Secretary as Architect of the Startup Ascent

## A Strategic Perspective on Corporate Governance in the Age of Unicorns

**CS Richa Sharma**

*Practicing Company Secretary*

### **I. The New Anatomy of Ambition**

There is a peculiar romance to the word 'startup'. It conjures images of sleep-deprived founders hunched over laptops in dimly lit co-working spaces, whiteboards scrawled with half-formed ideas, and the intoxicating belief that the next great disruption is only one breakthrough away. Yet beneath that mythology – behind the TED talks and the billion-dollar valuations – lies an unglamorous, indispensable architecture of governance, compliance, and institutional rigour. It is here, in this underappreciated scaffolding, that the Company Secretary quietly and decisively shapes the destiny of modern enterprises.

The global startup ecosystem has undergone a seismic transformation over the past decade. What was once a predominantly Silicon Valley phenomenon has evolved into a truly planetary movement. From Bangalore to Berlin, Lagos to Lisbon, founders are building companies that are rewriting the rules of industries – and doing so with a velocity and audacity that has forced every stakeholder, from investors to regulators – to fundamentally rethink their assumptions. As of 2024, the world counts over 1,200 unicorns – companies valued at one billion US dollars or more – a figure that would have seemed fantastical as recently as 2015.

In this new landscape, growth is no longer merely a financial aspiration. It is a multi-dimensional discipline. It demands technological innovation, talent magnetism, capital efficiency, and – critically – governance excellence. The Company Secretary, long regarded as a ceremonial custodian of corporate paperwork, has emerged as a strategic partner whose role is as consequential as that of the Chief Financial Officer or the Chief Technology Officer. To understand why, one must trace the arc of the startup journey and identify the precise junctures at which governance either propels or imperils progress.

### **II. From Garage to Gazelle – The Growth Imperative**

Every billion-dollar company begins with a proposition: a problem perceived with unusual clarity, a solution conceived with unusual courage. When Brian Chesky and Joe Gebbia rented out air mattresses in their San Francisco apartment in 2008, they were not building a hospitality empire – they were testing an idea. When Byjus Raveendran began teaching mathematics to friends in Bangalore's cafes in 2006, he was not yet envisioning India's most valuable edtech company. The earliest stage of any startup is an act of faith, not of finance.

But faith must be institutionalised. And this is where many promising ventures falter. The journey from concept to scale is littered with companies that possessed brilliant ideas but collapsed under the weight of structural inadequacy – cap tables in disarray, shareholder agreements unexecuted, intellectual property unprotected, tax obligations misunderstood. The graveyard of great ideas is, in many ways, a graveyard of governance failures.

**Case Study:** *Groww, India's leading investment platform and a fintech unicorn, invested early in building robust compliance infrastructure. Co-founder Lalit Keshre has repeatedly emphasised that their ability to navigate SEBI regulations and acquire the necessary licences swiftly was a function of having the right governance architecture in place from the outset – an architecture that included a strong legal and secretarial function.*

Startups that scale fastest are those that treat governance not as a tax on their time, but as a strategic multiplier. Every well-drafted shareholder agreement prevents a future dispute. Every properly constituted board meeting is a record of accountability. Every timely regulatory filing preserve institutional credibility. The Company Secretary is the professional who ensures these instruments are not merely present, but effective.

### III. The Company Secretary Redefined

In the traditional corporate imagination, the Company Secretary was a peripheral figure – a diligent administrator who took minutes, filed annual returns, and ensured compliance with the Companies Act. That image is not merely outdated; it is dangerously misleading. In the context of a high-growth startup, the Company Secretary is a convergence point for legal expertise, regulatory intelligence, strategic counsel, and stakeholder management.

To appreciate this evolution, one must understand the complexity of the regulatory environment in which modern startups operate. Consider a Series B funded technology company with operations in India, a holding structure in Singapore, investors from the United States, a European data processing subsidiary, and aspirations of a Nasdaq listing. This company simultaneously operates under the Indian Companies Act, FEMA regulations, Singapore's Companies Act, US securities law, GDPR, and multiple sector-specific frameworks. The coordination required to navigate this labyrinth – while maintaining investor confidence, operational momentum, and board cohesion – is not merely administrative. It is genuinely strategic.

The Institute of Company Secretaries of India (ICSI) has formally recognised this expanded mandate. The modern Company Secretary is empowered to act as a Key Managerial Personnel, advise the board on governance best practices, manage investor relations, oversee secretarial audits, and guide the company through capital-raising transactions, mergers, acquisitions, and public market events. Far from a passive archivist, the Company Secretary is an active architect of corporate destiny.

**Insight:** *Zepto, the quick-commerce unicorn that achieved a valuation of over \$1.4 billion within 18 months of launch, required its secretarial and legal function to manage an extraordinarily complex stakeholder landscape – multiple funding rounds, DPIIT startup recognition, FDI compliance under the automatic route, and the structuring of ESOPs to attract world-class talent. Speed of execution at every compliance touchpoint was a competitive advantage.*

### IV. Governance as a Growth Catalyst

#### a) Structuring for Investment

Capital is the oxygen of a startup. Without it, even the most luminous idea is extinguished. But capital does not flow freely – it flows along channels of trust, and trust is built through governance. Institutional investors – venture capital funds, private equity houses, sovereign wealth funds – deploy capital into companies whose governance they can assess, audit, and rely upon. The due diligence process that precedes every significant funding round is, in essence, a forensic examination of the company's governance health.

The Company Secretary is the primary custodian of this governance health. Prior to a funding round, it is the secretarial function that ensures statutory registers are meticulously

maintained, board resolutions are properly authenticated, equity allotments are correctly recorded, and shareholder rights are accurately documented. A disorganised data room – reflecting poorly drafted minutes, missing filings, or incoherent cap table management – can delay funding by months or terminate it entirely.

Conversely, a company whose governance is impeccable inspires disproportionate confidence. When Meesho, the social commerce platform, prepared for its \$570 million Series F round in 2021, its secretarial and legal teams had been systematically building a governance dossier that could withstand the scrutiny of global investors including SoftBank and Fidelity. That rigour – that institutional readiness – was a material factor in the speed and success of the round.

### **b) Protecting the Cap Table**

The capitalisation table – the document that records who owns what percentage of a company – is perhaps the most consequential document in a startup's life. A poorly managed cap table creates disputes, dilution controversies, ESOP misunderstandings, and, in the worst cases, litigation that can paralyse or destroy a business at its most vulnerable moment.

The Company Secretary is the guardian of cap table integrity. This involves not merely recording share issuances but understanding the downstream implications of each transaction – the dilutive effects of convertible instruments, the anti-dilution protections negotiated by early investors, the vesting schedules of employee stock options, and the liquidation preferences that determine how proceeds are distributed in an exit. Each of these elements requires legal precision and strategic foresight.

**Example:** *BharatPe, the fintech startup that reached unicorn status in 2021, experienced a highly publicised governance crisis involving disputes over equity ownership, alleged financial irregularities, and co-founder conflict. The crisis starkly illustrated how governance failures – particularly those related to equity management and board oversight – can destabilise even companies with otherwise strong business fundamentals and set back IPO ambitions by several years.*

### **c) Enabling ESOP Excellence**

Employee Stock Option Plans are the currency of talent in the startup world. In an environment where early-stage companies cannot compete with established corporations on salary, ESOPs represent the promise of shared prosperity – the proposition that those who help build the company will share in its eventual value. For this promise to be credible and legally enforceable, ESOPs must be designed, approved, and administered with meticulous care.

The Company Secretary plays a defining role in ESOP governance – from drafting the ESOP scheme in compliance with the Companies Act, to seeking board and shareholder approval, to maintaining the option pool register, to advising employees on exercise procedures and tax implications. As startups grow and their employee bases expand across jurisdictions, ESOP complexity multiplies.

Razorpay, the payments unicorn valued at over \$7.5 billion, has been lauded within India's startup community for the clarity and generosity of its ESOP policies. The company has consistently credited its governance function with enabling ESOP structures that were not merely compliant but genuinely motivating – structures that aligned employee interests with long-term company success and created meaningful wealth for hundreds of team members upon secondary transactions.

## V. Navigating the Regulatory Labyrinth

India's regulatory environment for startups has undergone a remarkable liberalisation over the past decade. The Startup India initiative, launched in 2016, introduced a framework of recognition, incentives, and simplified compliance that fundamentally altered the landscape for early-stage companies. The DPIIT recognition scheme, the tax holiday under Section 80-IAC of the Income Tax Act, the simplified winding-up process, and the self-certification mechanism for nine labour and environmental laws – each of these represents a deliberate policy choice to reduce the regulatory burden on innovation.

Yet even within a liberalised framework, compliance remains demanding. The intersection of corporate law, securities regulation, foreign exchange management, intellectual property law, sector-specific regulations, and data protection requirements creates a matrix of obligations that demands continuous attention. For a startup expanding from domestic operations to international markets – as companies like CRED, Nykaa, or Postman have done – this matrix becomes exponentially more complex.

**Regulatory Insight:** *Nykaa, the beauty and lifestyle platform that achieved India's first female-led unicorn IPO in 2021, navigated a particularly intricate regulatory journey. Its transition from a private company to a publicly listed entity involved not merely SEBI compliance and IPO documentation, but the reorganisation of its corporate structure, the resolution of pre-IPO governance anomalies, and the management of a complex multi-class share structure. Its secretarial team was central to the successful execution of this journey.*

The Company Secretary's role in regulatory navigation goes beyond mere compliance. The best secretarial professionals are regulatory intelligence professionals – individuals who track legislative developments, anticipate regulatory trends, and position their companies to benefit from policy changes before competitors are even aware of them. In an environment where regulatory arbitrage can confer genuine competitive advantage, this intelligence function is genuinely strategic.

Consider the evolution of India's data protection landscape. The Digital Personal Data Protection Act (DPDPA), 2023, introduced obligations for data fiduciaries that have significant implications for any startup handling personal data – which, in practice, means nearly every consumer-facing technology company. Company Secretaries who began advising their boards on DPDPA compliance in 2023 gave their companies a meaningful head start over those who waited for the regulations to take final form.

## VI. The Board as Strategic Engine

One of the most underappreciated contributions of a skilled Company Secretary is the professionalisation of the board. In the earliest stages of a startup, the board is often an informal gathering of founders and initial investors – a group operating primarily on relationships and goodwill rather than formal governance. This informality is not merely a legal risk; it is a strategic limitation. The board's potential as a source of strategic counsel, network leverage, and accountability is fully realised only when it operates with appropriate structure and discipline.

The Company Secretary is the architect and custodian of board effectiveness. This encompasses the design of board meeting agendas, the preparation and distribution of board papers, the management of board committees – audit, compensation, nominations – the administration of board evaluations, and the documentation of board decisions through properly drafted resolutions and minutes. Each of these functions, performed with excellence, transforms the board from a compliance requirement into a genuine strategic asset.

The experience of Freshworks – the SaaS unicorn that became the first Indian-origin software company to list on Nasdaq in 2021 – is instructive. Founder Girish Mathrubootham has spoken

extensively about the critical role that board evolution played in Freshworks' journey from Chennai startup to global enterprise. As the company scaled, its board transformed from an informal advisory circle into a sophisticated governance body comprising seasoned executives with expertise in product, finance, and international expansion. The Company Secretary was central to managing this evolution – from board constitution and committee formation to the complex governance requirements of a dual-listed global corporation.

**Board Excellence Principle:** *High-performing startup boards are characterised by clarity of purpose, diversity of perspective, accountability in execution, and discipline in documentation. The Company Secretary is the professional who ensures all four of these qualities are systematically embedded in the board's operating rhythm.*

## VII. The Unicorn Moment – IPOs and Exits

For many startups, the ultimate validation of their journey is an initial public offering – the moment when the company opens its ownership to the broader public and its shares begin to trade on an exchange. An IPO is simultaneously a financial transaction, a reputational event, a regulatory marathon, and a governance examination. It is, in the most literal sense, the moment when a company's internal standards are exposed to the full scrutiny of the market.

The preparation for an IPO begins years before the listing date. Companies that aspire to public markets must systematically upgrade their governance architecture to meet the standards expected of publicly listed entities – standards related to board composition, internal controls, financial reporting, related party transaction management, and disclosure practices. The Company Secretary leads much of this preparation, working in concert with investment bankers, auditors, legal counsel, and registrars to ensure that when the IPO window opens, the company is ready.

The IPO journeys of India's recent generation of unicorns offer compelling evidence of this dynamic. Delhivery, the logistics unicorn that listed on the BSE and NSE in 2022, undertook an extraordinarily complex pre-IPO restructuring that involved the reorganisation of its subsidiary structure, the rationalisation of related party relationships, the strengthening of its audit committee, and the revision of its corporate governance policies to align with SEBI's Listing Obligations and Disclosure Requirements. This work, conducted over 18 to 24 months under intense time pressure, required a secretarial function of exceptional capability.

Similarly, the listing of Zomato in 2021 – India's first major new-age tech IPO – involved governance preparations of considerable complexity. The company's dual-class share structure, its evolving relationship with regulatory authorities regarding FDI in food delivery, and the management of its large and varied investor base all required the sustained engagement of a sophisticated secretarial team. Zomato's successful listing at a market capitalisation of over Rs. 64,000 crores validated the governance investment that had been made in the preceding years.

For companies that choose exit through acquisition rather than public markets, the Company Secretary's role is equally critical. Merger and acquisition transactions involve due diligence processes, definitive agreement negotiations, regulatory approvals, shareholder consents, and integration planning – each of which has a significant governance dimension. The Company Secretary is the connective tissue between legal advisors, investment bankers, and the board during what is invariably a period of intense pressure and acute risk.

## VIII. The Human Dimension – Culture, Ethics, and ESG

Governance is not merely a technical discipline. At its deepest level, it is a cultural commitment – a collective decision by the people who lead a company to operate with integrity, transparency, and accountability even when – especially when – no external authority is watching. The Company Secretary is uniquely positioned to cultivate and reinforce this culture.

In the aftermath of several high-profile corporate governance crises within India's startup ecosystem, a new consciousness about governance culture has taken hold. Founders and boards have recognised that governance is not simply a risk mitigation mechanism – it is a brand asset, a talent magnet, and a stakeholder trust mechanism. Companies that demonstrably operate with integrity attract better investors, better employees, better partners, and better regulatory treatment.

The emergence of Environmental, Social, and Governance reporting as a mainstream investor expectation has further elevated the importance of the secretarial function. ESG reporting – which encompasses a company's environmental footprint, its social impact, and its governance practices – has become a material factor in investment decisions, particularly for institutional investors with sustainability mandates. The Company Secretary is increasingly responsible for coordinating ESG disclosures, engaging with rating agencies, and advising the board on ESG strategy.

**ESG in Action:** *Ola Electric, the electric vehicle startup that is redefining India's automotive future, has embedded ESG considerations into its governance framework from an early stage. Its reporting on carbon emissions, supply chain ethics, and workforce diversity reflects a governance approach that recognises ESG not as a compliance obligation but as a core element of its institutional identity – and a key component of its appeal to global institutional investors.*

Beyond ESG, the Company Secretary plays a crucial role in managing the ethics architecture of a growing startup. This includes the design and administration of whistleblower mechanisms, the management of conflict-of-interest declarations, the oversight of related party transaction approval processes, and the enforcement of codes of conduct. These mechanisms, when well designed and rigorously administered, create the conditions under which ethical behaviour becomes the default – not the exception.

## **IX. The Global Dimension – Structuring for Cross-Border Scale**

The most ambitious startups are not content with domestic leadership. They aspire to global relevance – to the kind of transformative scale achieved by companies like InMobi, which became India's first unicorn in 2011, or Freshworks, which built a global customer base from a city not typically associated with enterprise software. This global ambition creates governance complexity of an entirely different order.

Cross-border structuring – the creation of holding companies, operating subsidiaries, special purpose vehicles, and intermediate holding structures across multiple jurisdictions – is a governance exercise of extraordinary intricacy. The choice of holding jurisdiction (Mauritius, Singapore, Cayman Islands, Delaware) has implications for tax efficiency, investor preference, regulatory treatment, and future listing options. The interplay between FEMA regulations in India, company law in the holding jurisdiction, and securities law in potential listing markets creates a regulatory topology that requires both specialised knowledge and strategic judgment.

Postman, the API platform that achieved unicorn status with a valuation exceeding \$5 billion, operates a global structure with its holding company incorporated in the United States and operations spanning multiple continents. The governance of such a structure – ensuring compliance across jurisdictions, managing transfer pricing, coordinating board governance across the group, and maintaining consistent governance standards in each entity – requires a secretarial function that is as globally sophisticated as the business itself.

The Company Secretary in such environments is not merely a compliance officer – they are a global governance strategist, capable of advising the board on the governance implications of geographic expansion, jurisdictional choice, regulatory arbitrage, and cross-border capital flows. This strategic advisory role is one of the most demanding and most valuable functions that a modern Company Secretary can perform.

## X. The Future of the Role – Technology, AI, and the Augmented Secretary

The very technology that startups build is transforming the practice of company secretarial work. Legal technology platforms, AI-powered contract analysis tools, automated compliance tracking systems, and blockchain-based shareholder registers are fundamentally changing how governance functions operate. The Company Secretary of the future is a digitally native professional who harnesses technology to deliver governance services with greater speed, accuracy, and insight than was previously conceivable.

Consider the implications of AI for compliance management. A sophisticated AI system can monitor regulatory publication across multiple jurisdictions, identify changes relevant to the company's operations, assess their compliance implications, and flag action items for the secretarial team – all in near real time. This capability, which would have required a small army of compliance lawyers a decade ago, is now accessible to even modestly sized startups through commercially available platforms.

Similarly, the digitisation of board processes – through secure board portal platforms that enable paperless board packs, electronic voting, real-time resolution management, and integrated minute-taking – has transformed the efficiency and quality of board administration. Company Secretaries who have embraced these platforms can focus their attention on higher-value strategic activities, rather than the mechanics of meeting administration.

Yet technology does not diminish the human dimension of the role – it amplifies it. The Company Secretary's core value proposition has always been judgment: the ability to assess complex situations, identify risks and opportunities, and advise decision-makers with clarity and confidence. No AI system can replicate the judgment that comes from years of experience navigating the intersection of law, business, and human dynamics. Technology augments this judgment; it does not replace it.

**Looking Forward:** *The Company Secretary who will thrive in the next decade of startup growth is one who combines deep governance expertise with technological fluency, global regulatory knowledge, and the strategic acumen to advise boards at the highest level of complexity. This professional will be not merely the guardian of corporate compliance, but a genuine architect of institutional excellence.*

## XI. Conclusion – The Quiet Architect of the Startup Century

The story of the global startup ecosystem is, at one level, a story about ideas – about the human capacity for imagination, problem-solving, and the audacious belief that things can be done differently. But at another level, it is a story about institutions – about the capacity to transform a brilliant idea into a durable, accountable, and scalable organisation that creates value for customers, employees, investors, and society.

This institutional transformation is the domain of governance. And governance, executed with excellence, is the domain of the Company Secretary. In every funding round that succeeds, in every ESOP scheme that creates generational wealth, in every board meeting that sharpens strategic direction, in every regulatory challenge that is navigated with skill and composure, the Company Secretary's contribution is present – often invisible, always indispensable.

The unicorns of today – Zepto, Razorpay, CRED, Meesho, Nykaa, Freshworks, and the hundreds of others that populate the global roster of billion-dollar startups – are testaments not merely to the power of ideas, but to the power of institutional discipline. Behind each of their growth stories, quietly shaping the conditions for success, stands the governance professional: the Company Secretary, the quiet architect of the startup century.

*As India's startup ecosystem continues its remarkable ascent – with ambitions of nurturing a thousand unicorns and building globally competitive enterprises across sectors from deep tech to climate solutions – the demand for Company Secretaries of exceptional calibre has never been greater. For the professionals who embrace this challenge, who evolve with the complexity of their organisations, and who bring to their role the full breadth of legal knowledge, strategic insight, and human wisdom that it demands, the opportunity before them is nothing less than extraordinary.*

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\*ICSI (Management & Development of Company Secretaries in Practice) Guidelines, 2023

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