



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

in Public

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



# **Senior Editor**

## **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

## **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



## **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

## **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

## **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



## **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.



## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK  
LEGAL

# **EMERGING ROLE OF COMPANY SECRETARY AS PER THE COMPANIES ACT, 2013**

AUTHORED BY: - KASHISH AGARWAL & MOHIT SHAH  
UNIVERSITY OF PETROLEUM AND ENERGY STUDIES, DEHRADUN

## **Abstract**

“The role of the Corporate Secretary continues to evolve. Gone are the days of the horn-rimmed, pencil-sharpened, visor-, clad, minute taker; the Corporate Secretary is now an active partner with the directors to ensure Board effectiveness and good governance, an advisor to the Board to ensure that policy and intent are manifested correctly, a resource to provide trends and information, and the ombudsman for all members of the co-operative community to ensure a commitment to the values that we hold dear”.

This article throws light on the changing role of Company Secretary, duties, and responsibilities. The author enumerates the comparison of the role of the company secretary as per the Companies Act 1956 and the Companies Act 2013.

**Keywords** – Company Secretary, Companies Act 1956, Companies Act 2013

## **Introduction**

Good Corporate governance relates to systems of supervision, monitoring and sharing of information with the stakeholders to generate confidence and trust with customers, suppliers, and creditors and maximise corporate value for its shareholders. The four key elements of corporate governance are transparency, fairness to all stakeholders, disclosure of all financial and non-financial information in an easily understandable manner and supervision of the company’s activities by a professionally competent and independent Board of Directors. To build this confidence, it is imperative that sturdy systems are in place to ensure due compliance of laws and to bring transparency in operations and disclosure of information to the stakeholders. The Company Secretary plays a crucial role in the

governance of any organisation. The board and particularly the Chairman of the board relies, or ought to rely, on the Company Secretary to advise them with respect to current best corporate practices, corporate governance norms and practices, directors' duties under the law, board reporting and disclosure obligations, listing requirements and meetings procedure. The Companies Act, 2013 leapfrogs from the regime of control to that of liberalisation/self-regulation, which enables the corporates to play as per the rules of the game in a dynamic environment. This calls for a good amount of self-regulation and corporate governance on their part, which necessitates the services of independent, but competent and responsible governance professionals, like the Company Secretary. Redefining the role of the Company Secretary, the role of the company secretary in the governance of organisations has become more prominent as a result of ongoing regulatory developments and changing stakeholder expectations. This role of company secretary has been recognised worldwide by major jurisdictions. Dynamism and globalisation require the board of a company to be competent enough to handle the pressure of compliance under various jurisdictions. A Company Secretary is a competent officer to ensure compliance; this is the reason that today's appointment of a Company Secretary is being made mandatory in various jurisdictions. India, Pakistan, Bangladesh, Nepal, Singapore, Malaysia, Maldives, Hong Kong, and Kenya are some of the countries which have made the appointment of a Company Secretary mandatory for companies in the U.K.

### **Role of Company Secretary under The Companies Act**

The role of the Company Secretary is to make sure to execute and implement the decisions taken by the higher authorities like the board of directors of the company, chairman, CEOs, etc. The responsibility of the Company Secretary is to ensure the effective management and administration of the organization and to meet the regulatory and statutory expectations and requirements. Attending general meetings, managing legal documents, advises the board if required. The role of the company secretary is not secretarial. Company Secretaries work with professionals and leaders in an organization.

### **Meaning of Company Secretary under Companies Act, 2013**

Firstly, for the meaning of the Company Secretary, the Companies Act refers to Section 2(1)(c) of the Company Secretaries Act, 1980.



According to Section 2(1)(c) of the Company Secretaries Act, 1980, company secretaries are the people who are the members of the Institute of Company Secretaries of India. Hence, he is a member of ICSI and performs various ministerial and administrative functions of the organization.

### **Company Secretary under the Companies Act, 2013**

The Companies Act, 2013 (Act) has catapulted the profession of Company Secretaries to newer heights. The dominant theme of Companies Act is self - regulation. The principal responsibility in this regard has been entrusted to the Company secretary, who has been given an alleviated position in the corporate hierarchy. The Act confers a special status on the Company Secretary as Key Managerial Personnel and has bracketed him along with Managing Director, Chief Executive Officer, Manager, Whole-time director, and Chief Financial Officer. A Company Secretary is now appointed only through the resolution passed in the Board meetings. The Act provides a substantive oversight role for the company secretary. For the first time, the functions of the company secretary are codified to include reporting on compliance with the provisions of the Companies Act, 2013, the rules made thereunder and other laws applicable to the company. This in itself is a huge responsibility for the company secretary to rise to the expectations of the company and the regulators. Further, the rules provide that it is the duty of the company secretary to provide to the directors of the company, collectively and individually, such guidance as they may require, concerning their duties, responsibilities and powers; to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices and to assist the Board in the conduct of the affairs of the company. Company Secretary is a key functionary in the corporate pyramid. With increasing emphasis on the principles of good governance and compliance, the responsibilities of the company secretary have increased manifolds towards safeguarding the interests of all stakeholders.

### **COMPANY SECRETARY IN EMPLOYMENT**

- **Key Managerial Personnel (KMP):** The Companies Act, 2013 confers a special status on the Company Secretary as the Key Managerial Personnel (KMP). It provides that every listed company and every other public company having a paid-up share capital of ten crore rupees or more has to appoint a whole-time KMP. The appointment of the whole time KMP has to

be made by a Board resolution, which is a testimony of the significance of the role of the Company Secretary as KMP. Registrar of Companies must be notified of the appointment together with any change of details or the termination of the appointment. A full-time company secretary is also required to be appointed in other companies which have a paid-up share capital of five crore rupees or more.\_

- **Report on Annual General Meeting:** Every listed public company is required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Companies Act, 2013 and rules made thereunder. The report is also required to be signed by company secretary of the company.
- **Functions and Duties:** For the first time, the functions of a company secretary have been stipulated in the Companies Act, 2013. The Act casts an overwhelming responsibility on Company Secretary in employment in the discharge of their duties and they are expected to play a proactive role in meeting the expectations of various stakeholders. Other than the traditional role, the Companies Act, 2013 codifies the functions and duties of the Company Secretary, as under: -
  1. Reporting to the Board about compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company; Ensuring that the company complies with the applicable secretarial standards issued by the Institute of Company Secretaries of India, as approved by Central Government. The Institute has issued two Secretarial Standards under section 118(10) of the Companies Act, 2013, namely, Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2). These Standards have come into effect from 1st July 2015; Providing to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers.
  2. Facilitating the convening of meetings and attending Board, committee and general meetings and maintaining the minutes of these meetings; Obtaining approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
  3. Representing before various regulators, and other authorities under the Act in connection with the discharge of various duties under the Act.

4. Assisting the Board in the conduct of the affairs of the company.
5. Assisting and advising the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.
6. Discharging such other duties as have been specified under the Act or rules.

## **ROLE OF COMPANY SECRETARY IN PRACTICE**

Companies Act, 2013, provides wide opportunities to Company Secretaries in practice such as:

- Promotion, formation and incorporation of companies and related matters.
- Secretarial Audit and Certification Services.
- Signing of Annual Return.
- Representing on behalf of a company and other persons before the National Company Law Tribunal.

**Corporate Restructuring and takeover.** · Appointment as a scrutinizer, to scrutinize the voting process fairly and transparently. Administrator in respect of rehabilitation or revival of sick companies. Appointment as Company Liquidator/ Provisional Liquidator. Professional assistance to Company Liquidator. Technical Member of the National Company Law Tribunal. A Company Secretary may become a registered valuer under various provisions of the Act. Pre-certification and e-filing of various e-forms. Develop a corporate compliance management system and social sustainability framework for a company. A company secretary can also become part of a Mediation & Conciliation Panel consisting of experts having prescribed qualifications for mediation between the parties during the pendency of proceedings before Central Govt./NCLT/NCLAT.

**Company Secretary as Secretarial Auditors:** A Secretarial Audit is certainly a complete expression of the faith of the legislature and government in the company secretaries to instil corporate discipline and ensure compliance with laws. Under the Companies Act, 2013 every listed company and (a) every public company having a paid-up share capital of fifty crore rupees or more; or (b) every public company having a turnover of two hundred fifty crore rupees or more. is required to annex with its Board's report a Secretarial Audit Report, given by a company secretary in practice, in form MR.3. The introduction of 'Secretarial Audit' as a new class of audit, in addition to the existing statutory audit, internal audit and cost audit, is a welcome move towards improving the corporate governance

in the country. The objective of the secretarial audit is to improve the compliance culture in the corporate sector in letter and spirit and ensure transparency and timely communication of compliance/noncompliance status to the management of the company, regulators and external stakeholders. This will ultimately protect the interests of customers, employees, directors, and stakeholders and avoid any unwarranted action from law enforcement/other agencies. The Board of Directors in their report to shareholders are required to explain any qualification/remark made by the company secretary in practice in the secretarial audit report.

**Reporting of fraud:** In the course of the performance of his duties as secretarial auditor, if company secretary in practice has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he has been placed under obligation to report the matter to the Central Government immediately. **Annual Return Certification:** In respect of all the companies (except one-person companies and small companies), the annual return has to be signed by either a company secretary in employment and director or where no company secretary is appointed by the company, then by the company secretary in practice. Further, the company secretary in practice is required to certify the annual return, filed by a listed company or a company having a paid-up share capital of ten crore rupees or more or a turnover of fifty crore rupees or more. **Pre-Certification Services:** A company secretary in Practice is authorised for Pre-certification of various e-forms/LLP Forms/ DIN certification. This also entails a huge responsibility on the professional to ensure compliance with laws. **Company Secretary as Registered Valuer:** A Registered Valuer is one of the new concepts introduced by the Companies Act, 2013 to provide a proper mechanism for valuation of the various assets and liabilities related to a company and to standardize the procedure thereof. A company secretary in Practice is eligible to be a valuer. \_

### **Company Secretary as an Insolvency Practitioner**

The company secretary has been recognised in the Companies Act as Provisional/ Company Liquidator. He may also be appointed as company administrator for the revival and rehabilitation of companies. In addition to the Companies Act, 2013, a Company Secretary renders services in the area of various corporate and economic laws, Taxation Laws, Foreign Exchange Management Acts, Consumer Protection Acts, Depositories Act, Environment and Pollution Control Laws, Labour and Industrial Laws, Co-operative Societies Act, etc. **Role of Company Secretary in Whistle Blower**

Mechanism the Company Secretary being a secretary to the Audit Committee is actively involved in ensuring the proper functioning of the whistleblowing mechanism in the organization. The company secretary is primarily responsible for the efficient administration of the company under the applicable laws and for ensuring that board-level decisions are implemented properly and are reported regularly. In addition, the company secretary should also oversee the impact of any such decision on stakeholders and if there is any concern, it must be reported to the management. The effectiveness of the system mainly depends upon how the reported wrongdoings have been acted upon while providing sufficient protection to whistle-blowers. The professionals like company secretaries being a bridge between the stakeholders, the company's management and the Board hold enormous responsibility in ensuring the effective implementation of the Whistleblower mechanism in the company and developing the confidence of employees in that mechanism so that they can freely report any unethical practices, fraud or concern noticed in the company.

### **Corporate Social Responsibility (CSR)**

Corporate Social Responsibility (CSR) and Sustainability Section 135 of the Companies Act, 2013 makes it mandatory for certain classes of companies to constitute a Corporate Social Responsibility (CSR) Committee of the Board with at least one independent director. While the Committee has been entrusted to formulate and recommend the Corporate Social Responsibility Policy of the company in line with Schedule VII of the Act, the Board of directors are required to ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. Where the company fails to spend such an amount, the Board is required to specify in its report the reasons for not spending the amount. The approach is to 'comply or explain'. The evolution of the relationship between companies and society has been one of slow transformation from a philanthropic coexistence to one where the mutual interest of all the stakeholders is gaining paramount importance. The company secretary can play an instrumental role in the development of CSR values and policy for an organisation and also in the implementation of various other laws/guidelines important from a society perspective like competition laws, environmental laws and Business Responsibility Guidelines etc.

**Difference between the Old and New Companies Act regarding the  
roles of Company Secretary**

<b>Basis of Difference</b>	<b>Companies Act, 1956</b>	<b>Companies Act, 2013</b>
1. Compliance Certificate	Under the old Companies Act, 1956, company secretaries have to issue a compliance certificate to the companies. Hence, their major function was to issue the compliance certificate.	Under the Companies Act, 2013 the role of CS (Company Secretaries) has increased by providing with opportunities such as promotion, formation, and incorporation of companies, etc. Hence, their performance area has increased
2. Appointment	Every company with a paid-up share capital of more than Rs.5 lakhs had to appoint a CS.	Every listed company having paid-up share capital of more than Rs.10 lakhs has to appoint a CS.
3. Penalty	If a company fails to appoint a CS, the penalty is Rs.500 per day. Hence, there were fewer restrictions.	If a company fails to appoint a CS, the penalty is not less than Rs.1 lakh. Hence, there is more control over the appointment.

**CONCLUSION**

Transition in a profession is a silent, invisible movement towards attaining intangible perpetual gains. The profession of company secretary in India has undergone many stages of transformation from Record keeper to Compliance officer, from Compliance officer to Business manager, from Business manager to Board Room Advisor and now transformation beckons for Governance Professionals. The profession of company secretaries needs to evolve to meet the challenges of a more dynamic business

and regulatory environment. The Companies Act, 2013, depict significant improvements in the corporate sector operations and casts huge responsibility on company secretaries.

**References** – <https://www.icsi.edu/media/webmodules/companiesact2013/Annexure-I>  
<https://www.primedatabase.com/article/2015/33.Article-Atul%20H.Mehta.pdf>

