

LEGAL RIGHT

- Fundamental right, human right, rights of women, rights of children, right to education, right to clean environment.
- Right: Being right or having a right.
- The standard of permitted action within a certain sphere.
- The standard of permitted action by law. Such permitted action of a person is known as his legal right.
- Salmond: A right is an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty and the disregard of which is a wrong.
- Recognition and protection should be there simultaneously and concurrently.
- Legal rights are the interests which the law protects by imposing corresponding duties on others.
- Rights can be moral or legal.
 - Respect for moral right is moral duty and violation of it is moral wrong.
 - Legal right, violation of it is legal wrong and respect for which is a legal duty.

- According to **Salmond**, rights and duties are correlatives. He states that there can be no right without a corresponding duty and duty without a corresponding right.
- **Gray**: A legal right is that **power** which a man has, to make a person or persons do or refrain from doing a certain act or acts, so far as the power arises from society imposing a legal duty upon a person or persons.
- **Holland**: A right is a **capacity** residing in one man controlling with the assent and the assistance of the State, the actions of others.
- **Austin**: A party has right when another or others are bound or obliged by the law to do or forbear towards or in respect of him.
- **Hibbert**: 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**, Third party is public generally acting through opinions, **the right is moral**, third party is State, the **right is legal**.

THEORIES ABOUT LEGAL RIGHTS

The two theories as to the nature or function of rights are:

WILL THEORY:

- Exponents: Hart, Hegel, Kant, Hume, Austin, Holland, Pollock.
- Also known as **Choice theory**.
- The will theorists asserts that the function of right is to give its holder control over another's duty.
- A right makes the right holder a small scale sovereign.
- Example.
- Right is the inherent attribute of human will.
- Hart: Individual discretion is the distinctive feature of the concept of rights.
- Puchta: A legal right is a power over an object which by means of this right can be subjected to the will of the person enjoying the right.
- Definition: Austin, Holland, Pollock. Pollock: Right is a freedom allowed and power conferred.
- Criticism: Duguit: The basis of law is social solidarity and not subjective will.

INTEREST THEORY

- It is also called as **Benefit theory**.
- Rudolf von Ihering is the main exponent of this theory.
- According to him, A legal right is a legally protected interest.
- The basis of right is interest not will.
- Salmond's definition. He criticized Ihering and stated recognition of right by the State is also an important element.
- Buckland: A legal right is an interest or an expectation granted by law.
- The main object of law is the protection of the interest.
- According to Gary the theory is partially correct, he said legal right is not an interest in itself but it is a means to extend protection to interests.

Allen: The essence of right is not legally guaranteed power not legally protected interest, but the legally guaranteed power to realise an interest.

ELEMENTS OF A LEGAL RIGHT

According to **Salmond**, every legal right has five essential elements:

1. **The owner or the subject of the right:** A person in whom the right is vested. Also described as the person of inherence. The owner need not be a determinate or fixed person.
2. **The person of incidence:** Person or persons having corresponding duty in respect of the right vested in another person.
3. **Content:** The act or forbearance which is the subject of incidence is bound to do or not to do.
4. **Object:** Something to which the act or omission relates is the object of the right. Also called as subject-matter of the right.
5. **Title:** It denotes certain facts or events by virtue of which the right has become vested in its owner like sale, purchase, gift etc.

DUTY

MEANING

- DUTY=OBLIGATION. An obligation to perform an act or a task.
- Merriam Webster: Duty means a legal obligation to do or not to do something.
- A duty means that some person has to do something or abstain from doing something in favour of another person.

DEFINITION

- **Salmond:** A duty is an **obligatory act**, that is to say, it is an act opposite of which would be wrong. Duties and wrongs are correlatives. The commission of a wrong is the breach of a duty and the performance of a duty is the avoidance of wrong.
- **Keeton:** A duty is an **act or forbearance** which is enforced by the state in respect of a right vested in another and breach of which is a wrong.
- **Prof. Gray:** the **acts or forbearances**, which an organized society commands in order to **protect legal rights** are the legal duties of the persons to whom those commands are directed.

KINDS OF DUTY

Legal and Moral duty:

- Legal Duty: It is an act which is recognised as a duty by law. The opposite of it is legal wrong.
- Moral Duty: It depends on person's conscience. The opposite of it is moral wrong.

Classifications:

Positive and Negative duty:

- Positive duty: When the law obliges us to do an act, the duty is positive. Example.
- Negative duty: When the law obliges us to forbear from doing an act, the duty is negative. Example.

PRIMARY AND SECONDARY DUTY:

- Primary duty: Duty that exist per se and independently of any other duty. Example.
- Secondary duty: Duty which has no independent existence but exists only for the enforcement of other duties. Example.

ABSOLUTE AND RELATIVE DUTY:

- Rights and duties are correlatives.
- Austin classified duties into two: Relative and Absolute duties.
- Relative duties have corresponding rights.
- Absolute duties are those duties which do not have corresponding rights.
- There are four kinds of absolute duties:
 1. Duties not regarding persons: Duty towards God.
 2. Self-regarding duties: Duty towards oneself. Eg: duty not to commit suicide.
 3. Duty towards indeterminate persons or the public: Duty towards the community. Eg: duty not to commit nuisance.
 4. Duty towards the sovereign or state.

This classification was criticized by Salmond, Gray and Pollock. Salmond: There can be no duty without a correlative right and refused to accept the Austin's concept of absolute duty.