

Company Secretary in Practice- A Multidisciplinary Professional

Organizations need advice on navigating the legal system of the country. Therefore such an advisor is required who could be able to guide & direct the activities and functions towards the right direction as per the relevant provisions of Business & Corporate Laws of the country, and enable such organisations to comply the applicable laws. Thus, most trusted person who can manage compliances with all the Business and Corporate Laws is the Company Secretary.



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INTRODUCTION

With the introduction and implementation of the concept of Liberalization, Privatization & Globalization (LPG) in the country, it was observed that over the past few years, many Multinational Companies have been setting up their business units in India and our Indian Companies are also setting up their business units outside India to expand their horizon.

These organizations need advice on navigating the legal system of the country. Therefore such an advisor is required who could be able to guide & direct the activities and functions towards the right direction as per the relevant provisions of Business & Corporate Laws of the country, and enable such organisations to comply the applicable laws.

Thus, most trusted person who can manage compliances with all the Business and Corporate Laws is the Company Secretary.

Businesses trust the Company Secretary Professionals other than any other Professionals for legal advice with respect to various matters such as Corporate Restructurings, Re-organisation, Fund raising through Issue of Securities, Incorporation and winding up of the Companies and LLPs, Overseas Direct Investments, Foreign Direct Investments, CSR etc.

INTRODUCTION OF COMPANY SECRETARY PROFESSION

The Company Secretary Course was first introduced in the year 1960, by the Company Law Board (CLB) leading to the award of Government Diploma in Company Secretaryship. As the number of students taking up the Company Secretaryship course grew, the Government on 4th October, 1968, promoted the Institute of Company Secretaries of India under Section 25 of the Companies Act, 1956 for taking over from the Government the conduct of Company Secretaryship examination.

The Institute of Company Secretaries of India (ICSI) has since been converted into a statutory body w.e.f. 1.1.1981 under the Company Secretaries Act, 1980 (Act No. 56 of 1980). The Institute of Company Secretaries of India (ICSI) has its headquarters at New Delhi and four regional offices at New Delhi, Chennai, Kolkata, and Mumbai.

MEANING AND DEFINITION OF COMPANY SECRETARY

Company Secretary Means: The Company Secretary is a person who holds the Key Managerial Personnel (KMP) position in the Corporate Sector, and plays a crucial role in ensuring adherence to statutory, legal, and regulatory compliance requirements.

The Company Secretary ensures that an organisation complies with all the applicable Laws, Rules and Regulations; he/she acts as an advisor to the Board of Directors in various Corporate, Business, Legal, and Secretarial matters.

The Company Secretary also serves as a communication link between the Board of Directors and other stakeholders of the Company.

DEFINITION

Under the Companies Act, 2013:

According to section 2(24) of the Companies Act, 2013 "Company Secretary or a secretary means a Company Secretary defined under clause (c) of sub section (1) of section 2 of Company Secretaries Act, 1980 and appointed by a Company to perform the functions of a Company Secretary under this Act".

Under the Company Secretaries Act, 1980:

As per section 2(1)(c) of the Company Secretary Act, 1980, “Company Secretary” means a person who is a member of the Institute of Company Secretaries of India (ICSI).

Meaning of the Company Secretary in Practice:-

Company Secretary in Practice means any member of the Institute of Company Secretaries of India (ICSI), who does not work under any employment agreement or presently is working as an employee in any organisation under the employment agreement.

But, he/she works either as an individual or under a partnership agreement as a partner in a firm, and provides wide range of services, such as Legal, Financial, Consultancy, Taxation, Banking & Insurance etc, services to its clients.

As a Company Secretary in Practice the role and authority is more than the Company Secretary in employment.

DEFINITION**Under the Companies Act, 2013:**

According to section 2(25) of the Companies Act, 2013 Company Secretary in Practice means a Company Secretary who is in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980.

Under the Company Secretaries Act, 1980:

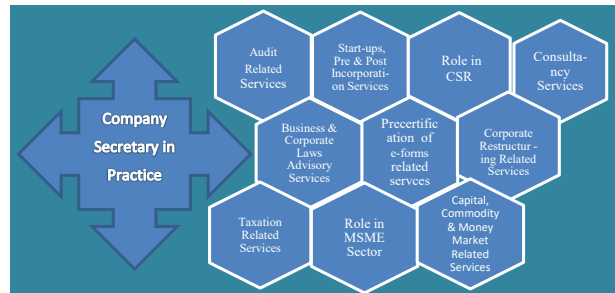
Section 2(2) of the Company Secretaries Act, 1980, provides that, a member of the Institute shall be deemed “to be in practice” when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,—

- (a) Engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) Offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or
- (c) Offers to perform or performs such services as may be performed by—
 - (i) An authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
 - (ii) A share transfer agent,
 - (iii) An issue house,
 - (iv) A share and stock broker,
 - (v) A secretarial auditor or consultant,

(vi) An adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or byelaws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973, (46 of 1973), or under any other law for the time being in force,

(vii) Issuing certificates on behalf of, or for the purposes of, a company; or

- (d) Holds himself out to the public as a Company Secretary in Practice; or
- (e) Renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) Renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in Practice; and the words “to be in practice” with their grammatical variations and cognate expressions, shall be construed accordingly.

Brief snapshot of disciplines/areas, where Company Secretaries provide their Services**DISCUSSION ON THE MULTI-DISCIPLINARY FUNCTIONS OF A COMPANY SECRETARY IN PRACTICE**

A Company Secretary is a Multi-disciplinary Professional; especially a Company Secretary in Practice performs Multi-disciplinary functions because there are no such restrictions in practice, which are there in the employment.

The various services/ roles of a Company Secretary in Practice are as follows:

1. Contribution of Company Secretary for Start-up:-

A Company Secretary in Practice is a competent professional to advice, manage and perform various statutory, legal, and regulatory functions in various stages such as pre-incorporation as well as post-incorporation of the start-ups.

He/she contributes services in the matters related to determination of legal structure of the start-up,



preparation of legal documents for its registration etc during the pre-incorporation stage, and provides legal advice in various matters and guidance for the preparation of statutory registers, books, agreements, etc during the post-incorporation stage.

2. Contribution of Company Secretary for MSME Sector:-

As we know that in our country MSME sector plays a very significant role, and it contributes around more than 29% of total GDP of the Nation. Therefore MSME sector is considered as a backbone of Indian Economy. It provides employment to lakhs of skilled and unskilled workforce of the country.

Therefore it is very much important to provide correct guidance and support to such organisations, so that country's GDP could be increased.

Except few other Such MSME organisations can't afford to appoint a whole-time Company Secretary.

Thus, the role of Company Secretary in Practice comes into picture, Company Secretary in Practice plays a crucial role in ensuring various compliance requirements, corporate governance, and overall management of the corporate affairs of such MSME organisations in the best way.

3. Certification Services:-

The real crux of any profession can be identified, where such professionals enjoy signing authority or having authority to certify such kind of documents, processes.

Certifying authority or right to certify is given to a professional under any law or regulation, if such professional belongs to a professional body which has recognised under any law to deals with the such specified matters, such as Bar Council of India is recognised professional body for promoting legal education, Medical Council of India, is

recognised body for promoting, regulating and laying down standards for medical education in the country.

In the same way ICSI is the only recognised professional body for promoting, regulating, laying down standards for Company Secretary Profession, so that high calibre professionals facilitating good Corporate Governance could be developed.

A Company Secretary in Practice is such recognised professional who has authority to certify various kinds of documents, e-forms, processes etc, under various legislations, which reveals the trust of the various regulators, in the Company Secretary Profession.

4. As an Arbitrator or Conciliator:-

The Arbitration and Conciliation (Amendment) Act, 2019 (the amended Act) has also recognised the Company Secretary in Practice as an arbitrator or conciliator to resolve dispute or to negotiate and council clients in various commercial contracts and disputes.

Further Section 43J of Arbitration and Conciliation (Amendment) Act, 2019 (the amended Act) provides the Qualifications and Experience of Arbitrator. And clause (iv) of the said section provides that Company Secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a Company Secretary may be appointed as an arbitrator.

Thus, Company Secretary in Practice is playing significant role in alternate dispute resolution (ADR) forum also.

5. As a Trainer:

A Company Secretary also acts as a trainer. As he/she trains under him/her various trainees under the Regulation 46BB of the Company Secretaries Regulations, 1982.

And training under a practicing Company Secretary is considered best, because they deal with multidisciplinary areas, and the trainee has an opportunity to learn and explore more and more things which are not available, if the training is done under Company Secretary in the employment because in the employment scope of functioning is limited.

Thus, a Company Secretary in Practice also gives his/her contribution to accomplish the mission of the Institute of Company Secretaries of India (ICSI), **"To develop high calibre professionals facilitating good Corporate Governance."**

6. As a Secretarial Auditor:-

Pursuant to Section 204(1) of the Companies Act, 2013 every listed company and a company belonging to other class of companies as may be prescribed shall

annex with its Board's report made in terms of sub-section (3) of Section 134 of this Act, a secretarial audit report, given by a Company Secretary in Practice, in such form as may be prescribed. Such prescribed Form is MR-3.

Thus, it becomes an excellent opportunity for a Company Secretary in Practice for providing his/her independent opinion with respect to the secretarial records, and the status of Legal, Regulatory, and Statutory Compliance of the Company. This will help the investors, regulators, and statutory authorities to take informed decision and form their opinion on the Company based upon the report of Secretarial Auditor.

7. As an Authorised Representative:-

A Company Secretary in Practice may also appear before various regulators, Tribunals such as CCI, NCLT, NCLAT, ITAT, TRAI, SAT, DRT, DRAT etc, on behalf of his/her clients.

Section 432 of the Companies Act, 2013 deals with the right to legal representation, and provides that the applicant or the appellant may either appear in person or authorise one or more Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners or any officer to present the case before the Tribunal or the Appellate Tribunal, as the case may be. Many Company Secretaries who are in practice appear before such Authorities to represent their clients.

Thus, it becomes another good opportunity for a Company Secretary in Practice to apply his/her skills, and expertise, excel in his/her career, and create value for their clients as well as for the whole CS Profession.

8. As a valuer of financial assets:-

Many Company Secretaries in Practice are currently providing their services as a registered valuer.

The Companies (Registered Valuers and Valuation) Rules, 2017 ("Valuation Rules"), has provided an emerging area of practice to the Company Secretaries in the field the valuation of securities under various laws.

Therefore to explore such an opportunity by the members, the Institute of Company Secretaries of India (ICSI) has established a registered valuer organisation, which is wholly owned subsidiary of ICSI, and is registered with the Insolvency and Bankruptcy Board of India (IBBI). This organisation provides registration as registered valuer to the member of the Institute of Company Secretaries of India (ICSI) and training to upgrade the skills of its members time to time.

The Role of Company Secretary plays a crucial role in ensuring various compliance requirements, corporate governance, and overall management of the corporate affairs of such MSME organisations in the best way.

9. As an Insolvency professional:-

A Company Secretary in Practice, having Ten years or more experience may register himself/herself as an Insolvency Professional (IP), after passing the limited insolvency exam, which is conducted by the Insolvency and Bankruptcy Board of India (IBBI). And may help his/her clients for revival, wind-up or take-over of the Company already under Insolvency proceedings or may act as resolution professional.

10. As a management consultant:-

A Company Secretary in Practice also act as a management consultant, who helps his/her client Companies to solve issues, create value, maximise growth and improve business performance, by using his/her skills and expert knowledge in the various fields like, Business and Corporate Laws, Finance and Taxation, Drafting, Corporate Funding and Restructuring etc. He/she provides expert advice to client Companies/organisations for the achievement of their goals.

11. As a private tutor or visiting faculty:-

A Company Secretary in Practice, who is willing to be a torchbearer for the young generation of the Country, may also become a private tutor or visiting faculty.

Many of the qualified professionals such as Chartered Accountants, Company Secretaries, Cost Accountants, and Lawyers etc become a private tutor and open their coaching centres where they provide best coaching to the students who want to become CA, CS, and CMA etc.

Many of the professionals are also invited as a visiting faculty by the premier management institutes, universities etc, to share their practical experience and knowledge with the students.

UGC'S INITIATIVE

The University Grants Commission (UGC) has taken a new initiative to bring the industry and other professional expertise into the academic institutions through a new category of positions called "Professor of Practice". A professional having more than 15 years of experience will be eligible to act as Professor of Practice in various Institutes and Universities.

12. As an advisor:-

A Company Secretary in Practice gives his/her services as an advisor in the various areas of business and corporate laws, taxation, finance etc to his/her clients. And not only the small Companies, Societies, Start-ups but also the large Corporates, trust Company Secretaries to take advice with respect to Business and Corporate Laws matters.

Whenever any business faces issues with respect to notice from a regulator, M & A dealings, Takeover, or any Compliance issue etc. A preferred professional is the Company Secretary to take advice and resolve the issue.

13. As an IPR Agent:-

A Company Secretary in Practice may act as an IPR Agent, pursuant to the powers conferred under Clause (f) of Sub Section (2) of Section 2 of the Company Secretaries Act, 1980 read with Regulation 168 of the Company Secretaries Regulations, 1982 which allows 'A Company Secretary in Practice to act as IPR agent'.

Many Company Secretaries work in the field of IPRs, especially for the Trade Marks registration, renewal, and representation before Trade mark Authority etc.

14. As Scrutinizer in e-voting process:-

Scrutinizer means a person who independently and in a transparent manner monitors the entire process of e-voting, and finally gives his/her report to the Chairman of the Company, with the status of the resolutions put for voting.

There are provisions under the Companies Act, 2013 which authorises a Company Secretary to act as a scrutinizer. Such as Section 108 (Company Secretary as Scrutinizer in e-voting), Section 109, and Section 110.

15. Role in fundraising:-

A Company Secretary in Practice provides his/her services for the fundraising activities by the Corporates in form of IPO, FPO, Debt financing, ECB, etc.

A Company Secretary in Practice advises his/her clients about various funding options available, prepares documents for IPO, FPO, ECB, and issue and listing of various securities on the Stock Exchanges including issue and listing of American Depository Receipts (ADR) or Global Depository Receipt (GDR).

16. As an Internal Auditor:-

Section 138 of the Companies Act, 2013 provides the Companies and class of Companies which are required to appoint an Internal Auditor to conduct

internal audit function. Such person shall either, be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company. An Internal Auditor may be an employee of the Company also.

Being multidisciplinary professionals, Company Secretaries are well-versed in Corporate Laws, Governance, Ethics, Strategic Management, etc, may take this responsibility.

Thus, it will be convenient to the Board and its Committees to communicate with him/her and determine the area and scope of Internal Audit etc.

17. As a Proxy Advisor:-

A Company Secretary may also act as a proxy advisor. Proxy advisors are those who uncover risks associated with board proposals and provide recommendations on Proxy voting based on the Corporate Governance practices of the organisation.

They guide the institutional investors so that they could be able to cast more informed votes.

18. As a Compliance and Risk Manager:-

A Company Secretary in Practice may also act as Compliance and Risk Manager of its Clients. During the Secretarial Audit, he/she may find the loopholes in the internal control and risk management processes of the Company, and accordingly he/she may guide them to robust their internal controls and compliance management processes. Thus, the client Companies will also find the Secretarial Audit a fruitful exercise for them to reduce compliance risk.

19. As a Corporate Planner:-

A Company Secretary in Practice also plays the role of Corporate Planner for his/her clients.

During the normal course of business a Company Secretary in Practice makes strategies for his/her clients to meet business goals and achieving objectives. It may involve strategy with respect to in-organic growth e.g. Amalgamation, Merger, Takeover etc. or with respect to organic growth e.g. growth through proper planning, organising, customer support, and product development etc.

20. As a Strategy Manager:-

A Company Secretary in Practice also acts as a strategy manager, it is because he/she guides and formulates strategy to achieve the goals of the organisation and advises to his/her clients how to achieve growth in the business whether through in-organic route e.g. M & As, Takeovers, Strategic



Alliance etc or through organic route e.g. growth through internal sources such as better customer service, cost reduction, product development etc.

21. As an Auditor of Capital Market Intermediaries:-

Robust internal control systems and processes are pre-requisite for good governance.

These internal controls can ensure compliance with laws and regulations; protect an organization's systems, data and assets, as well as to endure accurate and timely disclosures and reporting with respect to financials and/or non- financial data as the case may be.

Therefore it is very important to check such internal control systems time to time for ensuring good governance within the organisation.

The Company Secretary in Practice is authorised to carry out Audit of Stock Brokers/Trading Members/Clearing Members etc intermediaries of the Capital Market.

As an auditor he/she is responsible to check that such intermediaries are in compliance with the provisions of the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, and the intermediary specific regulations made by SEBI, e.g. SEBI

(Stock Brokers and Sub Brokers) Regulations, 1992, SEBI(Portfolio Managers) Regulations, 2020 etc.

22. Role in an Economic development:-

Economic development depends upon the Investments in Stock Market. And growth of Economic development takes place faster if there is Foreign Investment in such Economy.

The Foreign Investors could be attracted for Investing, when there are robust compliance procedures in the Country which ensures strict ethical guidelines, regulatory requirements to maintain the highest standards of integrity, transparency and accountability.

Company Secretary in Practice also plays significant role to make robust compliance system of the Country, through high standard of professional ethics, to inculcate ethical business practices and by complying law in letter and spirit, in his/her practice.

23. As technical member of NCLT:-

A Practicing Company Secretary can be appointed as a Technical Member of NCLT, provided that he/she has 15 years' work experience as Company Secretary in Whole-Time Practice.

24. Role in Corporate Social Responsibility (CSR):-

A Company Secretary in Practice also plays pivotal role in the CSR spending of his/her clients. As he/she gives advice to the clients about the areas to spend the CSR funds, prepares CSR Policy of the Company, and helps the client Companies to create the positive impact in the minds of the Investors, Regulators, and Public at large through the CSR initiatives.

COMPANY SECRETARY AND ARTIFICIAL INTELLIGENCE (AI)

All of us know that at present most of the work is completed by using tools of artificial intelligence (AI), within minimal time and efforts. Such AI tools may be Chat GPT; power BI, or any Compliance Software etc.

An artificial intelligence program can perform the long calculation in a short period, whereas a professional like Company Secretary will take a long time to perform the same task.

But it cannot be denied that an artificial intelligence programmes have limited validity, it has no logic of its own; it can only provide solution without any reverse engineering or logic.

AI cannot understand the emotions and lacks intuition; therefore it provides the same solution to each and every one having different sentiments and emotions.

But a human can understand the sentiments and emotions, and can provide solution accordingly.

AI cannot argue on an issue as a qualified professional does. AI lacks common sense, but a professional can give solution based on his knowledge and common sense.

Thus, it can be said that Artificial Intelligence cannot beat the human intelligence as it has its own programming limitations. And its updation and programming is also done by the humans.

The services which are provided by the Company Secretary in Practice, such as pre-certification of e-forms, advice, and overall business compliance and planning cannot be wholly done by using AI tools.

Thus, an AI tool also can't defeat and replace the role of a Company Secretary in Practice because of various limitations of AI tools (few of them has discussed above).

ANALYSIS OF ROLE OF COMPANY SECRETARY IN PRACTICE

Thus after throwing the light on the various aspects of professional services, which are provided by the Company Secretary in Practice.

It can now be said that a Company Secretary in Practice is one of the corporate professionals who deals with

multidisciplinary areas, and helps the clients to achieve the goal of good corporate governance, which reduces legal risk and makes business attractive for the Foreign Investors, which results development of Capital and Money Market, and finally, the Economy grows by leaps and bounds.

Thus, Company Secretaries in Practice are making true the slogan of ICSI, "In pursuit of Professional Excellence" by serving the corporate sector and enabling Companies to move from adequate compliances to absolute compliances.

CONCLUSION

As the corporate sector is facing new challenges, ever-increasing regulations, and the role of artificial intelligence in business etc, increasing the compliance burden of the businesses and corporates, the Company Secretary in Practice must also be ready to undertake new challenges and emerging areas of practice due to technological developments and entry of artificial intelligence in the business.

As the Artificial Intelligence (AI) is one of the emerging areas, where the role of Company Secretary in Practice may increase because of entry of AI programmes in the business, which may result the change/amendment in the Information Technology Act, 2000 or for enactment of new law to deal with the artificial intelligence, which may increase the compliances and the Company Secretary in Practice may get the emerging areas of practice to enable Corporates and businesses to meet such compliance. One of such emerging area is Structural Digital Database (SDD) compliances in the listed entities.

Thus, the Company Secretary in Practice can no longer be considered just a professional for certification services or as an advisor, but at present he/she is considered as a multidisciplinary professional who deals with the various aspects of business and corporate laws, finance, taxation, international trade, foreign collaborations, etc, and helps to meet the Statutory, Regulatory and Legal Compliances.

Thus, after overall discussion and analysis it can be said that a Company Secretary in Practice is a multidisciplinary professional who plays significant role to promote good corporate governance, by complying law in letter and spirit, and through this way also facilitates good Corporate Governance.

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