COMPANY SECRETARIES AS CHIEF GOVERNANCE OFFICERS IN INDIAN COMPANIES

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ABSTRACT

India has witnessed changing legal and financial structures inside its corporate entities over the past few decades. With an increase in financial irregularities in company records, the need for transparent and independent corporate governance is felt stronger than ever. The latest amendments to the Companies Act provide some regulatory mechanisms to make corporate administrations more accountable and accessible. However, mere external monitoring is not viable for the giant corporate nexus that accommodates companies of varying financial structures, sizes and technical setups. In such circumstances, the office of the Company Secretary often provides a convenient solution acceptable to both, the company management and the stakeholders. The CS is envisioned as a champion of stakeholder interests, and not as a mere employee of the management, as they have been traditionally stigmatized. This research article explores the foundation on which the office of Company Secretaries has been assimilated into Indian Company law, and whether it can be improved upon to empower them as governance officers. The researcher attempts to compare the position of company secretaries with that of the public office of an ombudsman. The paper involves analysis of committee reports, contemporaneous research, statute laws, case laws and opinio juris to understand the prevalent views on this concept. The research attempts to suggest a projected path for laws on company secretaries to elevate their responsibilities from being mere compliance officers to leaders in good governance enforcement.

Keywords: Company Secretary (CS), Corporate Governance, Independence, Accountability.

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I. INTRODUCTION

Corporate governance may be defined as the dynamic framework of laws that regulates commercial organizations and their relations with their stakeholders, by monitoring their transactions, managerial decisions and policy-making functions.[1] The advantage of such a framework is enjoyed by all stakeholders involved, and boosts the confidence of investors and government agencies in the stability and performance of the entity.[2] The consequent increase in economic value of the firm provides advantages to the employees of the firm, as it creates stability in employment and remuneration. In the long run, the presence of such benefits for stakeholders allows a company to fulfil its commercial goals, and helps it handle unforeseen situations with greater ease.[3] Corporate governance being such a crucial component of a company's survival strategy, it is handled by the company's top management. Although it began as a 'best business practice' approach, it has now become a mandated process in many jurisdictions for a variety of reasons.[4] To begin with, it helps the shareholders to implement their rights democratically, instead of restricting it to the books and reports of the company. Good corporate

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[1] Marco Becht, Corporate Governance and Control (Eur. Corp. Governance Inst., Working Paper No. 02, 2002), http://ius.bg.ac.rs/prof/Materijali/labmir/Corporate%20Governance%20&%20Control.pdf.

[2] Kose John & Lemma Senbet, *Corporate governance & board effectiveness*, 22 J. BANK. & FIN. 371, 372 (1998).

[3] Morrison-Paul & Donald S. Siegel, Corporate social responsibility & economic performance (Soc. Sci. Res. Network, Working Paper No. 01, 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=900838.

[4] T. 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*, 36(4) ORG. ST. 513 (2015).

governance is a widely pursued commodity, and few entities are deemed worthy of accomplishing it. This concept was made a reality in India by the share market regulator SEBI, which issued certain corporate governance guidelines that were required to be incorporated into the company's listing agreement.[5] However, this only applies to the arrangement's exterior existence.

The ever-changing corporate and commercial operations around the world have necessitated the presence and active participation of a professional and statutorily empowered member of the management in ensuring that corporate governance requirements are upheld. In this context, this research delves into the origins and growth of the position of Company Secretary (*hereinafter* referred to as "**CS**") in India, as well as its role in enhancing transparency, accountability, and legal compliance in Indian corporations during the last few decades. This study is an incisive examination of how the presence of appropriate statutes, regulations, judicial declarations, and socio-economic events affected Indian corporate law and created a new area of leadership in company management. When the global financial crisis struck at the end of the last decade, financial stability became the primary concern of global regulators, ushering in a new age of unparalleled transparency standards. The CS must now verify that the company's ownership, structure, and operations comply with a slew of new rules designed at keeping global markets on track and stifling globalization's previously unbridled expansion.[6] A long awaited development in the evolution of the CS as member of management can be him accepting the role of the 'chief governance officer'. Such a step would enable him to monitor organisational statistics and support the management in understanding patterns in the market. The CS is considered to wield strategic influence over the Board of Directors, as he

[5] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 6(1), Reg.4 (Sept. 2, 2015).
[6] K. R. CHANDRATRE, COMPANY SECRETARY PRACTICE MANUAL 21 (4th ed., 2019).

forms a link between internal and external stakeholders of the company.[7] This position brings with itself the responsibility to facilitate transparent managerial actions from the Board, efficient responses to regulatory roadblocks and relay of information to stakeholders in a timely manner.[8]

Having set the context of the study, it is essential to highlight the focus of analysis in the form of a proposition. The main objective of the paper lies in determining whether the Indian corporate sector requires an upgraded approach towards good governance in current social, economic and legal circumstances. It is also pertinent to probe if the said upgrade in approach can be brought through better facilitation and empowerment of the CS in company management. Based on these questions, it is hypothesized that the statutory addition of the CS into company management has improved independence, accountability and transparency in Indian companies. It is also proposed that their empowerment into chief governance officers is the necessary step that India needs to take to ensure a stricter corporate governance regime. To test the hypothesis on these factors, the paper shall analyse the origin and evolution of international models of corporate governance.

II. HISTORICAL AND LEGAL CONTEXT

A. ORIGIN OF GOVERNANCE PERSONNEL IN COMPANIES

The Latin word 'secretarius' can be given credit of origin in the formation of the concept of 'secretaries', especially considering that a person working under such a title was historically meant to possess and manage commercial secrets on behalf of his master.[9] Its modern rise in usage began in post-industrialization England when in 1971, the British

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[7] John Nowland et al., *The role of the company secretary in facilitating board effectiveness: reporting and compliance,* 61(1) ACC. & FIN. 1425, 1430 (2021).
[8] *Supra* note 4.
[9] C. C. Okolocha & E. I. Baba, *Assessment of extent of skills possessed by secretaries for effective electronic records management in polytechnics in north-central Nigeria*, 2(1) NAU. J. TECH. VOC. STU. 1, 3 (2017).

Institute of Secretaries and the Corporation of Secretaries combined[10] to form the Institute of Chartered Secretaries and Administrators (*hereinafter* referred to as "**ICSA**") in the UK. The Cadbury Committee, based on the submissions made by the representing group, consequently included secretaries as instruments of governance in their model, especially to fix the issue of irregular internal processes of companies and disorder in Board meetings.[11] The CS was envisioned to develop a relation of trust with the management and ownership of the company, thus cementing their position as a communication link.[12]

B. INFLUENCE OF SOCIO-ECONOMIC EVENTS

The acceptance of the CS as a link between stakeholders was founded on certain developments that were brought forward by regulatory authorities. The initiative was taken up by the Confederation of Indian Industries, which introduced the concept of corporate governance to numerous industries in India.[13] To begin with, they made recommendations with respect to rapid redressal of public concerns and investor queries by a company's executive officers, instilling transparency within management and shareholders across industries, and sharing of detailed information through disclosure processes with parallel corporate bodies as well as regulators.[14] The intention, by inference, was to slowly move towards a market without borders between investors, employees and the governing bodies involved. Subsequently, SEBI's Kumar Mangalam Birla Committee (2000) presented its report which proposed

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[10] Gerturd Erismann-Peyer et al., *The Evolution of Modern Corporate Governance* in THE INSIDER'S VIEW ON CORPORATE GOVERNANCE, 1-13 (2008).
[11] *Supra* note 7.
[12] Devendra Jarwal, *The Role of Company Secretary as Governance Officer*, NAT'L. CONVENTION COMPANY SECRETARIES, 84 (2013).
[13] Bhumesh Verma & Himani Singh, *Evolution of Corporate Governance in India,* SCC ONLINE (Nov. 13, 2019) https://www.scconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/#_ftn2.
[14] *Id.*

insertion of Clause 49 in Listing Agreements, to implement stronger regulatory standards for corporate disclosures.[15]

The KM Birla Committee also recommended the appointment of independent directors on the Board in an attempt to distribute administrative power of the Board between executive and non-executive personnel in the management.[16] This recommendation was in line with the global trend of appointing independent directors as a monitoring mechanism inside the company to protect stakeholders' rights.[17] However, this mechanism did not produce the desired results in the Indian corporate sector, since there was no proper legislation to determine crucial aspects surrounding Independent Directors, such as minimum qualifications requirements, remuneration rules, distribution of authority, access to information and suitable training in financial, commercial or legal matters.[18] Additionally, the lack of formal education in matters of corporate governance and a socially ingrained propensity to avoid boardroom conflicts became the prime reasons for the failure of Independent directors as healthy monitoring mechanisms.

This outcome paved the way for accommodating a governance officer who was more qualified and was not bound by the complexities of being a board member. A consequent legislative solution was observed in the amendment to the Companies Act in 1974, which created a mandatory requirement that if a company possessed paid-up share capital of Rs. 25 Lakhs or more, it must appoint a whole-time secretary, and such secretary could not hold such position in more than one company.[19] The

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[15] KUMAR MANGALAM BIRLA COMM., SEBI, REPORT OF THE KUMAR MANGALAM BIRLA COMMITTEE ON CORPORATE GOVERNANCE ¶ 1 (1999).

[16] Sahoo Rani & Dr. Dwibedi Kumar, *An analytical study relating to the role of an Independent director in the globalised era: A detailed study,* 10(1) ASIA J. MGMT. 72, 74 (2019).

[17] María Gutiérrez & Maribel Sáez, *Deconstructing Independent Directors,* 13(1) J. CORP. L. STUD. 63, 64 (2013).

[18] Kamal Kishore & Srirang Jha, *Efficacy of Independent Directors in Corporate Governance: Indian Scenario*, 1(2) J. POL. & GOVERNANCE. 25, 29 (2012).

[19] Companies (Amendment) Act, No.41 of 1974, §30(1) (Ind.); *See* Companies Act, No.1 of 1956, §383A (Ind.).

amendment also made it mandatory for firms or body corporates working as company secretaries to resign from such employment within specified time.[20] An analysis of the objects and reasons of this amendment highlighted the government's aim to promote the secretarial profession as a qualified instrument of legal compliance, good governance and assistance in commercial decisions.[21] However, mere compulsion of appointment was not sufficient for promoting a profession, and the government needed to make ancillary provisions to ensure that the CS profession was able to display intended results.

The question of appropriate qualification and training of the CS was the biggest matter in consideration, as it became a hurdle for the successful functioning of Independent Directors.[22] Apart from pre-employment training, there was also the need to monitor the conduct and professional activities of the CS, since their role as governance personnel had considerable influence upon the legal compliance of their employing company.[23] By inference, the government would need to set up an institution that could certify that the CS personnel were trained and qualified to perform their duties of corporate governance, that their conduct was compliant with the laws and ethics of the profession, and that there would be immediate legal consequences if a CS was found violating such laws. Creating such a body would increase the acceptability of the CS as a corporate professional, because a qualifying institution would provide proof of credibility and qualification to such personnel.[24] In this pursuit, the Government of India provided statutory recognition to the Institute of Company Secretaries through the Company Secretaries

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[20] Companies (Amendment) Act, No.41 of 1974, §30(2) (Ind.).
[21] Poonam Rajharia & Bhawana Sharma, *Legal Aspects of Corporate Governance for IT Companies in India*, 2 (11) INT'L. J. RES. BUS. MGMT. 35, 39 (2014).
[22] *Supra* note 4.
[23] Sharifah Fuzi et al., *Comparative Analysis on the Requirement, Qualification and Responsibility of Company Secretaries in United Kingdom, Malaysia and India*, 16(1) J. ADMIN. SCI. 118, 120 (2019).
[24] Cary Coglianese et al., *The Role of Government in Corporate Governance*, 1 N.Y.U. J. L. & BUS. 219, 221 (2004).

Act 1980, and introduced regulatory provisions to cover the procedural aspects of the Institute's activities.[25] [26]

The slow process of accommodating qualified professionals as governance officers in the commercial sector gained momentum in the post 1990 era of liberalization & globalization.[27] The government introduced the Companies (Compliance Certificate) Rules, 2001 as a measure to increase the accountability of the company towards regulatory authorities.[28] This law brought forth the concept of secretarial audits and certification, whereby the CS was required to verify and state that a company was compliant in matters of share certificates, allotments, stakeholder grievance redressal, alteration of charter documents and other such activities as specified by the government.[29] This became the first observable instance in the corporate sector where entities were required to implement self-regulatory practices with the assistance and monitoring vision of a qualified professional. Although the concept of financial audits existed previously, the secretarial audit was the first to cover commercial, legal and industrial characteristics of an entity.[30]

Around this time, the world witnessed the discovery and investigation of massive securities frauds such as the Enron and Worldcom scams.[31] According to notable financial studies, the existence of whistle-blowers aided in the prompt detection and investigation financial irregularities, and governments could track accountability by mandating the appointment of

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[25] Company Secretaries Act, No.56 of 1980, §3(1), (Ind.).
[26] Company Secretaries Regulations, 1982, Gazette of India, pt. III sec. 1, Reg. 1, (Sept. 1, 1982).
[27] Ananyaa Jha & Aayush Kanojia, *Globalization and Corporate Governance in Indian Context*, 3(5) INT'L. J. L. MGMT. & HUMAN. 482, 486 (2020).
[28] Companies (Compliance Certificate) Rules, 2001, Gazette of India, pt. II, Rule 1 (Oct. 2001).
[29] Dr. V. Balachandran & A. Panjavarnam, *Secretarial Audit Compliance under Companies Act 2013 in India - A Study*, 6(10) INT'L. J. ADVANCED. RES. MGMT. & SOC. SCI. 82, 86 (2017).
[30] Rahul Joshi, Corporate Governance: Reforms to Promote Sustainability, 4(1) JAGRAN INT'L. J. CONTEMP. RES. 48, 50 (2017).
[31] Kathleen F. Brickey, *From Enron to Worldcom and Beyond: Life and Crime After Sarbanes-Oxley*, 81(2) WASH. U. L. QUARTERLY. 357, 358 (2003).

responsible individuals.[32] The United States introduced the Sarbanes – Oxley Act, signalling economies around the world that they needed to re-assess their monitoring mechanisms to protect their markets from serious frauds.[33] In India, the Naresh Chandra Committee was formed by the Ministry of Finance, and in its report, the committee raised doubts regarding the reliability of mechanisms monitoring relationships between companies, its auditors, and Independent Directors.[34] In pursuit of a solution, the SEBI then established the Narayan Murthy Committee, in order to fill up the lacunae in India's corporate governance model.[35] Having studied the contemporary financial frauds, and sensing a need to provide a better framework for forensic accounting in companies, the committee report recommended the empowerment of board committees such as the Audit committee, and proposed the appointment of the CS as a secretary to the audit committee.[36]

C. LEGISLATIVE DEVELOPMENTS

As defined in the Companies Act 1956, the CS was deemed to be an officer equivalent to director or manager, under whose directions the Board is accustomed to functioning.[37] This opened the possibility that the CS was not merely a clerical being, but an officer equivalent to a director in terms of its functions in the Company. The Act also allowed companies to appoint CS as representatives before a Tribunal or Appellate Tribunal

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[32] Robert M. Bowen et al., *Whistle-blowing: target firm characteristics and economic consequences*, 85(4) ACCT. REV. 1239 (2010).
[33] Michael A. Perino, *Enron's Legislative Aftermath: Some Reflections on the Deterrence Aspects of the Sarbanes-Oxley Act of 2002*, 76(4) ST. JOHN'S L. REV. 671, 676 (2002).
[34] CONFEDERATION IND. INDUS., REPORT OF THE CII TASK FORCE ON CORPORATE GOVERNANCE CHAIRED BY MR. NARESH CHANDRA (Nov. 2002), https://www.mca.gov.in/Ministry/latestnews/Draft_Report_NareshChandra_CII.pdf.
[35] Dr. C. K. Gupta, *Corporate Governance Revisited-A Critical Study*, 2(1) INT'L. J. ADVANCED & INNOVATIVE. RES. 24, 26 (2015).
[36] COMM. CORP. GOVERNANCE, SEBI, THE REPORT OF SHRI N. R. NARAYANA MURTHY COMMITTEE ON CORPORATE GOVERNANCE (Mar. 2003), https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html.
[37] Companies Act, No. 1 of 1956, §2(30) & §2(45) (Ind.).

under company law.[38] Furthermore, the Act permitted the authentication of company documents or proceedings by way of signature, obtained from a manager, director, or the CS.[39] Where the Act discussed prerequisites for the commencement of business by a company, one such requirement mentioned is submission of a declaration from either the director or CS that all other conditions enlisted therein have been complied with.[40] Section 215 of the Act required companies to get every balance sheet and profit & loss account signed by the manager or CS.[41] An overview of these provisions suggests that by legislative intent, the offices of directors, managers and CS have been placed at an equal level of authority, responsibility and accountability towards administrative processes.

Through the Companies (Amendment) Act, 1988, the CS was brought under the ambit of "officers in default" as discussed in S.5 of the Act.[42] This amendment created provisions for awarding punishment on secretaries found to be in default, and positioned them as common link between the management and stakeholders.[43] The amendment also inserted the provision that during the registration of the Memorandum of Articles, where the applicant needed to submit a declaration of compliance from an officer or representative of the company, such a declaration could be provided by a CS.[44] This increment in liability to the office of CS should have brought with it certain additional authority to ensure a balance. However, no such facilitation was supplied, and by inference, this imbalance can be observed as the cause for the stunted growth of CS in terms of voluntary governance regimes. The next step in evolution was the requirement set by the SEBI through Section 4, Listing

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[38] *Id.*, §10GD.
[39] *Id.*, §54.
[40] *Id.*, §149.
[41] *Id.*, §215.
[42] *Id.*, §5(d).
[43] Laurie Factor, *Company Secretary: administrator but not manager*, 46 CORP. MGMT. J. 388 (1994).
[44] Companies Act, No. 1 of 1956, §33(2).

regulations (2003), mandating that the listing agreement must include disclosures in the areas of related party transactions, risk elimination processes, investor education and protection, etc. alongside compliance certificates for the same.[45] The provision required that these certificates would be provided by the authorised CS, casting a new responsibility on them. Similarly, a CS was also required to handle certification of the report on corporate governance presented by the company as per listing requirements. The guidance note provided by ICSI in 2010 provided for rights of practising CS (*hereinafter* referred to as "**PCS**") to gain access to various company records such as the company's registers, books of accounts, papers, documents, reports, and records, wherever they were maintained.[46] The PCS was authorised to obtain such information from the Company that he deemed necessary for certification purposes.

By 2011, it was a globally understood phenomenon that corporate disclosure requirements could not be mandatorily enforced unless an internal system of checks and balances could be set up.[47] Such a system would monitor the presence of fraudulent activity and eliminate areas of negligence that could cause financial and legal irregularities in day-to-day business. This visible change in policy is primarily observed in the introduction of the Companies Act 2013, which brought about a few major changes in the government's outlook towards public companies. The statement of objects and reasons of the new Act itself included an enhanced disclosure regime as its target. Apart from defining the CS as an officer[48] of the company, the new Act recognized the CS as an expert[49],

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[45] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2003, Gazette of India, pt. III sec. 4, Clause 47 & 49 (2003).
[46] INST. CO. SECRETARIES IND., GUIDANCE NOTE ON CORPORATE GOVERNANCE CERTIFICATE (Aug. 2010), https://www.icsi.edu/media/prb/pdf/GUIDANCE%20NOTE%20ON%20CG%20CERTIFICATE%20.pdf
[47] Madan Lal Bhasin, *Corporate Governance Disclosure Practices: The Portrait of a Developing Country,* 5(4) INT'L. J. BUS. & MGMT. 150, (2010).
[48] Companies Act, No.18 of 2013, §.2(59) (Ind.).
[49] *Id.*, §2(38).

and key managerial personnel (*hereinafter* referred to as "**KMP**")[50] in other provisions. This widening of ambit can be seen as a step towards the liberalisation of the CS from their stereotypical status as a clerical officer. The Act also mandated the CS to perform any prescribed functions such as reporting to the board on legal matters, ensuring company compliance with financial, industrial and regulatory standards, etc., essentially recognizing them as a compliance officer.[51]

Beginning from the incorporation of a company, the CS was allowed to provide the declaration of compliance, alongside other officers such as the manager, directors, or other authorised personnel.[52] The new Act mandated companies falling in prescribed categories to employ certain whole-time KMP, which included a Managing director, a Chief Financial Officer and a CS.[53] Here, the concept of 'Whole Time CS' (*hereinafter* referred to as "**WTCS**") was created. In increasing the ambit of responsibility of such a WTCS, the Act mandates a company's prospectus to state the name and address of its CS.[54] Apart from this, listed or specified companies are required to attach a secretarial audit report to the board report; such document needs to be obtained from a PCS, and the PCS is entitled to receive the cooperation and assistance of the company in verifying the data before certification.[55] The same provision also expects the board report to provide a directorial explanation on the qualifications provided by the PCS in his secretarial audit report.[56]

To enforce transparency & accountability, share certificates allotted to subscribers are required to be signed by the CS, and similar requirements govern the company's financial statements, board report, etc.[57] The Act also requires prescribed companies to get annual returns signed by a CS or

[50] *Id.*, §2(51).
[51] *Id.*, §205.
[52] *Id.*, §7(1)(b).
[53] *Id.*, §203(1).
[54] *Id.*, §26(a)(i).
[55] *Id.*, §204 (1).
[56] *Id.*, §204(2).
[57] *Id.*, §134(1).

PCS wherever possible.[58] With regards to their regulatory knowledge & expertise, the Act allows a Company Liquidator to appoint one or more CS to assist with him with the performance of his duties.[59] These provisions create a context that the CS was intended to fulfil roles with varying levels of responsibility and authority, and in various situations of legal compliance. Reliance on the quasi-technical and quasi-judicial abilities of the CS has also been placed through S. 409 of the Act, which allows a person practising as CS for 15 years or more, and meeting other criteria set by the law, to be appointed as a technical member of the NCLT.[60] On the other hand, a CS may also act on behalf of the company before the NCLT, as an authorised pleader.[61] These couple of provisions equated the CS with Chartered Accountants and legal practitioners in terms of representative capacity. Thus, in the eyes of the legislature, a CS was deemed capable of defending the company's interests and communicating with the members of the NCLT in matters of legal compliance.

While the involvement of the CS grew in administrative processes of companies, the government of India found it necessary to harmonize and define the various specifications that needed to be observed by him, and in consequence, the idea of secretarial standards was created.[62] In such pursuit, the ICSI created the Secretarial Standards Board (*hereinafter* referred to as "**SSB**") in 2000, and the SSB in turn formulated standards SS-1 and SS-2, defining specifications around Board Meetings and General Meetings respectively.[63] These standards were given recognition by the Companies Act 2013 for the first time, then were formally accepted as applicable through government notification in 2015, and were finally

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[58] *Id.*, §92.
[59] *Id.*, §291(1).
[60] *Id.*, §409(3)(d).
[61] *Id.*, §432.
[62] Milind Kasodekar, *Secretarial Standards – Tool for good Corporate Governance*, L. STREET IND. (Nov. 2, 2015) http://www.lawstreetindia.com/experts/column?sid=115.
[63] Meghna Thapar & Arjun Sharma, *Corporate Governance in India: An analysis*, 4(1) J. ECON. & SOC. DEV. 312, 314 (2017).

revised in 2017.[64] The SSB also introduced other standards, although they were deemed recommendatory in nature, and hence not mandated for compliance.[65] The Companies Act provides that it is the duty of the CS to ensure that a company is in compliance with all such secretarial standards as may be prescribed by the ICSI.[66] An analysis of the objects and reasons behind formulation of such standards suggests that the prime aim of standardizing secretarial conduct is to allow the profession to grow in terms of involvement, responsibility and authority in areas of governance leadership.[67]

Additionally, to contextualize the duties of a CS, the Ministry of Corporate Affairs added certain regulatory provisions through its appointment and remuneration rules.[68] The CS was thus required to provide advice to directors regarding their duties, facilitate meetings, maintain minutes of meetings and related records, obtain approvals from authorities, to assist the board in managing company affairs, to advise the board in matters of corporate governance and best practices, and other duties so imposed by the board or legislation.[69]. It can be observed that while the rules mention that the CS shall assist the board in other matters, when it comes to topics of good governance, best practices, compliances and board responsibilities, the terms 'advice' and 'guidance' are used.[70] A purposive interpretation of this construction suggests that the intention behind adding these terms is to elevate the status of CS, from a clerical

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[64] S. S. Rana, *Revised Secretarial Standards, SS-1 & SS-2 to be applicable from October 1, 2017*, MONDAQ (Aug. 30, 2017) https://www.mondaq.com/india/directors-and-officers/624706/revised-secretarial-standards-ss-1-and-ss-2-to-be-applicable-from-october-1-2017.

[65] Vartika Rawat, *Follow the Secretarial Standards in true letter and spirit': ICSI President*, CFO (Sept. 10, 2017) https://cfo.economictimes.indiatimes.com/news/follow-the-secretarial-standards-in-true-letter-and-spirit-icsi-president/60426543.

[66] Companies Act, No.18 of 2013, §§118(10), 205(b) (Ind.).

[67] Devendra Jarwal, *Opportunities for Company Secretaries to Serve Society and Economy in New Regime*, 42 NAT'L. CONF. COMPANY SECRETARIES 112, 113 (2014).

[68] Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Gazette of India, pt. III, sec. 3(i).

[69] *Id.*, Rule 9.

[70] *Id.,* Rules 9(1) & 9(6).

position to an expert in governance, who can provide insight to the Board in certain matters.[71] These rules were later amended in 2020, whereby the requirement for companies to appoint whole time KMP if they had paid up share capital of 10 Crore rupees or more, was made a bit more specific.[72] The amended rules required that when a private company owned paid up share capital of or above 10 Crore rupees, such company would have to appoint a WTCS.[73]

The CS was first officially recognised as a compliance officer by SEBI through its Listing obligations & disclosure requirements in 2015, whereby listed entities were required to appoint a CS as compliance officer.[74] Such officer was required to monitor regulatory conformity, coordination between intermediaries and the company, information accuracy, and grievance redressal of investors. He was also positioned as secretary to the Audit committee, thereby cementing his role as an instrument of ensuring board accountability.[75] In 2018, an amendment to the regulations introduced the additional requirement that a listed company must, along with its own annual report, attach a secretarial audit report of its own as well as its material subsidiaries, and such audit must be conducted by a PCS.[76]

D. JUDICIAL APPROACH

The first focus of judicial scrutiny upon the office of the CS came as early as 1841, where the powers and duties of the CS were discussed. In *Pontifex v. Bignold*, the court observed that a secretary was a secretary of the

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[71] Julie Mclellan, *Applied Corporate Governance: New Challenges in Public Sector Governance,* 61(8) KEEPING GOOD COMPANIES 466, 468 (2009).
[72] Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Gazette of India, pt. III, sec. 3 (i), Rule. 8.
[73] *Id.,* Rule 8A.
[74] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 6(1), (Sept. 2, 2015).
[75] *Id.,* Reg. 18(1)(e).
[76] *Id.,* Reg. 24A.

society; his allegiance must tilt towards the public benefit.[77] This cast a duty of pro-societal governance on the CS, making him a potential governance officer. Research suggests that over the years, secretarial functions have been explicitly specified in publicly traded firms, with an emphasis on interactions between the executive and supervisory boards, investors, public authorities and various stakeholders.[78] This position was revisited in the case of *Panorama Developments, Guildford, Ltd v. Fidelis Furnishing Fabrics Ltd.*[79] In this case, the court opined that the presence of a CS was necessary not for social causes, but for administrative ones, and such authority as an administrator was provided to him by the company to sign contracts and make public representations for the company.[80] The revolutionary verdict in the Enron case (*Skilling v. the United States*) shed light upon the conduct of the CS in employment during the years of the scandal.[81] The notes of the CS that were made during meetings of the audit committee were scrutinized during the trial, and it was discovered that the CS possessed evidence regarding fraud, and had recorded her suspicions in the matter. However the CS was prevented by the Board from taking action or informing authorities about it.[82] The Enron case became a prime example to show that while the Board of directors was authorised to take decisions for the company, it was necessary to empower the CS with greater independence and protection from ill consequences, and position them as potential whistle-blowers.[83] In terms of functions related to legal compliance, the Australian courts have explained that a company secretary could be equated to a general counsel,

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[77] Pontifex v. Bignold, [1841] 3 Scott. N. R. 390.
[78] *Supra* note 4.
[79] Panorama Developments, Guildford, Ltd v. Fidelis Furnishing Fabrics Ltd., [1971] 2 QB 711.
[80] Andrew Johnston, *Company secretaries: gatekeepers or doormen?* 18(1) WITHOUT PREJUDICE. 1, 4 (2017).
[81] Skilling v. the United States, 561 U.S. 358 (2010).
[82] Rezart Dibra, *Corporate Governance Failure: The Case of Enron and Parmalat*, 12(16) EUR. SCI. J. 283 (2016).
[83] Erica Beecher-Monas, *Enron, Epistemology, and Accountability: Regulating in a Global Economy*, 37(141) IND. L. REV. 141, 188 (2003).

and their responsibilities could be overlapping in many areas.[84] In such pursuit, the CS should not be dependent on Board approval in matters requiring regulatory scrutiny of the Board's actions.[85]

In India, the discussion on powers and duties of CS has followed the same route of evolution as other jurisdictions. One of the first decisions in the matter came in the case of *Lakshmirattan Cotton Mills Co. Ltd. & Behari Charan v. The Aluminium Corporation of India*, where the CS was labelled as a mere secretarial officer with no powers of administrative action, thus deeming him invalid to ratify debts on behalf of the company.[86] This judgment was based on previous common law judgments from English courts, whereby the CS was meant to play a static and limited role of assisting the board, unless a secondary power was granted to him through the memorandum of association of the company.[87] However, with the introduction of newer laws and socio-legal changes in the area of corporate governance, this stance changed. With more and more duties being statutorily imposed on the CS, the judiciary observed that the award of power and authority too needed to be raised considerably.[88] In the case of *Y. C. Bhavsar v. Vraj I.T.P. Ltd.*, the court explained that where a CS was carrying out a verification or audit, he must be allowed access to manpower, records and assistance, and that he should be treated akin to a financial expert like a chartered accountant.[89] It thus became an accepted position that audit of financial, legal, industrial or other records was a power bestowed to the CS or could be delegated to a firm of PCS.[90] While deciding on a case of mismanagement in *Sadbhav Infra Ltd. v. Montecarlo Ltd.*, the court observed that to enable corporate

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[84] Shafron v. Australian Securities and Investments Commission, (2012) HCA 18.
[85] Tim Hartin et al., *The Impact of the Global Financial Crisis continue to present an interesting challenge for company secretaries to navigate*, 7 INT'L. IN-HOUSE COUNSEL J. 1, 7 (2014).
[86] Lakshmirattan Cotton Mills Co. Ltd. & Behari Charan v. The Aluminium Corporation of India, (1971) 1 SCC 67.
[87] ROBERT PENNINGTON, PRINCIPLES OF COMPANY LAW 94 (2nd ed., 1967).
[88] *Supra* note 47.
[89] Y. C. Bhavsar v. Vraj I.T.P. Ltd., (2013) 116 CLA 75 (CLB).
[90] *Supra* note 67.

governance, CS must have powers to access and review company records.[91]

It can be inferred from the duties imposed upon CS that he is required to ensure that the conduct of the management does not adversely affect the interests of the stakeholders, and in such pursuit, he must intervene in activities such as malicious disposal of funds or assets.[92] However, the gravity of the role of CS in India can be understood only upon analysing the decision in *State of Gujarat v. Coromandal Investment Private Limited.*[93] Therein, the court discussed the ambit of S. 383 A of the Companies Act, suggesting that if a person was employed as WTCS in one company, he would have to relinquish his post as CS in other companies.[94] It is pertinent to note that no other KMP has been mandated to observe such restrictions on employment; this suggests that the law places the CS at a position of higher responsibility and expects a superior level of attention towards company affairs from such CS.[95] When not functioning under the direction of the board members, a company secretary's structural detachment is meant to strengthen the roles of the non-executive directors. Since neither the auditor nor the internal or external lawyers are required to attend board meetings and may not have direct access to the chairman or other non-executive directors, the CS can serve as a unique gatekeeper. This distinction between statutory duties and socio-legally projected functions of the CS mark a jurisprudential shift on the company secretary's position as a governance officer.

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[91] Sadbhav Infra Ltd. v. Montecarlo Ltd., (2014) 122 CLA 148 (CLB).
[92] *Supra* note 33.
[93] State of Gujarat v. Coromandal Investment Private Limited, (1991) 71 Comp. Cas. 470.
[94] Companies Act, No.1 of 1956, §383 A (Ind.).
[95] Chand Phool & Deb Taru, *Companies Act & Corporate Governance in India: Quo Vadis?*, 1(1) J. COM. & MGMT. 121, 125 (2018).

E. EXECUTIVE ENABLEMENT: COMPARING A CS TO AN OMBUDSMAN

The ombudsman can be described as an officer who has the ability to review the administrative acts of several government departments in light of citizen complaints. Various jurisdictions across the world have incorporated this Swedish concept into their public administration structures to ensure that the governing bodies do not cause unreasonable grievances to citizens. The ombudsman's duty is to facilitate grievance redressal, enforce accountability, and create a communication path between the pillars of public administration.[96] He is responsible for investigating occurrences of fraud, dishonesty and unauthenticated use of power by the executive wing of the government.[97] Hence, the ombudsman is an instrument of good governance in public administration and matters of the state.[98] It can be understood that such good governance is essentially meant to prevent corruption, nepotism, misuse of influence and protection of citizens' rights in the nation. By simple comparison, the public office of the ombudsman is comparable to that of governance personnel meant to handle regulatory compliance and corporate practice in corporate entities. In India, a listed company is expected to establish higher standards of disclosure and accountability by the appointment of a WTCS.[99] Such a permanent office in a corporate entity must thus be considered at a higher pedestal than an external PCS or a firm thereof.

In the previous section, we have discussed how the judiciary and legislative intent imposes greater responsibilities on a CS due to increasing occurrences and rising magnitudes of corporate embezzlement. It can be logically inferred that the CS is meant to be a sort of redressal officer for

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[96] Simone Caddedu, *The proceedings of the European Ombudsman*, 68(1) L. & CONTEMP. PROBS. 161, 162 (2004).
[97] V. S. Shukla, *The Ombudsman Hysteria,* 2 SUP. CT. J. 1, 86 (1967).
[98] Anita Stuhmcke, *Evaluating the effectiveness of an Ombudsman: a riddle, wrapped in a mystery inside an enigma*, 10 WELLINGTON CONF., INT'L. OMBUDSMAN. INST. 1, 4 (2012).
[99] Companies Act, No.1 of 1956, §203 (Ind.).

the stakeholders and that they shall abstain from being part of any stakeholder redressal committee.[100] Their independence is comparable to the ombudsman because although their activities are quasi-administrative in nature, neither of them are parts of executive bodies. The ombudsman is independent of the government, and similarly, the CS needs to be provided an independent position which is beyond the influence and interference of the Board of directors. Thus, the process of empowering a CS shall require his position to be given certain powers upon the administration of the Company, whereby he is not required to obtain board approvals in investigating or discussing matters of corporate governance with the employees, external stakeholders or regulatory authorities.

F. ANALYSING AND COMPARING INTERNATIONAL MODELS

The Anglo- American model of corporate governance can be observed as the fountain of origin from which subsequent divergent models arose[101] Its development was aided by the rapid boom in capitalist markets that created the need for private and public sector segregation in industries.[102] Its prime objective was to maintain management relations and cooperation with shareholders, owing to the fact that their adoption of a 'unitary tier board system' as elected by shareholders.[103] Optimized communications technology, lower business and financial barriers, and increased access to previously closed markets have given such businesses more freedom to choose where they want to manufacture. This created loopholes to enable getting around onerous regulations and finding low-cost labour/ materials. These two reasons, i.e. shareholder prominence

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[100] Rafael La Porta, *Investor Protection and Corporate Valuation*, 57(3) J. FIN. 1147, 1151 (2002).

[101] Thomas Clarke, *A critique of the Anglo-American Model of Corporate Governance*, 5(3) COMP. RES. L. & POL. ECON. 1, 2 (2009).

[102] Steve Toms & Mike Wright, *Divergence and convergence within Anglo-American corporate governance systems: Evidence from the US and UK, 1950–2000*, 47(2) BUS. HIST. 267, 269 (2005).

[103] Hassan Shirwa & Murat Onuk, *Corporate Governance Models & Possibility of Future Convergence,* 4(1) J. CORP. GOVERNANCE RES. 1 (2020).

and the rising probability of liability evasion have been tackled by setting up of governance officers.[104]Although the appointment of independent directors was the primary step towards better governance, cases like the Enron Fraud proved that company management needed a monitoring office with independence and accountability towards stakeholders.[105]

The second school of thought flourishes under the European model of corporate governance. As a means of improving good governance, some continental European countries, such as Germany, Austria, and the Netherlands, mandate a two-tiered board of directors,[106] As a result, the executive board, comprised of company executives, typically handles commercial operations, whereas the supervisory board, comprised wholly of non-executive directors, represents the investors and employees, employs and disqualifies executive board members, defines their remuneration, and reviews strategic changes. The German Codetermination Act of 1976 stipulates that worker be given seats on the board as stakeholders, in addition to the seats that accrue to shareholder representation.[107] This setup is materially similar to the appointment of an independent officer who is a link between employees, stakeholders and management, in the form of a CGO. Developing economies can be seen adopting a hybrid of the unitary and two-tier systems in corporate governance. Research in the Nigerian regime shows that ingrained institutionalism greatly influences stakeholders' expectations of financial, legal and regulatory administration, practises created or accepted, grievances & successes of legislative actions taken.[108] These conditions arise from a need for accountability, accessibility and transparency on

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[104] Jessica Djilani, *The British Importation of American Corporate Compliance*, 76 BROOK. L. REV. 303 (2010).
[105] *Supra* note 27.
[106] FELIX I. LESSAMBO, THE INTERNATIONAL CORPORATE GOVERNANCE SYSTEM 114 (1st ed. 2014).
[107] Hans Mertens & Erich Schanze, *The German Codetermination Act Of 1976,* 2 U. PA. J. INT'L L. 75, 77 (1979).
[108] Emmanuel Adegbite & Chizu Nakajima, *Institutions and Institutional Maintenance: Implications for Understanding and Theorizing Corporate Governance in Developing Economies*, 42(3) INT'L. STUD. MGMT. & ORG. 69, 73 (2012).

behalf of management tier officers. A similar picture is put up in the South East Asian economies such as Pakistan, which have adopted most of their legislative framework from the British colonial era principles of law.[109] Research suggests that board composition of companies has a positive effect on investor confidence, & firms with independent governance personnel have performed better statistically. [110]

The third school of governance is composed of the Chinese model, whereby three levels of Board members are employed to fulfil responsibilities of directorial, executive and supervisory nature respectively.[111] The third organ, which comprises of elected members working as monitors over the directors, is similar to a body of governance personnel.[112] It is primarily meant to increase accessibility, accountability and transparency of the board towards the stakeholders.[113] However, since no legal qualification is required, the amount of independence and scope of qualified corporate governance remains restricted to the director's discretion. Around the world, the CS has thus become more important than was initially intended, particularly in public companies, in order to mitigate legal and reputational risk. This added responsibility was not the result of any special law governing the CS.[114] Instead, laws requiring increased accountability, accurate governance, internal safeguards, separation of the chairman and CEO roles, a rise in the amount of non-

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[109] Howard Leichter, *The patterns & origins of policy diffusion: The case of the commonwealth*, 15(2) COMP. POL. 223, 225 (1983).
[110] Attiya Y. Javed et al., *Corporate Governance and Firm Performance: Evidence from Karachi Stock Exchange*, 45(4) PAK. DEV. REV. 947, 956 (2006).
[111] On Kit Tam, *Models of corporate governance for Chinese companies*, 8(1) CORP. GOVERNANCE INT'L. REV. 52, 54 (2000).
[112] Andrew Keay & Jingchen Zhao, *Transforming corporate governance in Chinese corporations: A journey, not a destination,* 38 NW. J. INT'L L. & BUS. 187, 189 (2018).
[113] Yuan George Shan & David K. Round, *China's Corporate Governance: Emerging Issues and Problems*, 46(5) MODEL ASIAN STUD. 1316, 1324 (2012).
[114] SAMUEL IDOWU, CORPORATE SOCIAL RESPONSIBILITY FROM THE PERSPECTIVE OF CORPORATE SECRETARIES 52 (Walter Filho & Samuel O. Idowu eds., 1st ed. 2010).

executive board members, and mandatory CSR policies have fuelled the rise in the value of the CS.[115]

III. SUGGESTIONS

It is also visible through research that the position of a chief Governance Officer (CGO) lies at a higher pedestal, considering that it is no more a clerical position, but one of executive leadership. Thus, in order to promote the CS from mere compliance reporting to a director-level position, it is necessary to analyse how he may be given more authority. Although the CGO's duties differ by jurisdiction, the chairperson and board commonly rely on them for legal direction. As a result, his prime functions are focused on three basic areas:

- Instructing the board members, individually and as a team, in their duties and obligations;
- Ensuring that the firm complies with all legislation and regulations;
- Assisting with maintenance of stakeholder relationships.

This helps them ensure that the board and management are aware of the legitimate and reasonable demands, interests, and needs of the stakeholders. In a liberalised world where commercial equations spread across jurisdictions, the wide-ranging qualifications of the CS need to be incorporated into their authority to the point where it is improper to cover them in a clerical cloak with the word secretary.

Firstly, to be upgraded into a CGO, a CS must have governance experience and be familiar with how the company manages its turnover and its financial, social, and environmental consequences.[116] Hence, it is proposed that the CS must be involved in internal audits. Apart from the Secretarial Audit conducted under S.204 of the Companies Act, the CS

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[115] Joseph Lee, *the corporate governance officer as a transformed role of the company secretary: an international comparison,* 14 S.C. J. INT'L. L. & BUS. 109, 113 (2018).
[116] *Supra* note 47.

must be the monitoring authority on the report generated by an internal audit.[117] The internal audit is meant to ensure that a sturdy accounting system is in place, and that the company is able to identify risks, protect assets and analyse financial information.[118] Under company law, the monitoring powers of the management have been provided to the audit committee, but the CS is merely a secretary therein, and is thus denied the ability to opine freely and independently.[119] Hence, the under S. 138(2) of the Act, the clause should be amended to say that the internal audit shall be conducted and reported to the CGO. This step is crucial to facilitate his awareness of the company's overall operations, & change the perception that the CS only handles paperwork for financial and legal compliance.

Secondly, the CS is well-positioned to handle the function of strategic communication with stakeholders. Accordingly, a clause should be added under S.138 to mention that the CGO shall be responsible for presenting the internal audit report before the Annual General Meeting, and solving queries of stakeholders based on such report.[120] The CS must be available and accessible to stakeholders for active dialogue on issues of corporate governance, especially with respect to the internal audit. In such pursuit, the CGO should mandatorily be present for all company meetings including requisitioned meets, class meetings and short notice meetings, and must be authorised to work in conjunction with the chairperson to ensure that critical issues in modern corporations, such as IT governance and stakeholder relationships, are addressed. For such reasons, S. 205 of the Act should be amended to include the function of the CS to attend all company meetings, ensure that grievances of the stakeholders are

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[117] Companies Act, No.18 of 2013, §138 (Ind.).
[118] Premlal Joshi, *Which factors affect the internal audit effectiveness in India?*, 12(2) IND. J. COM. MGMT. STUD. 1, 3 (2021).
[119] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 6(1), (Sept. 2, 2015); *See supra* note 7.
[120] Companies Act, No.18 of 2013, §138 (Ind.).

addressed, and that financial/legal matters of critical importance are communicated to the requisite persons.[121]

Thirdly, the CS must be involved in managing the relations of the board of directors itself. The most rampant abuse of directorial power was observed in the *Enron case* (as was discussed above), and judicial opinion suggested that it was a lack of internal governance that allowed such a disaster. By inferences, the law needs to incorporate the CS into the process of appointment, remuneration and removal of directors in the company. There exist three areas of responsibility wherein the CS can be involved to monitor the employment of directors; background checks and analysis before appointment, analysis of findings in internal audits during employment, and investigations into allegations through investor grievances or vigil mechanism complaints.[122] The process of appointment of directors occurs through discussion in the general meeting, and during nomination or election of a director, the CS should be mandated to ensure that the requisite criteria of disclosures and checks are completed.[123] Secondly, if the findings of an internal audit suggest that a director in office has taken actions that are commercially, legally or financially detrimental to the interests of the company or its stakeholders, the CS should be empowered to analyse, investigate and present such data before the general meeting.[124] Thirdly, the CS should be involved in the process of removal of directors through S.169 of the Act, with the power to investigate into reasons of removal, and to analyse the claims of the director made in defence during the general meeting.[125]

This function should be removed from the ambit of the audit committee because the committee is itself comprised of directors, and

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[121] *Id.*, §205.
[122] Mohammad Tayseer Alshaboul & Mohammad Ahmad Abu Zraiq, *Investigating the Relationship Between Board of Directors and Corporate Financial in Jordan*, 8(2) J. FIN. & ACCT. 59, 64 (2020).
[123] Companies Act, No.18 of 2013, §152 (Ind.).
[124] Dr. S. K Gupta, *Leveraging Internal audit for good corporate governance*, L. STREET IND. (Dec. 02, 2020) http://www.lawstreetindia.com/experts/column?sid=502.
[125] Companies Act, No.18 of 2013, §169 (Ind.).

cannot be relied upon completely based on the occurrences of financial crimes involving directors in the recent years.[126] The reason for awarding the authority on the CS instead is twofold. Primarily, since the CS has access to company records and knowledge of the law, he is qualified to provide a professional opinion on such matters in an advisory capacity.[127] Secondarily, the CS is the only KMP defined by the Companies Act, who requires a legal qualification in order to occupy his post, and is strictly governed by rules, regulations and secretarial standards issued by the ICSI.[128] Thus, any mala fide advice or investigation made by the CS can be prevented or punished through the stringent framework on conduct by the ICSI.

Fourthly, and finally, various Indian laws allow the CS to represent the company before respective tribunals on legal matters.[129] This necessitates that the CS must be independent and protected from undue pressure from the Board of Directors in matters where a legal proceeding requires that the conduct of the board be discussed before a judicial authority. Hence, the process of removal of a CS should be made more difficult, to ensure that it is not used as a threat by the Board of directors.[130] Currently, the Companies Act does not specify any procedure for removal of the CS, and he is dismissed like any other employee of the company. The process must require the involvement of a hearing opportunity in a general meeting, wherein the causes of removal and the claims of the CS must be presented before the stakeholders. Such treatment is necessary, as the Act provides this mechanism to auditors for reasons of independence and protection from mala fide removal as well.[131] If all these changes are incorporated into the existing framework of Indian company law, the CS

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[126] Hernando Riski & W. Wiralestari, *Do Directors and Tax Aggressiveness Affect Fraudulent Financial Reporting*, 9(3) J. AKUNTANSI. 219, 222 (2019).
[127] Michael Hocken & Paul Latimer, *The Ostensible Authority of a Company Secretary - Does Size Matter?,* 20(2) COM. L. QUARTERLY. 35 (2006).
[128] Company Secretaries Act, No. 56 of 1980, §2(c) & §4 (Ind.).
[129] Companies Act, No.18 of 2013, §432 (Ind.).
[130] Kakabadse et al., *Company secretary: a role of breadth and majesty*, 11 SOC'Y. & BUS. REV. 333 (2016).
[131] Companies Act, No.18 of 2013, §140 (Ind.).

can be upgraded into a CGO and the economy can move towards a safer corporate sector in the years to come.

IV. CONCLUSION

Good governance is becoming increasingly crucial for all organisations, including those in the private, public, and charitable sectors. Due to rapid rate of regulatory change and public distrust of institutions, the role of company secretaries as caretakers and leaders of good governance has increased more than ever. A CS contributes significantly to board effectiveness, but due to the clerical nature of the job, they are an underestimated and underutilised resource. The CS should not be merely treated as an agent of compliance in regulatory spaces, but also as a leader of strategic importance. His presence should facilitate even the lowest tier of employees and the smallest group of shareholders to effectively voice their concerns and questions before the management. It is of great significance for the company secretary to thus be elevated to a higher pedestal of authority.

The presence of a chief governance officer is not only a sign of improved accountability but a step towards an organized approach to good corporate governance. Their independence, accountability and impartiality arise from the fact that they are beyond the sole control of the board of directors. They should be empowered to create a system of checks and balances between the management and ownership, so that they may act in good faith for the betterment of the company. For this reason, it is necessary that a legally qualified individual, who is governed by established professional codes of conduct, is selected for such a position. These reasons champion the case of the CS to be appointed in that office. India has observed a growing inclination of the legislature and judiciary towards company secretaries, and this fact further established its roots in the corporate sector. The author acknowledges that further research is required to determine whether such an appointment of chief governance officer can be statutorily mandated and whether such law can

apply to merely listed companies or unlisted public companies as well. However, this study conclusively accepts the hypothesis that India is a suitable jurisdiction for the evolution of company secretaries, and their elevation to become chief governance officers is the next logical step in corporate law.