

# Company Secretaries : The Instruments of Change



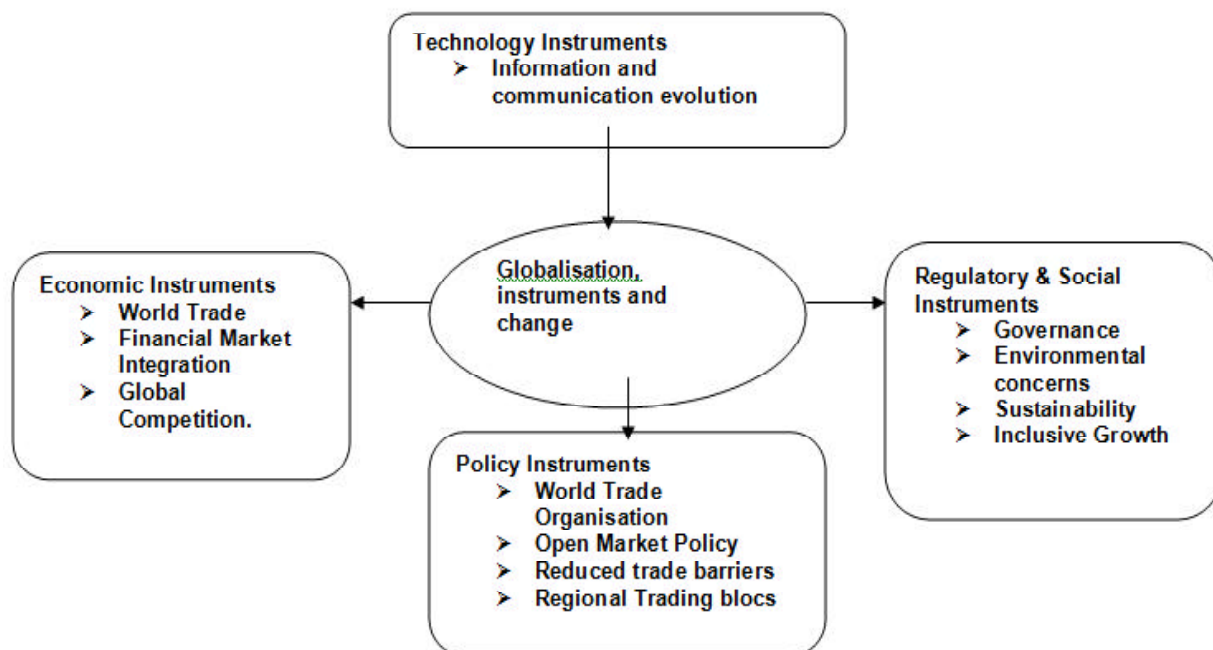
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Business organizations are often designed for change. An enterprising management keeps innovative and fosters creativity to sustain on long term perspective. Such organizations focus on creating change rather than reacting to change and to achieve such a defined purpose they engage the services of Professionals - be it as a full time Executive or as a Consultant to support the desired change in the organization from time to time.

The globalization effects of technological and economic development experienced in recent decades are significant. The intensity of innovation has not decreased, even in times of world economic recession. The growth of competition has led to the reevaluation of the human factor. The creative human has come into central focus. Today, creativity forms the core activity of a growing section of the global economy — the so-called “creative industries” are generating wealth through the creation and exploitation of intellectual property. The creative professional workforce is becoming a more integral part of world economies.

In that context, one of today’s primary management challenges is the development of organizational culture that not only value change, innovation, and creativity but also provide value to stakeholders. The adoption of such value system allows organizations to stretch the limits of individual knowledge, skills and ability to collective wisdom for the good of stakeholders at large.

The instruments of change can be discussed in four segments viz economic, technological, regulatory and social and policy instruments, as under :

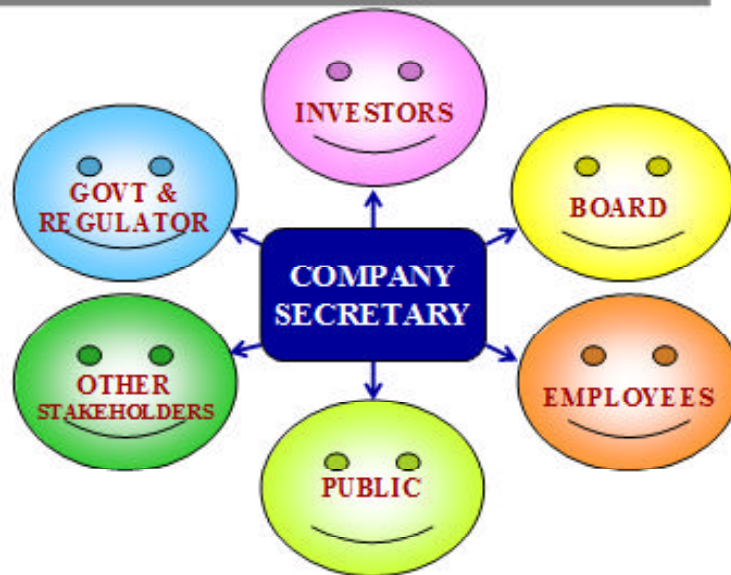


## Company Secretary as Instrument of change

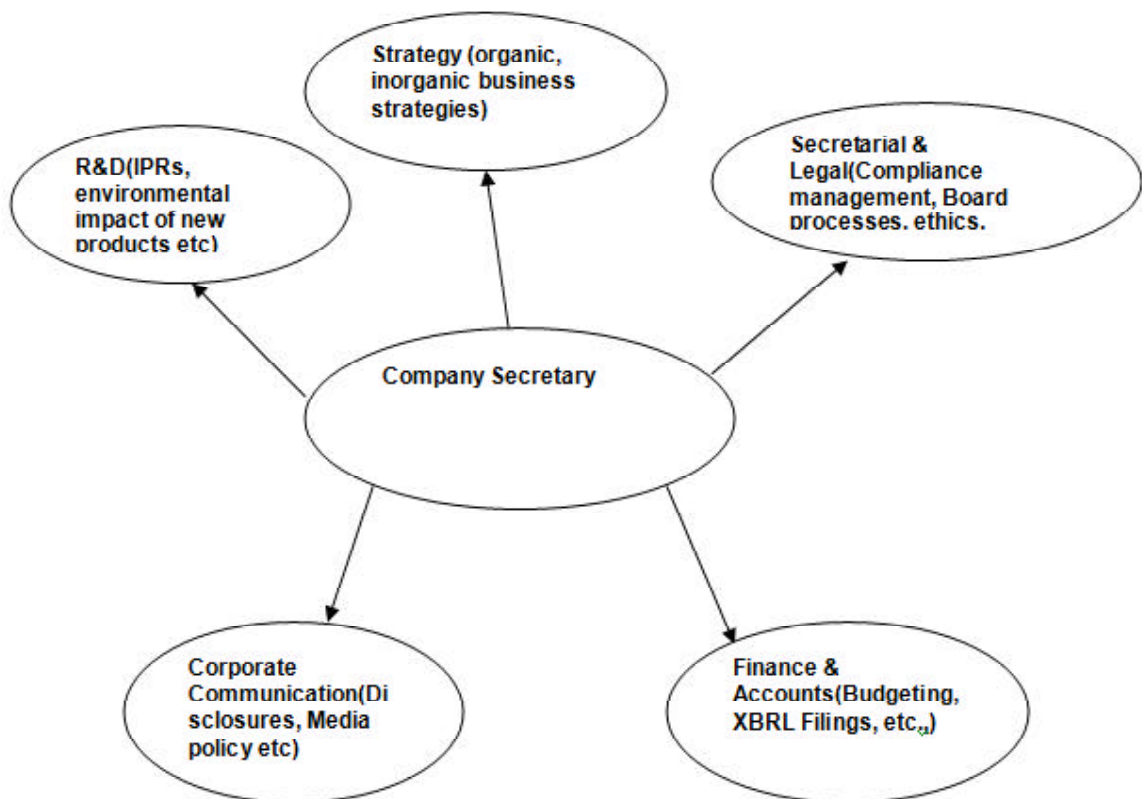
A Company Secretary may not be a director, but he is often liable for breach of duty in the same way as board members. The code of directors’ duties, set out in the companies Act, is not expressed as applying to the secretary, but, as an officer of the company, the duty to promote the company’s success applies in equal measure, as the obligations to avoid a conflict of interest and to exercise independent judgement.

As their functions are linked to Board, Regulators, investors, public, employees and other stakeholders, the Company Secretaries are key persons to drive organisations to meet the expectations of change to the benefit of all stakeholders. They are now regarded as change agents in the organisation.

## Company Secretary is Vital Link



### Company Secretary vis-à-vis Corporate Administration



### **Role of Company Secretaries in dealing with economic change**

- Company Secretaries are strategic advisers, in the process of organic and inorganic growth of the Company.
- The Companies Bill, 2011 provides a larger role for Company Secretaries in the area of restructuring and liquidation.
- The Competition Act, 2002 authorises the Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal.
- Company Secretaries help in accessing the capital market in the form of IPO compliances, internal audit of stock brokers, sub-brokers etc.,

### **Role of Company Secretaries in dealing with regulatory and social change**

- To advise the company on ideal Board composition.
- To advise on effective board room practices.
- To make effective disclosures to stakeholders on financial and non financial matters
- To address the sustainability issues of business.
- To bring environmental sensitivity in business processes
- To act as effective compliance managers.
- To advise the Board on societal based business strategies.
- To guide the Board on corporate governance policy of the company.
- To strengthen the stakeholders communication mechanism, media policy etc.

### **Role of Company Secretaries in dealing with technological change**

- To guide the business in technological developments e.g. online filing, XBRL filings etc.
- To conduct meetings through video conferencing.
- To conduct polls for electronic voting.
- To use technology in compliance management.
- To undertake systems audit.

Following paragraphs outlines the important changes in terms of sustainable development, compliance management and Secretarial Audit, from the stakeholders' perspective and the role the Company Secretaries should play in adopting these changes in corporate through processes, strategies, planning and implementation.

## **CORPORATE SUSTAINABILITY AND THE ROLE OF COMPANY SECRETARIES**

There has been a paradigm shift in recent years in terms of public expectations of corporate behaviour. People now expect government, businesses and public agencies to provide good models for transparent and sustainable practices — and to publicly report on these practices in a way that goes beyond mere window-dressing.

Recent years have witnessed a growing range of sustainability issues push into the mainstream of business and professional thought process challenging very edifice of human success and prosperity. While most sustainability challenges are not new, the globalisation has directly or indirectly exacerbated many issues to a degree where many of these problems are now dealt with as matters of global and national security.

While India has achieved high GDP growth rates in the last decade, the growing inequity in sharing the fruits of success indeed impedes the nation's true potential. India faces a multi-dimensional challenge to chart a growth path that is inclusive and broad based.

Corporations who possess enormous economic and social prowess must take it on themselves to operate in such a manner that there is not only economic stability and progress but that these are coupled with environmental and social sustainability. Organisation's purpose is no more merely to engage in a creative operation or activity. Be it a business organization or a non-profit or non-government organization its operation must also address the concerns of sustainable development and the same has to be reported in the Annual Report. The purpose of sustainability reporting is to show how an organization contributes or aims to contribute in the future, to the improvement or deterioration of economic, environmental and social conditions and trends, and developments at the local, regional or global level. This involves discussing the performance of the organization in the context of the limits and demands placed on environmental or social resources at the sectoral, local, regional or global level.

Businesses who report sustainability outcomes have the opportunity to achieve a competitive advantage through:

- increased trust levels from consumers;
  - increased credibility,
  - potential to reduce cost of supplies through detailed analysis;
  - potential to be viewed as a superior investment choice, and
  - increased employee satisfaction and attraction of high calibre employees.
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The need for organisations to embrace transparency, environmental sustainability and social benevolence is more important than ever before.

### **Role of Company Secretaries**

Company Secretaries through their effective recommendation of corporate policies, can guide the businesses to inter-relate ecological, social and economic goals of the sustainability in their strategies. As mediators between corporate and stakeholders, it is their duty to ensure that the environmental issues are addressed at Board/departmental and individual levels in corporates and the same is reported in the Annual Report.

The Company Secretaries have special role and responsibility in advising and guiding the companies to adopt the good ethical business practices. Proper sensitisation about the need and benefits of such practices is the duty of the Company Secretaries.

Sustainability challenges have opened vast opportunities and challenges to governance professionals like Company Secretaries. It is the Company Secretaries who should drive the organisations to embrace new sustainability paradigm and implement them successfully.

### **CORPORATE COMPLIANCE MANAGEMENT**

The regulatory compliance landscape in India has experienced dramatic changes in recent years. Historically, specific industries such as energy, utilities, manufacturing, health care and aviation had stringent compliance requirements for legal management. Today, almost every industry has compliance obligations. As regulations have grown in number, scope and complexity, the penalties for non-compliance have expanded to include hefty fines. With corporate compliance continuing to be top on the minds of executives at all levels, the organizations increasingly look for ways to meet emerging regulatory mandates.

Regulatory compliance needs to be viewed as a natural extension of the governance obligations cast on top management and corporate boards. Compliance indeed ensures that good corporate governance is aligned with the company's business objectives and risk management strategies and is thereby adding real value to the organisation. Ultimately, the goal is to ensure that the compliance with the spirit as well as the letter of the law, is embraced in every corner of the business.

The most important aspect of compliance management, is the creation of a compliance-conscious environment at every level of the company and the education and training of employees to avoid engaging in any activities that might raise legal compliance concerns. Recognizing the need to respond immediately if a potential compliance problem is detected, companies should encourage their employees to report questionable activities to their supervisors or the relevant departments.

Corporate Compliance Management is to be developed as a radically different and effective system that deploys legal as well as information technology tools in order to ensure that a corporate is singularly compliant with the legal system in all its activities. Corporate Compliance Management should not be a static system that once designed perpetuates itself for checking compliance. It is rather a dynamic and pro-active cultural change management that should keep the corporate, its officers and decision makers continually aware of the demands of the legal system and the changes therein.

### **Company Secretaries and Compliance Management**

Company Secretaries are specially trained and educated in corporate compliance management. Being involved in the crucial corporate decision making process, they are the professionals who devise, update, upgrade and constantly maintain compliance management systems in companies. Their analytical and structured systems approach to the management of regulatory risks enhance transparency standards in corporate governance. The Company Secretaries indeed plays a significant enabling role in the enterprises' regulatory compliance management systems. Businesses should avail the services of Company Secretaries to build sound compliance policies and procedures, optimal collaborative processes and efficient internal controls. Moreover, compliance specialization of Company Secretaries should be leveraged to gain sustainable benefits and competitive advantage by using their capabilities to the fullest.

### **Secretarial Audit**

Secretarial Audit is a part of total compliance management in an organisation. It helps ensure compliance and timely corrective action when non-compliance is detected. Secretarial Audit is a process of verification of records and documents to check compliance with the provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a mechanism to monitor compliance with the requirements of applicable laws.

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**Secretarial Audit – An Effective Management Tool**

Corporate actions manifesting good Corporate Governance are vital for the healthy, vibrant and ever growing corporate sector in global economy. In developing economies, inclusive growth of all segments of society is more than imperative. Adoption of effective management tools like Secretarial Audit will go a long way in fulfilling these objectives.

**Secretarial Audit – provides more comfort to foreign investors**

Foreign Investors' contribution in the capital of Indian companies has a significant role of our economy. Foreign investors directly engage and participate in the business in their independent capacity as 100% holding or as joint venture partners subscribing to a part of the capital and take part in promotion of their business in our Country.

Secretarial Audit in such companies having foreign participation ensures proper compliance of all applicable provisions of Corporate Laws, in particular to Companies Act, Foreign Exchange and Management Act, SEBI Act and Listing Agreement etc. as applicable. This provides comfort level to foreign investors.

Several listed entities including companies having foreign stakeholders in any form engage practising Company Secretaries for periodical voluntary Secretarial Audit and provide the same as part of their annual reports.

**Conclusion**

Company Secretaries who are in the mainstream of business dynamics are instruments of change. They guide and advise the businesses to adapt to changes through timely compliance management, innovative business strategies, effective governance, awareness to environmental and social obligations, Board room advice, sustainability initiatives, etc.

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