

Original Article

The Role of Practicing Company Secretaries in India

Mahesh Waghole¹, Dr. Kishor Lipare²

¹B. Com., LL.B., C. S.

²M. Com., M.Phil., Ph.D

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Correspondence Address:

Mahesh Waghole

B. Com., LL.B., C. S.

Email: maheshpwaghole@gmail.co



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Abstract

The role of Practicing Company Secretaries (PCS) as an entrepreneur in India plays a vital role in inclusive development by addressing societal challenges, promoting equitable growth, and ensuring that the benefits of development reach marginalized and underserved communities. Here are several key ways in which social entrepreneurship contributes to inclusive development has evolved significantly with the growing complexity of corporate governance and legal frameworks. This research paper explores the pivotal functions and responsibilities of Practicing Company Secretaries, highlighting their contribution to ensuring compliance, transparency, and ethical standards in Indian companies. By examining the statutory duties and advisory roles of PCS, the paper delves into their involvement in corporate filings, regulatory compliance, board governance, and safeguarding shareholder interests. Additionally, the study focuses on the expanding role of PCS in enhancing corporate social responsibility (CSR), managing legal risks, and providing strategic counsel in mergers, acquisitions, and restructuring activities. The paper further evaluates the challenges faced by PCS, such as the rapid pace of regulatory changes and the evolving legal environment, and the need for continuous professional development. Through a comprehensive analysis, this paper aims to underscore the critical significance of Practicing Company Secretaries in strengthening the corporate governance framework in India and contributing to the nation's economic growth and regulatory integrity. Practicing as a company secretary with a focus on social entrepreneurship is an exciting and impactful career path. By combining the skills of a company secretary with a social mission, you can contribute to positive social change while maintaining the legal and regulatory framework for businesses.

Keywords: Practicing Company Secretary (PCS), Statutory Filings, Ethical Standards, Social Entrepreneurship, The Companies Act, 2013

Introduction

The role of a Company Secretary (CS) in India is defined by the Companies Act 2013 and Company Secretaries Act, 1980, The Parliament passed Act which empowers the Institute of Company Secretaries of India (ICSI) to regulate and develop the profession. There are two types of membership available after successfully completion of Company Secretary exam by the student. First is only membership who can do a corporate job or job in firms, second type is Practicing Company Secretary (PCS) is separate category for providing independent services as professional to different entities. A Practicing Company Secretary (PCS) is an individual cum professional who is authorized to provide services in the field of corporate governance, legal and financial compliance, and other related advisory services to companies and organizations.

The role of Practicing Company Secretaries in India has expanded significantly over the years. They now play a vital role in ensuring that businesses adhere to various statutory and regulatory frameworks, thereby contributing to the overall transparency, accountability, and good governance within the corporate sector.

Here are some ways you can approach this:

a. Advising Social Enterprises:

- **Corporate Governance:** Ensure that social enterprises adhere to proper corporate governance standards, even if they prioritize social over financial returns.
- **Legal Structure:** Help choose the right legal structure (e.g., charity, cooperative, or social enterprise) that aligns with the organization's mission.

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- **Compliance:** Guide the social enterprise in complying with relevant laws, such as charity laws, social impact laws, and local business regulations.
- b. **Setting Up Social Enterprises:**
 - Assist individuals or organizations in establishing social enterprises by providing the necessary legal and regulatory support.
 - Help them create mission-driven businesses with sustainable impact, ensuring that their goals and strategies align with their social mission.
- c. **Navigating Funding and Governance:**
 - Work with social enterprises in navigating funding options, such as impact investors, grants, or crowdfunding, while ensuring that the financial backers' expectations align with the company's social objectives.
 - Advise on how to balance social goals with financial viability.
- d. **Corporate Social Responsibility (CSR):**
 - Advise traditional for-profit companies on setting up CSR initiatives that have a real social impact.
 - Help structure and implement CSR programs that genuinely benefit the community while maintaining compliance with legal obligations.
- e. **Legal and Ethical Advocacy:**
 - Support social enterprises in advocating for ethical business practices, corporate transparency, and a strong commitment to social justice.
 - Promote ethical standards within the business community, ensuring that profit motives do not overshadow social objectives.
- f. **Building Partnerships:**
 - Help social enterprises build partnerships with non-governmental organizations (NGOs), other businesses, or government bodies that can assist in achieving their social impact goals.
 - Facilitate networking and knowledge-sharing to improve outcomes for both the social enterprises and the communities they serve.
- g. **Impact Reporting:**
 - Help design and implement systems for measuring and reporting social impact, ensuring transparency and accountability to stakeholders.

As a practicing company secretary, leveraging your legal expertise in combination with a passion for social change can make a significant difference in the social enterprise space. The combination of legal compliance, governance, and ethical practices can support sustainable and impactful social businesses.

Practicing Company Secretary (PCS) – A qualified professional authorized to provide legal, secretarial, and compliance services independently under the Companies Act.

Corporate Governance – The system of rules, practices, and processes by which a company is directed and controlled, with PCS ensuring ethical and regulatory adherence.

Compliance Management – The process of ensuring that a company adheres to legal, regulatory, and internal guidelines, often overseen by a PCS.

The Companies Act, 2013 – The principal legislation governing corporate affairs in India, forming the legal backbone of a PCS's responsibilities.

ICSI (Institute of Company Secretaries of India) – The statutory body regulating the profession of Company Secretaries in India, including those in practice.

Corporate Social Responsibility (CSR) – A mandate for certain companies to undertake social welfare activities, where PCS can play a role in planning and compliance.

Statutory Filings – Mandatory submissions like annual returns and financial statements that PCS handle to maintain corporate legality.

Regulatory Authorities – Government bodies like SEBI, RoC, and MCA that PCS interact with for compliance, filings, and approvals.

Social Entrepreneurship – Business ventures focused on social impact, where PCS contribute by providing legal and governance expertise.

Ethical Standards – Principles guiding fair, transparent, and responsible conduct in business, championed and upheld by PCS.

The Legal and Regulatory Framework Governing Practicing Company Secretaries:

The primary legal framework under which Practicing Company Secretaries operate includes:

1. The Companies Act, 2013:

The Companies Act, 2013 is the primary legislation governing corporate affairs in India. Section 203 of the Companies Act, 2013 mandates the appointment of a Company Secretary in certain classes of companies.

PCS plays a vital role in ensuring compliance with provisions related to board meetings, shareholder meetings, statutory filings, and maintenance of corporate records.

2. The Institute of Company Secretaries of India (ICSI):

The ICSI is the regulatory body that governs the practice of Company Secretaries in India. It provides education, sets professional standards, and enforces ethical conduct.

PCS must adhere to the guidelines set by ICSI and maintain their certification and membership to practice.

3. Securities and Exchange Board of India (SEBI):

PCS is also involved in ensuring compliance with the regulations set by SEBI, particularly for listed companies. This includes ensuring proper disclosures, reporting, and adherence to listing obligations.

4. Other Laws and Regulations:

PCS assists organizations in adhering to other applicable laws such as the Foreign Exchange Management Act (FEMA), the Income Tax Act, the GST Act, and more. Compliance with environmental, labour, and intellectual property laws is also essential.

Roles and Responsibilities of Practicing Company Secretaries:

The roles and responsibilities of a Practicing Company Secretary are vast and multi-dimensional. The key areas include:

1. Corporate Governance:

Ensuring that the company complies with corporate governance standards is one of the most important responsibilities of PCS. They assist in setting up structures for the board of directors, ensuring that the company follows ethical practices, and ensuring accountability to stakeholders.

PCS ensures compliance with regulations such as the SEBI (Listing Obligations and Disclosure Requirements) Regulations and guidelines on corporate governance.

2. Compliance Management:

A core function of PCS is managing legal and regulatory compliance for organizations. This involves ensuring timely filings, ensuring adherence to corporate laws, and assisting companies in maintaining statutory registers and records.

PCS ensures that the company's activities are in alignment with the provisions of the Companies Act, 2013, and other applicable laws.

3. Advisory Services:

PCS provides valuable advice on matters relating to company law, corporate restructuring, mergers and acquisitions, share capital management, and other business decisions. Their expertise ensures that companies avoid legal pitfalls and make informed decisions.

4. Representation and Filings with Regulatory Authorities:

PCS represents companies before various authorities such as the Registrar of Companies (RoC), SEBI, and other regulatory bodies. They are responsible for filing returns, resolutions, and other required documents on behalf of the company.

They also help companies in drafting and filing annual reports, financial statements, and other mandatory disclosures.

5. Directorial and Shareholder Meetings:

PCS is responsible for managing board meetings, shareholder meetings, and ensuring compliance with procedures. This includes drafting agendas, preparing minutes, and ensuring compliance with quorum and voting procedures.

They are also responsible for advising directors on their legal responsibilities and ensuring their compliance with fiduciary duties.

6. Taxation and Financial Compliance:

PCS also provides advice on indirect taxation, such as Goods and Services Tax (GST), and supports the company in filing tax returns. They are responsible for ensuring that the company remains compliant with financial reporting standards and other tax-related matters.

Challenges Faced by Practicing Company Secretaries:

1. Regulatory Complexity:

The ever-changing nature of laws and regulations poses a challenge for PCS. New amendments to laws, such as the Companies Act, GST, and the Income Tax Act, require constant updates to knowledge and compliance procedures.

2. Technological Advancements:

With the growing use of technology, PCS must adapt to digital tools for compliance management and filing. However, the integration of new technologies requires both skill development and investment, which can be a barrier for smaller firms.

3. Increased Responsibilities:

As the role of PCS expands, there is an increasing expectation from businesses for a wider range of services, from risk management to strategic advisory. This demands higher skill levels and more time, often leading to a heavy workload.

4. **Ethical Dilemmas:**

PCS sometimes face ethical dilemmas, especially when a company asks them to overlook or misreport statutory compliance or file false returns. Their role as guardians of compliance can conflict with business interests, creating tensions.

5. **Competition and Market Pressure:**

There is growing competition in the market, with both large firms and smaller, emerging practitioners vying for the same clientele. Many PCS professionals face price pressure, which can affect the quality of service.

Impact of Practicing Company Secretaries on Corporate India:

1. **Corporate Governance and Transparency:**

PCS are integral to the promotion of transparency and accountability in the corporate world. Their role in ensuring adherence to corporate governance practices helps in building trust with investors, shareholders, and other stakeholders.

2. **Business Growth and Legal Protection:**

Through their advisory roles, PCS support companies in making informed business decisions that protect them legally and financially. Whether it is a new business venture, a merger, or expansion, their legal expertise proves vital.

3. **Economic Contribution:**

By ensuring that businesses comply with statutory requirements and avoid legal pitfalls, PCS contribute significantly to the economy. Well-compliant businesses are less likely to face legal troubles, helping to create a stable economic environment.

Conclusion

Practicing Company Secretaries play a vital role in the corporate ecosystem in India. They bridge the gap between business operations and regulatory requirements, ensuring that organizations remain compliant, transparent, and ethical in their dealings. Their work is critical for corporate governance, risk management, legal advisory, and strategic business decisions. While the profession faces numerous challenges, including regulatory complexity and increased competition, the evolving landscape offers opportunities for growth and specialization.

As the business environment in India becomes more complex, the role of Practicing Company Secretaries will only continue to grow, making them indispensable to the success and sustainability of businesses in India.

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