

RIGHTS AND DUTIES

Theories of Legal Rights – Will and Interest Theory

Will Theory (Austin, Holland, Pollock)

Also known as the 'choice theory'

According to this theory your having a right to something means that you have control over others' free will in regard to it; otherwise, they can do as they please. Someone violates your right by acting contrary to your will in regard to your right's object.

Austin says that "A party has a right when another or others are bound or obliged by the law to do or forbear towards or in respect of him"

Holland defines right as "A Capacity residing in a person to control the action of others"

Pollock defines right as "Freedom allowed and power conferred by law"

Interest Theory (Ihering, Salmond, Buckland, Allen)

Your having a right to something means that it is in your interest, or is to your benefit, and someone else has a duty to provide it. Someone violates your right by not doing his or her duty to provide the thing that is in your interest.

Buckland defines right as "an interest or expectation guaranteed by law"

Allen defines right as "a legally guaranteed power to realize an interest"

Ihering says "Right is a legally protected Interest"

Salmond as Ihering also defines right as "an interest recognised and protected by law" but he differentiates his definition from the one Ihering gave in the sense that according to Salmond the interest here could only be a human's interest or societies interest.

Like laws preventing someone from killing animals, Here the animal has an interest here but he doesn't have a right, here the law is protecting the interest of not the animal but the owner or the society in general. So the Interest protected by a right is always human interest.

Important Definitions by other Jurists

Kant defines right as “Authority to compel”

According to **Laski**, “Rights are those conditions of social life without which no man can seek in general, to be himself at his best.”

T. H. Green explained that “Rights are powers necessary for the fulfilment of man’s vocation as a moral being.”

Beni Prasad stated that “Rights are nothing more nor less than those social conditions which are necessary or favourable to the development of personality”

Holmes defines right as “a permission to exercise certain natural power and upon certain conditions to obtain protection, restitution or compensation with the aid of public force.”

Duguit totally rejects the idea of right, he says that man is a social animal and has many social relationships, these relationships are always duties and never rights and that is why law contains only duties without any corresponding rights and “the only right a person has is to always do his duty”

So Duguit focuses on duty and denies the existence of right, lets see what the jurists have to say about duties.

Duties

Duties are an essential part of Rights, Early Greek Philosophers and ancient Hindu philosophers talked in term of duty and not right. Dharma was the duty of every person.

In 1976 Part IV-A has been added by the constitutional (forty second amendment) Act which inserts Article 51A which provides for Fundamental Duties.

Salmond defines duty as *“An obligatory act, that is to say, it is an act opposite of which would be a wrong. The commission of a wrong is the breach of duty and the performance of duty is avoidance of wrong”*.

Salmond says that there can be no right without a corresponding duty and no duty without a corresponding right, the same way there cannot be a husband without a wife and vice versa.

Duties and rights are said to be co relative, which means that there cannot be a duty unless there is someone to whom it is due, similarly there cannot be a right unless there is someone from whom it is claimed and there cannot be a wrong unless there is someone who is wronged

Austin disagrees with this notion; he divides duties into **relative duties** and **absolute duties**.

Relative duties have a corresponding right

Absolute duties don't have a corresponding right to it.

*Examples of absolute duties are **Self regarding duties** (duty not to commit suicide), **duty to indeterminate person or to the public** (duty not to commit a nuisance), **Duties to not a human** (duty towards god, sovereign or animals)*

Hibbert differentiates between “divine right”, “moral right” and “legal right” with his definition i.e. “A right is one person’s capacity of obliging others to do or forbear by means not of his own strength but by the strength of a third party. If such third party is God, the right is divine. If such third party is the public generally acting through opinion, the right is moral. If such third party is the State acting directly or indirectly, the right is legal.”

Types of Rights (and Duties implied)

1. Perfect and Imperfect Rights

A perfect right is one which corresponds to a perfect duty (duty which is enforced by law), for example you have a right not to be killed and people have the duty not to kill you.

Imperfect Right is one which doesn't have a corresponding perfect duty. For example, time barred debt

2. Positive Negative Rights

When someone else has to do something (positive duty) because I have a right, it is called positive right. For Example, it is my right to performance of a contract by other party.

When someone has to refrain from doing something (negative duty) because I have a right, it is called a negative right. For example, for my right to enjoy my property, others have a negative duty to not trespass my property.

3. Right in Rem and Right in Personam

When the right is against the world that is right in rem (Ex. right of possession, ownership) when the right is against a determinate person that is right in personam (Ex. contractual rights)

4. Right in re propria, Right in re aliena

A right in the property of another (Mortgaged property, easement etc). It is contrasted with jus in re propria – a right in one's own property.

5. Principle and Accessory right

Principal rights exist independently of other rights. Accessory rights are appurtenant to other rights and they have a beneficial effect on the principal rights.

For example. X takes debt from Y and puts a security for the debt, now the debt is the principle right of Y and right over security is the accessory right.

6. Proprietary and personal right

Proprietary Rights are rights in relation to one's own property, which consists of things, assets, belonging in possession and ownership rights of a person or entity. The personal rights are relating to the body of the concerned person which may affect his /her character, liberty, and status in the society.

7. Legal and Equitable right

Legal rights are those which were recognised by Courts of Common Law, whereas equitable rights are those which were recognised solely in the Court of Chancery, This differentiation was later abolished, In India also we don't have any such distinction.

8. Vested and Contingent Right

Contingent rights depends upon certain contingencies (conditions)

Vested rights are not dependant on any contingencies

9. Public and Private Right

There are two wrongs, public wrong and private wrong, a public wrong is much graver in its characteristic, like a crime.

So the rights in regard to public wrongs are public rights, a public right is connected with the state, A private right is only concerned with individuals.

10. Primary and Secondary rights

Primary Rights are independent of any wrong being committed they exist on their own. These are called antecedent right because they are antecedent to the wrongful act or commission.

Secondary rights are the rights which are provided for the redressal of injury done to primary rights, They are also called Remedial or Restitutory rights.

Natural Rights.

Derived from the idea of Natural Law.

Bentham talks about **Natural rights** that rights devoid of enforcement are meaningless, from real law come real rights, from imaginary law i.e. natural law comes imaginary rights, natural rights are nonsense upon stilts.

David Hume considered natural law and natural rights as unreal metaphysical phenomenon.

Moral Rights

Moral Rights are based on human consciousness. They are supported by moral force of human mind. These are based on human sense of goodness and justice.

Legal Rights - Constitutional Rights - Fundamental Rights

Legal rights are rights conferred by a law or statute, so we can call them statutory rights, **Fundamental Rights** are rights conferred by constitution in part III of the constitution, **Constitutional rights** are right conferred by constitution except for the F.R's for example right to vote (art. 326), Right to property (which was earlier a fundamental right under article 31 but was later removed from F.R's by 44th amendment and now is only a constitutional right under Article 300A)

Human Rights – Common term used for all basic **civil, political and economic Rights**

Jus Ad Rem

Jus ad rem is a Latin term of the civil law, meaning "a right to a thing", or a "right to a right" that is, A person has a right to have some other right transferred to him.

If I sell my car to Y, Y has the right against me to have the house transferred to himself. Jus ad Rem is always a "Right in personam"



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