



RAMA UNIVERSITY

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FACULTY OF COMMERCE & MANAGEMENT

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LECTURE: 4-5

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Lecture-4-5



Unit I

Rights and Liabilities of the Company Secretary:

Rights of a Company Secretary emanate from the Companies Act on the one hand and his service contract on the other. Rights which emanate from the Companies Act are known as statutory rights and rights which emanate from his service contract are known as contractual rights.

Rights of the Company Secretary

Rights of a Company Secretary are:

1. As the head of the secretarial department, the Secretary has the right to control, direct and supervise the activities of the department.
2. As the principal executive officer of the company the Secretary has the right to sign documents which require authentication of the company.
3. The Secretary has the right to get remuneration from the Company. As an officer of the company he has the right to claim two months' salary as a preferential creditor at the time of winding-up of the company.
4. The Secretary has the right to claim damages and compensation when his service is terminated before the expiry of his terms as per service contract.
5. The Secretary has the right to inspect the books maintained by the secretarial department.

Liabilities:

Liabilities of a Company Secretary emanate from various statutes and service contracts. The Secretary has two sets of liabilities—statutory liabilities and contractual liabilities.

Statutory Liabilities:

The Company Secretary may be held liable for many penalties under the Companies Act if he makes any default in complying with its provisions.

The Company Secretary may be held liable for:

- (i) default in holding Statutory Meeting and filing and circulating the Statutory Report to the Registrar of Companies and members of the company;
- (ii) Default in holding the Annual General Meeting of the Company;
- (iii) Failure to give due notice of Board Meetings;
- (iv) Failure to record the minutes of the Board and General Meetings;

- (v) Failure to maintain Director 'Members' and Debenture holders' Registers and Index;
- (vi) Failure in registering resolutions and agreements which need to be registered;
- (vii) Failure to make entries in the register of members on the issue of a share warrant;
- (viii) Default in filing with the Registrar particulars of any change created by the company;
- (ix) failure to file with the Registrar copies of the annual Balance Sheet, Profit and Loss Account, annual returns, statements, certificates, etc.;
- (x) Failure in circulating resolutions for which members have given notice;
- (xi) Failure in delivering share certificates, debentures etc. within 3 months of the date of allotment and within 2 months of the application for registration of transfer of shares;
- (xii) Failure in painting or affixing the name of the company outside every office and place of business;
- (xiii) Non-compliance with the provisions of the Act relating to the appointment of auditors, audit of accounts and auditor's report;
- (xiv) Like any officer of the company, the Secretary will be punishable with imprisonment for falsifying the books of the company and making willfully and knowingly a material false statement in the Balance Sheet, or, in certain returns, reports, certificates or other documents of the company.

Under the Income Tax Act, the Company Secretary is liable for:

- (i) Failure to deduct income tax from salaries of employees at source;
- (ii) Failure to deduct income tax from dividend payable to shareholders;
- (iii) Failure to deposit tax deducted at source to the Income Tax Authority;
- (iv) Failure to pay corporate tax in time.

Under the Stamp Act, the Company Secretary is liable for:

- (i) Failure to verify whether the requisite stamps are affixed to various documents.

Under the Sales Tax Act, the Company Secretary is liable for:

- (i) Failure to get the company registered with the Sales Tax Authority;
- (ii) Failure to pay sales tax in time.

Under the Registration Act, the Company Secretary is liable for:

- (i) Non-compliance with the rules and procedures of registration.
- (ii) Non-payment of registration charges under the MRTP, FERA, Shops and Establishment Act.

The Secretary may incur personal liability for default of any provision of the respective Acts.

Contractual Liabilities:

The Company Secretary also has certain liabilities arising out of his contract of service with the company for:

- (i) Disclosure of official secrets;
- (ii) Acts done beyond the limits of his authority;
- (iii) Acts of omission and commission in violation of the rules and fraud in course of employment;
- (iv) Making breach of trust;
- (v) Discharging duties without reasonable care and skill.

Secretary of a Cooperative Society:

A cooperative society is a voluntary association of a number of persons to promote the economic interests of its members. It is organised by its members and run by them through an elected Managing Committee.

The Cooperative Societies Act has defined a Cooperative Secretary as **“a person who subject to the control of the Managing Committee, has the management of the affairs of a cooperative society and includes a member of a Managing Committee or any other person discharging the duties of a secretary, by whatever name called, and whether under a contract of service or not.”**

Appointment:

The secretary of a cooperative society may either be appointed as a paid secretary or may be elected from amongst the members of the Managing Committee to act as an honorary secretary. Every cooperative society must have a secretary.

The secretary of a cooperative society is the Chief Executive Officer of the society. He manages the society and is fully liable to the Managing Committee for the management of the society.

Qualifications:

The secretary of a cooperative society should possess the following qualifications:

- (i) Graduate from a recognised university.
- (ii) A good knowledge of English.
- (iii) A good working knowledge in Accountancy.
- (iv) A good knowledge of secretarial practice.
- (v) A good knowledge of office procedure and ability of drafting notices, letters, minutes etc.

Functions of the Cooperative Secretary:

The main functions of the secretary of a cooperative society may be summed up as:

1. To act as the mouthpiece of the Managing Committee and to carry out the decisions of the Managing Committee.
2. To carry out the routine activities of the office including correspondence, maintenance of registers and accounts, receipts of payment of cash and preparation of statements and returns for submission to the Registrar of Cooperative Societies.
3. To convene all the meetings of the society and to help the Chairman in conducting the meetings and to write the Minutes of the meetings.
4. To advise the Managing Committee in legal and other matters regarding the activities of the society.
5. To control and supervise the staff of the society.
6. To prepare the budget estimate for the next year and place it before the Managing Committee and before the Annual General Meeting.
7. To prepare annual accounts for placing before the Auditors.
8. To receive all money on behalf of the society and issue receipts thereof and to deposit money to the society's bank.
9. To institute, defend and conduct all legal proceedings in law courts and other places on behalf of the society.
10. To look after the appointment of staff and staff matters.
11. To prepare Income and Expenditure Account and Balance Sheet and Annual Reports and Statements.
12. To all shareholders, issue share certificates, arrange for transfer of shares and maintain share register.
13. To arrange election of office-bearers, Secretary and members of the Managing Committee.
14. To represent the society in the govt., court and the public.
15. To maintain the bank accounts of the society.