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Critical Analysis of the Role of a Company Secretary: An Indian Perspective

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ABSTRACT

This Article explores the position and difficulties of working corporate secretaries in India. The significance of structures of the company and the involvement of the secretary as a leading officer in the management of the company by semi-structured interviews with the different Company Secretaries is essential in order to determine the reasons and skills necessary for the development of positions. The theoretical structure of this analysis is focused on amalgamation of previous study on company secretaries and discusses various important facets of the position of corporate secretary. The function is not a static definition, which is constantly evolving in a growing regulatory environment and Dynamics of the internal working of the company. The exploratory evidence shows that corporate secretaries are taking into account the extension of duties and the transition of positions from planner to strategic advisor. The role requires the professional proficiencies and skills of demonstrative intelligence, communication and confidence that are essential to preserving the function and freedom of the governing doors. Dual-role corporate secretaries (i.e. those who merge legal counsel or chief financial officer functions) of non-profit and government-owned organisations are well conscious of the limitations of their roles. With respect to the same, the guidelines in this essay will provide a broad overview of how this should be achieved.

Keywords: Company Secretary, Role, Appointment, Duties, Rights.

I. INTRODUCTION

The CS shows a significant role in the management of the Company. Although he has progressed from being a clerk to a higher level of the company, he is not merely responsible to the company but also to its owners, shareholders, workers, customers, community and governments. The Companies Act, 2013 describes a 'Company Secretary' or 'secretary' as a corporate secretary as specified in subsection (c) of subsection (1) of section 2 of the Companies Secretaries Act, 1980, i.e. named by a corporate to serve as corporate secretary

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under that Act. The complexity of the position of corporate secretary depends on the size and function of the company. The Secretary shall be designated to execute the responsibilities which may be undertaken by the Secretary in compliance with this Act and any other ministerial and administrative duties. Both the Private Sector Company and the Public Sector Company may have a corporate secretary in their administration department. Internationally, the Treasurer of the Business is also known as the Secretary of Public Relations or Director. The Secretary of the Company usually has to work with the general management, but in particular has to insure that the legislative and legal provisions of the business and the judgments of the Board of Directors have been enforced. The present article will further substantiate and elaborate on role, features, appointment and rights of a Company Secretary.

II. RESEARCH QUESTION

The following questions will be discussed in this Research Article:

1. Whether the role of a Company Secretary essential for private or public sector companies in India?
2. Whether the processes of appointment of company secretary enough to get an appropriate CS for a company?
3. Whether the judicial precedents and amendments has laid down any significant variations in its role in an Indian corporation?

III. OBJECTIVES OF THE STUDY

1. To comprehend the role of a CS in an Indian company.
2. To understand the procedure of appointment and disqualification of a Company Secretary.
3. To understand various rights and responsibilities of a CS.
4. To understand various responsibilities and their expansion under the companies act and other legislations
5. To discuss various judicial precedents and amendments which are involved in the changes and variations in the role of the CS.

IV. SIGNIFICANCE OF THE STUDY

The current research article analyses and discusses various aspects of the role of the company secretary in depth to recognize its importance in a private sector company and a public sector

company. It also examines various dimensions of the duties, rights, and key features of a practicing company secretary which will help the readers to comprehend the obligations and responsibilities performed by him in a company and also in the legal world. Although, Company law provides for various rights of the company secretary, there various other rights which have been suo-motu provided to a company secretary which has been discussed in the current Article in a pre-eminent manner. Thus, this Article, in overall composition, discusses each facet of operating of a company secretary which would emancipate the readers to not only envisage the importance of his position but also understand its accountability as an authority in a company.

V. RESEARCH METHODOLOGY

This research article use the **Qualitative Data** by taking interviews from various Company Secretaries to manifest various facets and demeanors of a company secretary as an administrative dignitary and his importance in working of companies; and by taking various scripts written by company secretaries about their role in a company situated in India. The Article also uses the **Quantitative Data** for understanding the remuneration issues for a company secretary. The Article incorporates both **Doctrinal and Non-doctrinal research** as the article incorporates both existing legal propositions, judgements, statutory provisions and settled research concluded by various researchers and publishers. Adding to this, the author has also used both **Primary Data** by taking interviews of various company secretaries and **Secondary Data** by referring various researched articles and papers.

VI. LITERATURE REVIEW

1. *Role of a CS by The ICSI (ICSI):*

Proposition given: This Article provided various rules and regulations under which the working of a company secretary has been coordinated and monitored. This Article has acted as source for the current research article to pin point the legislations which affect the role, appointment, rights, liabilities and disqualifications of a company Secretary in India.

Contribution provided: It had substantiated the role of a company secretary not only according to the companies Act, 2013 but also covered other corporate legislations and formal grounds.

2. *Profession of a Company Secretary- Surging ahead by CS NK Jain:*

Proposition given: This research walks through various case studies to incorporate understanding of the working of a Company Secretary in a company in the minds of the readers.

Contribution provided: The Author has used various examples and existent situations to explain the importance of a company secretary in the economic development as well as the popularity of the company within the various continents of the world which have been incorporated in the current research.

3. *Company Secretary: a role of breadth and majesty* by **R.K. Maheshwari:**

Proposition given: This Paper deals with the role of the company secretary in various government policies and strategic business decentralisations. It concentrates on how the role of a company secretary has evolved where the demands and pressure have increased to a great level. Consequently, with years, the role of company secretary has reached different horizons. The paper discusses the need of various guidelines for the working of a company secretary which are not as clearly realised in the Companies Act, 2013. Although, the recommendations made are genuine, the author did not discuss the applicability of these recommendation and suggestion.

Contribution provided: This opens a way for the current article examine the applicability of such guidelines and scrutinize its importance in improving the role of the position of a company secretary.

4. *Duties Within The Domination Space: A Study Of The Role Of The CS On Current Boards* by **Robyn L Trubshaw:**

Proposition given: This research Paper discussed about the dual nature of the company secretary i.e. as a legal counsel and as a Chief financial officer function. This paper discussed about the general role of a company secretary in administration of a company and how its importance has increased till now.

Contribution provided: It discusses various development in the legislations and precedents which have thoroughly discussed the changes in the rights and liabilities of company secretary throughout the century.

5. *Guide to Companies Act* by **A Ramaiya, 17th Edition, Part-2:**

Proposition given: In this Book, the study is about the role of the CS and the board efficiency.

Contribution provided: The book examines the role of company secretary which is meant to be the legal officer of the corporation and the chief manager to the board of directors and how his changes at various echelons of such companies.

VII. DEFINITION OF COMPANY SECRETARY

A Company Secretary means “a person who is a member of the Institute of Company Secretaries of India” as given under Sec. 2 (1) (c) of the Company Secretaries Act, 1980. Also, according to Section 2(45) of the Companies Act, 1956, a Secretary means “any individual possessing the prescribed qualifications, appointed to per-form the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties”.

VIII. APPOINTMENT OF A COMPANY SECRETARY

The First Secretary of a corporation shall usually be chosen by the founders and may be designated in the Articles of Association. If the First Secretariat is then named, the Board of Directors can adopt the name when the meeting is held by passing the motion. The terms and conditions of the position should be set out in the judgment of the Board of Directors. The Administrator may also be named as Secretary of State. *Section 203*, read in accordance with Rule 8 of the Companies (Appointment and Remuneration of Management Personnel) Law, 2014 (as amended) requires that every company whether listed or any other public company with a paid-up share capital of 10 or more Crore Rupees shall have a full-time key managerial person which includes a Company Secretary which has share capital of 10 Crore Rupees or more.

“With respect to the unlisted Public Companies the prescribed amount of capital for compulsory appointment of Company secretary is fixed at 5 Crores. Even Private Companies with a paid up capital of 5 Crores or more has to have an all-time CS. Thus all listed Companies,² Unlisted Companies and Private Companies shall have obligatory CS, based on their paid up capital. Whole time Company Secretary of a company is a key managerial person who is appointed by the passing of a resolution of the Board of Director and such resolution shall specify rules and conditions of his appointment which includes the definite remuneration. Although, it is not necessary that a CS cannot be appointed as a Director. A full time Company Secretary shall hold office of Secretary only in one of the companies. If he has more than one company, he has to choose the particular company in which he wants to work as CS. Any vacancy in the post of full time Company Secretary has to be filled within the period of 6

² ICSI - Home, , <https://www.icsi.edu/home/> (last visited Mar 1, 2020).

months from the date of vacancy by the board of the company.”

“If there is any contravention with Sec. 203³ by any of the company, it will be punishable with a fine of not a lesser amount of than 1 Lakh rupees and the company’s key managerial person and director (including the whole time company Secretary) who is in default shall be punishable with a fine which may extend to 50,000 Rupees and where the offence is continuing an additional fine which might extend to Rs. 1000 for each day after the first day during which the breach continues”⁴

IX. OTHER QUALIFICATIONS OF A COMPANY SECRETARY

➤ Educational qualifications of company secretary:

A Company Secretary has a lot of names and recognition to work with. Therefore, for better understanding, he must have higher education. He reflects the company to the outside world, and therefore he should have the language skills to be a successful conversant. It should be revised with broad general information related to the management of the operations of the company.

➤ Professional qualifications of company secretary:

A The Secretary of the Corporation requires specialized experience of secretarial procedure to comply with notes, motions, reports, minutes of meetings. He needs to know about the personal communications of the company. The Director of the Corporation shall have sufficient knowledge of the Business Legislation, the Industrial and Commercial Law and the Law on Income Tax, the Stamps Act, the Accounting Principles and the Regulations of the Securities and Exchange Commission (SEC) to comply with legal and regulatory matters. A corporate secretary should have a better understanding of the finance and capital markets, foreign exchange and socio-economic conditions when coping with trade and funding. It requires proper knowledge to work with a machine for the storage of documents and potential use of data or information. To order to maintain a good relationship with all stakeholders, the Secretary of the Group should have knowledge of human resources.⁵

³ Company Secretary: A worth doing course for a good Career, , <https://www.sarvgyan.com/courses/company-secretary> (last visited Mar 1, 2020).

⁴ The most sought-after job: Company Secretary - The Hindu BusinessLine, , <https://www.thehindubusinessline.com/news/the-most-sought-after-job-company-secretary/article28158515.ece> (last visited Mar 1, 2020).

⁵ Company secretary pdf, , <https://www.slideshare.net/sanjeevkumarsingh3766952/company-secretary-pdf> (last visited Mar 1, 2020).

➤ **Personal qualities of company secretary**

A company secretary is a high-profile worker and should therefore be a citizen of lower quality: honesty and integrity, commitment and respect, punctuality, tactfulness and prudence, sense of duty and obligation, serious mindedness.

X. LEGAL STATUS OF A COMPANY SECRETARY

Pursuant to Section 2(29) of the Companies Act, 2013, the word "officer" encompasses any manager, manager or main managerial staff (including a corporate secretary).⁶

The Company Act, 1956, placed such contractual duties on the Secretary of the Corporation, but the statute does not specify his exact position. From the essence of the roles undertaken by the Secretary, we can have some understanding of the legal position of the Secretary of the Group. According to the law of the land, the secretary is merely a servant of the company which operates underneath the full regulation of the BOD of the company. He is going to carry out the orders given to him by the Directors. But since the judgment of *Lord Esher in 1887*, everything has changed. The legal position of the Secretary of the Group has completely changed. Currently, the company's secretary holds a very important position in the company's managerial supervision. He is a company administrator with thorough obligations and duties. He's never again an unadulterated representative. It will make portrayals in the interest of the organization all the time and go into contracts for its sake which fall inside the everyday activity of the matter of the organization, to such a degree, that it might be viewed as having the position to do such things for the benefit of the organization. Organizations Act additionally sees him as the chief official of the organization who is by and by answerable for documenting different comes back to the Registrar of Companies. The legitimate status of the secretary has The Companies Act in this manner regards him to be the official director of the firm, who is by and by answerable for presenting various reports to the Registrar of Companies. The legal status of the secretary has been identified as a servant of the company, but the actual position is far more than a servant.

It is the obligation of the Manager of the Company to make the policy decisions of the BOD. He has a significant role in the management of the company. As a guy on the spot, he has to make quick decisions on a variety of daily things. As CEO of the Group, he has a considerable influence on the Board of Directors and provides valuable input in the policy decisions of the Board of Directors. Since the executives are fully engaged in business development, they do

⁶ Appointment of Company Secretary as per Companies Act 2013, , <https://taxguru.in/company-law/appointment-company-secretary-companies-act-2013.html> (last visited Mar 1, 2020).

not have time to deal with clients, staff and the media. The Secretary of the Company shall inform the employees, shareholders and the public of the decisions of the BOD. The secretary is the co-operative officer between the executives and the others. Since the Secretary has a strong understanding of the Companies Act, the Board of Directors shall seek expert advice from him. The Secretary will convene and attend all meetings of the company. He must draft the agenda and submit a note to all concerned to support the chairperson of the meeting to schedule the meeting.⁷

The directors serve as the conscience of the business as they form the agenda of the company. But when shaping the policy decisions of the company, the directors have to rely heavily on the manager. It is properly said that while the executives are the minds of the business, the assistant is the mouth, eyes, and hands of the company.⁸

XI. DISMISSAL OF COMPANY SECRETARY

A secretary may be dismissed from his position by a vote of the Board of Directors. The Director, who is an employee of the company, will also be entitled to the general rules of work of the business. It may be eliminated by giving due notice in writing or by offering reimbursement in place of such notification. Even where the appointment of a secretary is for a fixed period of time, the client can, by giving due notice, terminate him before the stated date. A secretary can, however, be dismissed without giving him a notice in the following cases: (a) for wilful disobedience; (b) for misconduct or moral turpitude; (c) for negligence; (d) for incompetence or permanent disability. In the event of compulsory winding up of the company, the order of the court shall serve as a notice of discharge to officers and employees of the company, i.e., the secretary will also be automatically dismissed.

On termination of the position of the Director, the necessary information in the specified form and in the prescribed manner should be given to the Registrar of Companies within thirty days of the termination of the appointment. Necessary changes should also be rendered to the Directors' Registers, the Managing Director, the Treasurer, etc.⁹

XII. FUNCTIONS OF THE COMPANY SECRETARY

Pursuant to subsection (1) of section 205 of the Company Act, 2013, the roles of the Secretary

⁷ C. A. Portal, *Duties & Responsibilities Handled By A Company Secretary*, <https://caportal.saginofotech.com/blog/duties-responsibilities-by-company-secretary/> (last visited Mar 2, 2020).

⁸ Bindan Singh V. Institute Of Company Secretary Of India, 180 (2011) DLT 153

⁹ Duties of a Company Secretary: Factors and Classification, <http://www.yourarticlelibrary.com/company/secretary/duties-of-a-company-secretary-factors-and-classification/74616> (last visited Mar 2, 2020).

of the Company shall include: reports to the Board of Directors in accordance with the regulations of this Act, the rules thereunder and other laws relevant to Company h to insure that the Business complies with the appropriate secretarial standards; the discharge of such other duties as may be prescribed.

XIII. DUTIES OF A COMPANY SECRETARY

General duties:

“The responsibilities of the secretary differ depending on the size and function of the company and the scope of the contract established with it. In the ordinary course of the operations, he shall be present at all meetings of the corporation and at all meetings of the directors and shall make the proper minutes of the proceedings. It shall issue, under the guidance of the Board, all appropriate notifications to Members and others.” Correspondence with creditors on the further topic of cons and calls, the rendering of transactions and forfeitures; He is in control of the Saks of the corporation, or of others relevant to the internal business of the company, e.g. the Registry of Investors, the Shareholders, the Transaction Record, the Register of Debt Holders, the Registration of Transfers, and conducts other administrative functions. It is also liable for submitting the required reports with the Registrar of Companies.

Statutory Duties

Rule 10 of the Company's Rules of Procedure (Designation and Remuneration of Managerial Personnel) of 2014 specifies that the Secretary of the Company shall also conduct the following functions, namely :- To provide the Directors of the Company, collectively and individually, with the guidance they might need, with regard to their roles, obligations and responsibilities; to promote the convening of meetings and to attend meetings; To represent the various regulators and other authorities; to assist the Board in the conduct of the business of the company; to assist and advise the Board in ensuring good corporate governance and in complying with corporate governance, i.e. requirements and best practices; and to perform other duties as set out in the Act or the rules; and to perform such other duties as may be assigned.¹⁰

XIV. RIGHTS OF THE COMPANY SECRETARY

Rights are given to the secretary by the Companies Act, Board of directors and the general body of shareholders. He also derives some rights out of his service agreement with the

¹⁰ The role of the Company Secretary — MOORE, , <https://www.moore-southafrica.com/services/business-outsourcing/company-formation-secretarial/the-role-of-the-company-secretary> (last visited Mar 2, 2020).

company. A secretary has the following rights:

- He has the right to control and supervise the working of his department.
- As a principal officer of the company, he has the right to sign a document or proceeding requiring authentication by the company.
- He has a right to be indemnified by the company for any loss suffered by him while discharging his duties.
- As an employee of the company, he has the right to receive remuneration. In the event of winding-up of the company, he has a right to be treated as a preferential creditor for his salary subject to a maximum amount that may be notified.

But a company secretary has no right to borrow money in the name of the company or make allotment of shares or register transfer of shares without the express authority or consent of the Board of directors. He has no authority to convene a meeting of the company unless directed by the Board or to remove a name from i.e. Register of members, or to take policy decisions.¹¹

XV. LIABILITIES OF THE COMPANY SECRETARY

The discussion on liabilities of a company secretary may be grouped under two broad heads: (a) Statutory Liabilities, and (b) Contractual Liabilities Statutory Liabilities.

Statutory Liabilities

The Companies Act has perceived the secretary as a key administrative staff of the organization, and such, different liabilities have been forced upon him. According to Section 2(60) of the Act, a secretary has been remembered for the rundown of "Officials in default" and is made at risk to substantial punishments for any default or resistance of the arrangements of the Act. The Secretary of the Corporation will be subject for completing the tasks of the Firm in consistence with the guidelines of the Companies Act. It is in this manner at risk for managing the arrangements of certain customer guidelines. Consequently, the Director of the company might be discovered answerable for various activities of carelessness or offense in the organization of the company.

“The company secretary may be held liable for the following matter under Companies Act: *Default in filing returns as to allotment* - on the off chance that a default is made in recording returns as to designation of offers inside the endorsed time, he will be culpable with fine which

¹¹ Role of Company Secretary Play in Corporate Business | CA Portal, , <https://caportal.saginofotech.com/blog/what-role-company-secretary-play-business/> (last visited Mar 2, 2020).

may stretch out to one thousand rupees for consistently during which the default proceeds or one lakh rupees, whichever is less.”

Default in the preparation of share/debenture certificates - as per section 56(4) the company will convey the endorsement of all protections designated, moved or transmitted. Inside a time of two months from the date of consolidation, notice, in the event of endorsers of the reminder. Inside a time of two months from the date of distribution, on account of any designation of any of its offers. Inside a time of one month from the date of receipt by the organization of the instrument of move under sub-section (1) or, all things considered, of the insinuation of transmission under sub-section (2), on account of a transmission of protections; c. move or, Within a time of a half year from the date of portion if there should arise an occurrence of any distribution of debentures.

Where securities are met with in a depository, the corporation shall automatically enter into the description of the transfer of the shares of the depository on the issuance of such shares.¹²

In case of default, the company secretary, as an officer in default, shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees¹³:

“Default regarding Register of members/ debenture holders, etc.- Disappointment will make Company Secretary, in the event that he is in default, culpable with fine which will not be under fifty thousand rupees however which may stretch out to three lakh rupees and where the disappointments is a proceeding with one, which a further fine which may reach out to one thousand rupees for consistently, after the first during which the disappointment proceeds.

Default in the filing of particulars regarding charges-On the off chance that a default is made in recording with the Registrar the points of interest of any charge made by the organization, each official of the organization who is in default which incorporates an organization secretary will be culpable with detainment for a term which may stretch out to a half year or n with fine which will not be under twenty 5,000 rupees yet which may reach out to one lakh rupees, or with both.

Default regarding the publication of name of company - In case a default is made in getting the name and address of the enrolled office of the association painted or secured or printed outside every office or spot of business or engraved on the sum of its business letters, charge heads,

¹² Wisteria Accountants, *The Role of a Company Secretary* (11:41:27 UTC), <https://www.slideshare.net/WisteriaAccountants/the-role-of-a-company-secretary> (last visited Mar 2, 2020).

¹³Company Secretary - What Does a Company Secretary do in Ireland?, , <https://accountantonline.ie/guides/i-need-company-secretary/> (last visited Mar 2, 2020).

etc., association secretary, in case he is in default, will be dependent upon discipline of one thousand rupees for reliably during which the line of default continues yet not outperforming one lakh rupees.

Default in recording of yearly returns- In the event that a company secretary fails to archive the yearly return in or an association secretary before long affirmed the yearly return regardless than in closeness with the necessities of this zone or the norms made thereunder, he will be at fault with fine which won't be under fifty thousand rupees yet which may contact five lakhs rupees.

Default in holding annual general meeting - Default in holding the yearly comprehensive gathering as per the arrangements from Sections 96-98, will make him at risk to a fine which may reach out to one lakh rupees and on account of a proceeding with default, with a further fine which may stretch out to 5,000 rupees for consistently during which such default proceeds.

Default in circulation of members resolutions - if a default is made in circulating members' resolutions of which they have given notice to the company, he shall be punishable with fine which may extend to Rs. 25,000.

Default in registering certain resolutions and agreements - default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees,

Default in recording the minutes of the meetings- If a default is made in recording the minutes of all proceedings of every general meeting and meetings of the Board, a fine of Rs. 5000 may be levied upon an officer in default which includes company secretary.

Default in minute books or allowing inspection or furnishing copies of minutes to members- On the off chance that a default is made in outfitting a duplicate of the minutes inside seven working days after the date of solicitation by any part or if review isn't permitted, he will be subject for a fine of Rs. 5,000 for each such refusal or default, by and large.

Failure to give notice of Board's meeting - The gathering of the Board of Directors will be called by at the very least seven days' notification recorded as a hard copy to each executive at his location recorded with the association and will be conveyed by hand or by email or through electronic methods. Inability to offer notification will be dependent upon a fine of 25,000 rupees for each official of the business whose activity is to pull out under this arrangement (the secretary of the business is such an official) who neglects to do as required.

Failure to maintain the register of directors and key managerial personnel and their shareholding- The Director of the Organization in default shall be disciplined with a penalty

of not less than fifty thousand rupees, but this can stretch to five lakh rupees.

Failure to maintain register or inter-corporate loans and investments- for this default organization secretary, in the event that he is in default will be culpable with detainment for a term which may stretch out to two years and with fine which will not be under 25,000 rupees however which may reach out to a lakh rupees.

Besides the above responsibilities a Company Secretary is also liable under various provisions of enactment which include Income Tax Act for DS, Stamp Act for Stamping for Share Certificates, Share Warrantee, and Debentures. Transfer forma etc. He is also liable under Employees State Insurance Act, Minimum Wages Act. Payment of Wages Act , Industrial Disputes Act, and similar enactments including Foreign Exchange Management Act.

Contractual Liabilities

For reality, a corporate secretary enters into various service arrangements with clients and their contractual responsibilities may be focused on such arrangements. Many of these duties are as follows. For time to time, the Secretary will obey the orders of the Board of Directors as he does. The qualified secretary will take charge of the company's personal needs and reverence for the rules. The secretary of the business shall make no hidden benefit on the grounds of his role in the group. The Secretary shall not act beyond the powers assigned to him by the Organization. As the officer of the business manager, he shall be responsible for any injuries and liabilities incurred by his own negligence to the business. If the Organization suffers any damages attributable to leaking of such confidential details by the Director, it shall be directly responsible to indemnify the Client for any liability or harm incurred by the Business as a consequence of such exposure. The Secretary shall be responsible for any crime or mistake performed.

However, if the secretary has acted in good faith without negligence, he shall not have any liability. He is would not be responsible for any fraud or damage caused by his subordinates, except when he is in for such fraud.

XVI. COMPANY SECRETARY AND HIS/HER ROLE

The organization secretary assumes a significant job in organization. From the situation of an assistant, he has ascended to the degree of an official of the organization. The extent of his job relies upon the size and nature of the organization. He is subject not exclusively to the organization, yet in addition to its investors, leasers, representatives, purchasers, society and

the Government. As a rule, the organization secretary assumes a three-overlap job as a statutory official, as a Coordinator and as a regulatory official.

Secretary As statutory officer

As one of the principal officers of the company, the company secretary is responsible for strict compliance with the various provisions of the Companies Act. Some of which are given hereunder:

- Under section 21 he is authorised to sign any document for authentication.
- Under section 92(1) he is authorised to sign and deliver to the Registrar the Annual Return of the company made up to the date of the close of the financial year.
- Under sections 134 and 137(1) he is authorised to authenticate the financial statement, including consolidated financial statement, if any, of the company and deliver the same to the Registrar of Companies within 30 days of the Annual General Meeting.
- An obligation has been imposed on company secretary for filing of various returns under the Companies Act, 2013 with the Registrar of Companies, viz, return of allotment, return of creation and satisfaction of charges, annual return, change of registered office, etc.
- He is duty bound to issue share certificates and debentures under section 56. 6. He is duty bound to maintain various statutory registers, viz- (i) Minutes of General Meeting and Board Meetings (ii) Register of Members, debenture holders and Index (iii) Register of changes among directors (iv) Register of directors and key managerial personnel and their shareholdings (v) Register of charges (vi) Register of loans and investments, etc.
- He is duty bound to send notices for convening the meetings of shareholders and debenture holders, etc.

As a statutory officer, the company secretary is also responsible to comply with the provisions of other Acts, such as Competition Act, Securities (Contracts and Regulation) Act, Income-tax Act, FEMA, Indian Stamp Act, Sales Tax Act, various labour laws like Factories Act, Minimum Wages Act, Payment of Wages Act, Industrial Disputes Act, etc.

Secretary as coordinator

The secretary holds a high administrative circumstance in the organization. The Board of they set out the broad ways to deal with be trailed by the organization. It is the commitment of the officials of an organization is liable for managing the endeavours of the organization and secretary to ensure that completed. At the present time, should be seen that a secretary can't be

methodologies and decisions of the Board are satisfactorily seen as proportional to work of boss performing managerial limits. He needs to co-associate between the Board and various authorities. He can be said to be the 'mouthpiece of the Board'. The organization secretary accept the activity of a Coordinator not simply inside different levels. The secretary is a noteworthy the organization, yet furthermore with the outsiders, for instance, financial specialists, society and unmistakable Government workplaces. The secretary's activity as a coordinator has two points of view - inside and external. His activity as an inside coordinator involves his activities between the Board, managing boss and the overseer from one perspective and other line and staff authorities, specialist's organization and analysts of the organization, on the other. His activity as an external coordinator relates to the relationship of the organization with speculators, Government and society.

Internal role as a coordinator:

Relating to the Board, chairman and managing director – The CS is answerable for the holding of gatherings of the Board of Directors and loan bosses. This will hold the Board refreshed about the exercises of the business and the additions created in the different regions, console them in regards to the particular administrative obligations put on them, and prompt them on the most present enhancements and patterns in the professional workplace. He must deal with the Council of Bosses. It permits the Board to settle on different choices. That is the reason it's asserted that when administrators are the organization's brain, the secretary is the organization's head, eyes, and hands.

Identifying with the workers - The company secretary assumes a significant job lo as an organizer of the staff approach of the company. Despite the fact that for utilizing people, there might be a different faculty office, yet and still, at the end of the day the secretary needs to exhort the top administration on labor arranging and plan of enlistment approach and seeing that the great work relations are kept up. At whatever point an understanding is made with the worker's company, the secretary should make a legitimate note of the equivalent so that there may not be any misconception or debate later on, the secretary must make sure that the arrangements of various work government assistance laws are carefully consented to. The secretary has a significant task to carry out in looking after control. Prior to making any disciplinary move, he should guarantee that the lawful customs and methodology are followed, the secretary must put forth conceivable attempt to keep up welcoming relations with the representatives; and then just the targets of the company could be accomplished. The innovative exercises of workers ought to be empowered and any place potential awards and

endowment from the company ought to be given.

Identifying with the evaluators - Each corporation is required to get its records analysed by a confirmed inspector and present the yearly checked on accounts before the general gathering of financial specialists at the yearly wide assembling. Beside statutory audit, analyst's supports are furthermore required under various laws. The secretary has, thus, to compose with the analysts. The organization secretary needs to ensure that the course of action of overseers is made according to the requirements of the Companies Act. The secretary needs to see that all books and reports, objectives, etc, required by assessors for audit work are made open to them in time.

External role as coordinator

“Relating to the shareholders - For keeping up friendly relations with the financial specialists, the organization secretary needs to keep up proper association or contact between the Board and the speculators. Under the Companies Act, speculators hold the choice to get share presentations, warning of meetings, benefit warrants, etc. In time, to survey books and registers of the organization and have focuses of registers on portion of embraced charges. The secretary must ensure that the benefits of financial specialists are respected in time and the concentrates of registers mentioned by speculators are given to them inside the statutory periods. The secretary should ensure that all letters and protests from speculators are quickly overseen and their requests are answered without harming the statutory game plans. He should be obliging and amicable while overseeing financial specialists.”

Relating to the Government - The Secretary of Company has a noteworthy job to act in the legislature. The Secretary will protect that the guidelines of the Companies Act and of different laws of the nation are carefully consented to. This will guarantee that the association follows the approach of the State with its actual sense. The Board will be informed on adjustments to the Government's approach. While submitting reports and perceptions to the Committee, the Secretary will guarantee that they are truthfully precise and reliable with the rule.

Relating to the society - It has been all around perceived that a company has some duty towards the general public. We locate that dynamic companies are making significant commitments in giving greater work openings, conferring specialized training, setting up schools, universities and clinics. The secretary ought to prompt the Board with respect to the regions where the company can make valuable commitment. Companies providing merchandise and ventures ought to be increasingly cautious in releasing their social obligation by providing products and enterprises at sensible rates by keeping up satisfactory quality. Further, he needs to see that the

necessities for keeping contamination 15 inside legitimately and socially worthy cut-off are consented to.

As an administrative officer

As General Administrative Officer, he is liable for the productive administration of the organization. The Secretary must guarantee that the approaches of the organization are appropriately executed. It is liable for managing, checking and sorting out the activities of various offices, for example, organization, staff and friends. The most ideal results can be accomplished by having a decent organization structure. The Secretary of the Group is in such a job, that he can have a general perspective on the various parts of corporate administration and can build up a solid and effective organization structure. The Secretary of the Business may need to assume a significant job in the money related organization by assessing the budget reports and proposing fitting advances; in spite of the fact that in huge organizations, the monetary angle is dealt with by an expert. The Secretary will bolster the Board in arrangement making and haggling with the Government and the monetary establishments. The Secretary additionally has a significant task to carry out in the administration of the organization's staff. It might give significant guidance to the Board on enlistment, preparing, compensation, and backing for retirement, release, order of staff. The Secretary of the Company will guarantee the insurance and appropriate upkeep of the products and property of the Business. He should ensure that they are not abused He should see that properties and different reports are appropriately guaranteed against legend through fire and different dangers. The Director of the Company should likewise safeguard that the records are kept appropriately. With the sensational advancements occurring, the organization's secretary is required to expect an always basic part in taking care of the organization's money related issues.

XVII. JUDICIAL PRECEDENTS

There are various landmark judicial precedents which became very useful not only for status of a Company Secretary but also for the functionality of a Company. Some of them are given as follows:

In *Barnett Hoares & Co. v. South London Tramways Co. Ltd.*¹⁴, it was observed that “the position of the secretary changed considerably over a period of time as previously a secretary was considered as a mere servant and his position was that he was to do what he was told and no person can assume that he has any authority to represent anything at all. But later, in the

¹⁴ Barnett Hoares & Co. v. South London Tramways Co. Ltd., [1887] 18 QBD 815,817

case of *Panorama Developments (Guildford) Ltd. v. Fidelis Furnishing Fabrics Ltd.*¹⁵, it was settled by Lord Denning that a company secretary is much more important person than he was in 1887 where he is an officer of the company with extensive duties and responsibilities. He is no longer a mere clerk. He regularly makes representations on behalf of the company, and he enters into contracts on behalf of the company, and enters into contracts on its behalf. Mr Justice Salmon also observed in this case that the secretary has ostensible authority to sign contracts on behalf of the company. Further in the case of *Re, Cleadon Trust Ltd.*¹⁶, it was observed that he cannot borrow money in the name of the company, in *Re, Haycraft Gold Reduction and Mining Co. Ltd.*¹⁷, it was held that he cannot call a meeting of the company while in the case of *Chida Mines Ltd. v. Anderson*¹⁸, it was held that he cannot register transfer of shares without the Board's authority. At last, in the recent landmark judgement of *Lakshmi Rattan Cotton Mills Ltd v. Aluminium Corporation of India Ltd.*¹⁹, it was held that the company secretary cannot acknowledge a debt in any suit against the company.”

XVIII. CONCLUSION AND RECOMMENDATIONS

From the above research study, it can be inferred that adherence to stringent corporate governance principles and tougher transparency requirements will certainly make the Indian corporate sector more open, and the corporate secretary plays a vital role in achieving this. In addition to compliance with the provisions of company law, the Secretary of the Corporate must appreciate and have an ever-increasing knowledge of the laws on the administration and operation of a firm. In today's case, the corporate secretary arrives to serve as a "Proxy" to plug the information gaps that might otherwise emerge at the board meeting.

It has also been proposed that, in addition to its conventional efforts to ensure good governance, a good corporate secretary should also insure that his client recognizes the human face of corporate governance. In doing the same, he can consider the following issues. This will include alerting the Board to ability of learning about the working of corporate governance, alerting them to best practice in interactions with clients, and alerting the Chairman to the emergence of suspicious activities or potentially harmful practices.

¹⁵ *Panorama Developments (Guildford) Ltd. v. Fidelis Furnishing Fabrics Ltd.*, [1971] 2 QB 711

¹⁶ *Re, Cleadon Trust Ltd.*, [1939] Ch. 286

¹⁷ *Re, Haycraft Gold Reduction and Mining Co. Ltd.*, [1900] 2 Ch. 230

¹⁸ *Chida Mines Ltd. v. Anderson*, [1905] 22 TLR 27

¹⁹ *Lakshmi Rattan Cotton Mills Ltd v. Aluminium Corporation of India Ltd.*, AIR 1971 SC 1482

XIX. REFERENCES

Internet Sources:

- Authority of a Company's Secretary to Enter into Contracts on Its Behalf on JSTOR, , https://www.jstor.org/stable/4505524?Search=yes&resultItemClick=true&searchText=company&searchText=secretary&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dcompany%2Bsecretary%2B&ab_segments=0%2Fbasic_SYC-5055%2Ftest&refreqid=search%3Af1cdd666ac552de94a57795059a63c71&seq=1#metadata_info_tab_contents (last visited Mar 1, 2020).
- Stages to become a Company Secretary, https://www.icsi.edu/media/webmodules/aboutus/courses/CS_Course_01042014.htm (last visited Mar 1, 2020).
- ICSI - Home, <https://www.icsi.edu/home/> (last visited Mar 1, 2020).
- Terry McNulty & Abigail Stewart, *Developing the Governance Space: A Study of the Role and Potential of the Company Secretary in and around the Board of Directors*, COMPANY STUDIES (2014), <https://journals.sagepub.com/doi/10.1177/0170840614556919> (last visited Jan 4, 2020).
- Company Secretary: A worth doing course for a good Career, <https://www.sarvgyan.com/courses/company-secretary> (last visited Mar 1, 2020).
- The most sought-after job: Company Secretary - The Hindu BusinessLine, <https://www.thehindubusinessline.com/news/the-most-sought-after-job-company-secretary/article28158515.ece> (last visited Mar 1, 2020).
- Company secretary pdf, <https://www.slideshare.net/sanjeevkumarsingh3766952/company-secretary-pdf> (last visited Mar 1, 2020).
- Appointment of Company Secretary Companies Act 2013, <https://yourstory.com/mystory/appointment-of-company-secretary-companies-act-2013> (last visited Mar 1, 2020).
- Appointment of Company Secretary as per Companies Act 2013, <https://taxguru.in/company-law/appointment-company-secretary-companies-act-2013.html> (last visited Mar 1, 2020).

- Mandatory Appointment Of Company Secretary In Whole-Time Employment. - Corporate/Commercial Law - India, <https://www.mondaq.com/india/CorporateCommercial-Law/327712/Mandatory-Appointment-Of-Company-Secretary-In-Whole-Time-Employment> (last visited Mar 1, 2020).
- C. A. Portal, *Duties & Responsibilities Handled By A Company Secretary*, <https://caportal.saginfotech.com/blog/duties-responsibilities-by-company-secretary/> (last visited Mar 2, 2020).
- Bindan Singh V. Institute Of Company Secretary Of India, 180 (2011) DLT 153
- The Role of Company Secretary - Company Formation - Company Registration, <https://www.companiesmadesimple.com/the-role-of-a-company-secretary.html> (last visited Mar 2, 2020).
- Duties of a Company Secretary: Factors and Classification, <http://www.yourarticlelibrary.com/company/secretary/duties-of-a-company-secretary-factors-and-classification/74616> (last visited Mar 2, 2020).
- Role of Company Secretary in Every Stage of Company Formation, <http://www.businesscommunicationarticles.com/role-of-company-secretary/> (last visited Mar 2, 2020).
- The role of the Company Secretary — MOORE, <https://www.moore-southafrica.com/services/business-outsourcing/company-formation-secretarial/the-role-of-the-company-secretary> (last visited Mar 2, 2020).
- Role of Company Secretary Play in Corporate Business | CA Portal, <https://caportal.saginfotech.com/blog/what-role-company-secretary-play-business/> (last visited Mar 2, 2020).
- Wisteria Accountants, *The Role of a Company Secretary* (11:41:27 UTC), <https://www.slideshare.net/WisteriaAccountants/the-role-of-a-company-secretary> (last visited Mar 2, 2020).
- Company Secretary - What Does a Company Secretary do in Ireland?, <https://accountantonline.ie/guides/i-need-company-secretary/> (last visited Mar 2, 2020).

Case Laws:

- *Barnett Hoares & Co. v. South London Tramways Co. Ltd.*, [1887] 18 QBD 815,817
- *Panorama Developments (Guildford) Ltd. v. Fidelis Furnishing Fabrics Ltd.*, [1971] 2 QB 711
- *Re, Cleadon Trust Ltd.*, [1939] Ch. 286
- *Re, Haycraft Gold Reduction and Mining Co. Ltd.*, [1900] 2 Ch. 230
- *Chida Mines Ltd. v. Anderson*, [1905] 22 TLR 27
- *Lakshmi Rattan Cotton Mills Ltd v. Aluminium Corporation of India Ltd.*, AIR 1971 SC 1482

Newspapers:

- TIMES ECONOMICS
- ECONOMICS TIMES
- TIMES OF INDIA
- THE HINDU

Legal Resources:

- MANUPATRA
- SCCONLINE
- LEXIS NEXIS
- WESTLAW
