

Subject -Jurisprudence
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INTRODUCTION

The development of society is credited to the constant evolution of law. When people come into contact with each other, everyone has certain rights and duties obligated towards one another. A right and duty are the pillars of law, and are hence consequently protected by it. Both these concepts are intertwined. The concepts of legal rights and duties in Jurisprudence are elucidated below.

DEFINITION OF RIGHT

The definition of legal rights have been propounded by several famous legal philosophers. Some definitions are as follows –

John Austin – According to Austin, “A party has a right when another or others are bound or obliged by law to do or forbear towards or in regard of him”. This definition was not widely accepted. It was stated by John Stuart Mill that the act referred by Austin should be in the interest of the person who can be said to have the right. He illustrated with an example by stating that when a prisoner is sentenced to death, the jailer is bound to execute him. Does this mean that the convict has the right to be hanged?

Rudolf Von Jhering – Jhering defined rights as “legally protected interests”. The law does not protect all such interests. The interests of men conflict with one another and the law, is the rule of justice and protects only certain interests.

John Salmond – Salmond defines right as an interest recognised and protected by a rule or justice. He says, for an interest to be regarded as a legal right, it should obtain not merely legal protection but also recognition. The law protects cruelty against animals, and to some interest the interest of animals, but animals do not possess any legal rights.

Holland – Legal rights were defined by Holland as the “capacity residing in one man of controlling, with the assent and assistance of the state the actions of others.” He followed Austin’s definition

Gray – He defined a legal right as “that power which a man has to make a person or persons do or refrain from doing a certain act or certain acts, so far as the power arises from society imposing a legal duty upon a person or persons.” He states that the “right is not the interest itself, it is the means to enjoy the interest secured.”

Supreme Court of India – The Apex Court of India defined legal right in the case of *State of Rajasthan v. Union of India* [AIR (1977) SC 1361] as: “In strict sense, legal rights are correlatives of legal duties and are defined as interests whom the law protects by imposing corresponding duties on others. but in a generic sense, the word ‘right’ is used to mean an immunity from the legal power of another, immunity is exemption from the power of another in the same way as liberty is exemption from the right of another, Immunity, in short, is no subjection.”

THEORIES OF LEGAL RIGHTS

There exist two main theories of legal rights – 1. The Will Theory and 2. The Interest Theory.

The Will Theory of Legal Rights –

The Will Theory states that right is an inherent attribute of the human will. It says that the purpose of the law is to allow the free expression of human will. This theory was advocated by scholars like Hegel, Kant, Hume and so on. The subject matter is derived from human will. Austin, Holland and Pollock define rights in terms of will. According to the famed French Jurist, John Locke “the basis of the right is the will of the individual.” Puchta defined the legal right a power over an object which by means of right can be subjected to the will of the person enjoying the right. This theory has been widely accepted by the jurists in Germany.

Despite its wide acceptance, there were many scholars who disagreed with it. Some of the criticisms were from Duguit who is opposed to the “will” theory. According to him the basis of law is the objective fact of “social solidarity” and not the subjective will. The law is to protect only those acts or rights which further “social solidarity”. He calls the theory of subjective right a mere metaphysical abstraction.

The Interest Theory of Legal Rights

The Interest Theory was proposed by the German Jurist, Rudolf von Jhering. Jhering defined rights as legally protected interest. Jhering does not emphasize on the element of will in a legal right. He asserts that the basis of legal right is “interest” and “not will”. The main object of law is protection of human interests and to avert conflict between their individual interest. These interests are not created by the state, but they exist in the life of the community itself. Salmond supported it but mentioned that enforceability is also an essential element. He says, “Rights are concerned with interest, and indeed have been defined as interests protected by rules of right, that is by moral or legal rights.”

Salmond has criticized Jhering’s theory on the ground that it is incomplete since it completely overlooks the element of recognition by the state. A legal right should not only be protected by the state but should also be legally recognized by it. Gray stated that the theory was only partially correct. He emphasized that a legal right is not an interest in itself but it is only a means to extend protection to interests. He considers legal right as that power by which a man makes other persons do or refrain from doing a certain act by imposing a legal duty upon them through the agency of law “state”.

Both these theories are not opposed to each other, it is rather a combination of both that is correct. Dr. Allen has tried to blend these two theories by pointing out that the essence of legal right seems to be, not legally guaranteed power by itself nor legally protected interest by itself, but the legally guaranteed power to realise an interest. Thus, it would be sensible to say that both “will” and “interest” are essential ingredients of a legal right.

Features/Nature of Rights:

1. Rights exist only in society. These are the products of social living.
2. Rights are claims of the individuals for their development in society.
3. Rights are recognized by the society as common claims of all the people.
4. Rights are rational and moral claims that the people make on their society.
5. Since rights in here only in society, these cannot be exercised against the society.

6. Rights are to be exercised by the people for their development which really means their development in society by the promotion of social good. Rights can never be exercised against social good.

7. Rights are equally available to all the people.

8. The contents of rights keep on changing with the passage of time.

9. Rights are not absolute. These always bear limitations deemed essential for maintaining public health, security, order and morality.

10. Rights are inseparably related with duties. There is a close relationship between them “No Duties Ho Rights. No Rights No Duties.” “If I have rights it is my duty to respect the rights others in society”.

11. Rights need enforcement and only then these can be really used by the people. These are protected and enforced by the laws of the state. It is the duty of a state to protect the rights of the people.

All these features clearly bring out the nature of Rights.

Types of Rights:

1. Natural Rights:

Faith in natural rights is strongly expressed by several scholars. They hold that people inherit several rights from nature. Before they came to live in society and state, they used to live in a state of nature. In it, they enjoyed certain natural rights, like the right to life, right to liberty and right to property. Natural rights are parts of human nature and reason.

However, several other scholars regard the concept of natural rights as imaginary. Rights are the products of social living. These can be used only in a society. Rights have behind them the recognition of society as common claims for development, and that is why the state protects these rights.

2. Moral Rights:

Moral Rights are those rights which are based on human consciousness. They are backed by moral force of human mind. These are based on human sense of goodness and justice. These are not backed by the force of law. Sense of goodness and public opinion are the sanctions behind moral rights.

If any person violates any moral right, no legal action can be taken against him. The state does not enforce these rights. Its courts do not recognize these rights. Moral Rights include rules of good conduct, courtesy and of moral behaviour. These stands for moral perfection of the people.

3. Legal Right

ELEMENTS OF A LEGAL RIGHT

According to Sir John Salmond, each legal right has 5 essential elements –

1. **The Person of Inherence** – It is also known as the subject of right. A legal right is always vested in a person who may be distinguished, as the owner of the right, the subject of it or the “person of inherence”. Thus, there cannot be a legal right without a subject or a person who owns it. The subject means the person in whom the right is vested or the holder of the right. There can be no right without a subject. A right without a subject or a person who owns it is inconceivable. The owner of the right, however, need not be certain or determinate. A right can be owned by the society, at large, is indeterminate.

2. **The Person of Incidence** – A legal right operates against a person who is under the obligation to obey or respect that right. He is the “person of incidence”. He is a person bound by the duty or the subject of the duty.
3. **Contents of the Right** – The act or omission which is obligatory on the person bound in favour of the person entitled. This is called the context or substance of right. It obliges a person to act or forbear in favour of the person who is entitled to the right. It may also be known as the substance of the right
4. **Subject matter of Right** – It is something to which the act or omission relates, that is the thing over which a right is exercised. This may be called the object or subject-matter of the right. Some writers, although argue that there are certain rights which have no objects.
5. **Title of the Right** – Salmond has given the fifth element also, that is, “title”. He says that “every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner”.

Hence, it can be observed every right involves a three-fold relation, in which it stands

- It is a right against some person or persons.
- It is a right to some act or omission of such person or persons.
- It is a right over to something to which that act or omission relates

The terms of ‘person’, ‘act’, ‘thing’ are connected with the term ‘Right.’

A popular illustration that was quoted by Salmond satisfies all the above mentioned elements of legal rights. It is as follows –

“If A buys , a piece of land from B, A is the subject or owner of the right so acquired. The persons bound by the correlative right are persons in general, for a right of this kind avails against all the world. The context of the right consists in non-interference with the purchaser’s exclusive use of the land. The object or subject-matter of the right is the land. And finally, the title of the right is the conveyance by which it was acquired from its former owner”

KINDS OF LEGAL RIGHTS

Jurists have classified legal rights in the following ways –

1. Primary and Secondary Rights
2. Public and Private Rights
3. Positive and Negative Rights
4. Vested and Contingent Rights

5. Perfect and Imperfect Rights
6. Principal and Accessory Rights
7. Legal and Equitable Rights
8. Proprietary and Personal Rights
9. Rights in Rem and Rights in Personam
10. Rights in re Propria and Rights in re Aliena

Primary and Secondary Rights –

Primary Rights are also called antecedent rights. It is vested within a person by law or any other legal manner. These are the bundles of those rights which are the privileges enjoyed by any person e.g. a person's rights to Liberty.

A violation or breach of the primary rights, on the other hand, gives rise to a sanctioning right or remedial right. These are also known as secondary rights. It is also called the remedial or adjectival rights. It is called so as it is a mode of legal enforcement, for the loss of the primary right. It is subdivided into two kinds – 1. Right to exact and receive a pecuniary penalty from the defendant for loss of right and 2. Right to exact and receive damage for the injury caused to the defendant. It can be said that primary rights exist independently whereas secondary rights have no separate existence and arise only on violation of primary rights.

Public and Private Rights

Legal rights can be considered as both public and private. Public rights are those vested with the state. The state enforces such right as a representative of the subjects in public interest. A public right is possessed by every member of the public. For example, a right that is concerned with the Government may be termed as a public right such as the right to vote. A private right, on the other hand, is concerned with individuals, that is both the parties connected with it are private persons. For example, owning a vehicle is a private right.

Positive and Negative Rights

A right is considered as positive or negative depending upon its correlative duty. A positive right exists when the owner of it is entitled to something to be done by the person of incidence. A person possessing a positive right can compel the person with the duty to perform a positive act. For instance, a right to receive a compensation is a positive right. A negative right corresponds to a negative duty and is a right that the person bound shall refrain from some act which would operate to the prejudice of the entitled; in other words, a negative right, corresponds a negative duty. It is a right of the person and the person bound shall restrain from doing some act which will be prejudicial to the person entitled, such as when a person owns a land, it is the duty of others to not trespass.

Every person is entitled to negative rights, but only a few get positive rights. The number of negative rights is larger than the positive rights. The difference between these rights is illustrated below –

- A positive right corresponds to a positive duty whereas a negative right corresponds to a negative duty.

- A positive right involves a positive act while a negative right involves some kind of forbearance or not doing.
- A positive right entitles the owner of it to an alteration of the present position to his advantage whereas a negative right seeks to maintain the present position of things.
- A positive right aims at some positive benefit but a negative right aims at not to be harmed.
- A positive right requires an active involvement of others but a negative right requires only positive acquiescence of other persons.
- A positive right receives something more than what one already has whereas a negative right seeks to retain what one already has.
- A positive right has a mediate and indirect relation to the object while a negative right is immediately related to the object.

Vested and Contingent Rights

A vested right is a right in respect of which all events essential to vest the right in the owner have happened; while a contingent right is one in respect of which only some of the events necessary to vest the right have happened and the vesting can be complete only on the happening or non-happening of a specified uncertain event. A vested right is not dependent upon the fulfillment of any condition and a right becomes contingent only on the fulfillment of any condition that may either be subsequent or precedent. Vested rights are transferable and inheritable, this is not possible in contingent rights.

Perfect and Imperfect Rights – A perfect right is one which corresponds to a perfect duty and a perfect duty is one which is not only recognized by the law but is enforced also. Perfect right means the complete right, which signifies the right for which there is remedy also. This is explained by the latin maxim “ubi jus ibi remedium” which means, where there is a right, there is a remedy. When in case of the breach the right is not enforceable in a court of law then it is known as imperfect right. This was stated in the case of *Allen v. Waters & Co.* [(1935) 1 KB 200]. The Directive Principles of the State Policy that is present in the Indian Constitution is an example of imperfect rights.

Principal and Accessory Rights

A principal right is a primary right of a person vested in him by the law of the land, or through any other legal method. An accessory right is a right which is connected with the principal right. Principal rights exist independently while accessory rights are dependent upon principal rights. They are beneficial on the principal right.

Legal and Equitable Rights

These type of legal rights cannot be found in India. It is found only in England. Legal rights are those which were recognized by the Courts of Common Law in England and Equitable rights are those which were solely recognized in the Court of Chancery. The underlying principle in regards to equitable rights is that when there are two inconsistent equitable rights claimed by different persons over the same thing, the first in time shall prevail. Although, where there is a conflict between a legal right and an equitable right, the legal right shall take

precedence over equitable right even if it is subsequent to the equitable right in origin. The Privy Council in *Chatra Kumari Devi v. Mohan Bikram* [(1931) 58 I.A 279] observed that the Indian law does not recognize legal and equitable estates.

Proprietary and Personal Rights

Proprietary Rights are rights that are related to a person's property whilst personal rights relate to one's body. Proprietary rights are transferable and personal rights are not. If the breach of a right can be measured in terms of money or it has money value then it is said that the person has proprietary right but if the breach of a right cannot be measured in money or it has no money value that that right is known or called as personal right. A personal right is uninheritable and dies with him.

Rights in Rem and Rights in Personam

These are also called real and personal rights. The modern terms right "in rem" and right "in personam" have been generalized, somewhat inaccurately, from Roman sources. A right in rem means a right available against the whole world whereas a right in personam is a right that is available only against specific number of people.

Rights in re Propria and Rights in re Aliena

Rights in re Propria and Rights in re Aliena are a classification of proprietary rights. Right in re Propria is the right in his own thing and if he has a right in the property belonging to another than he is said to have a right in re Aliena. A right in re-Aliena 'or encumbrance' has been defined by Salmond as one which limits or derogates from some more general right belonging to some other person in respect of the same subject-matter. Salmond refers to four classes of encumbrances, namely, i) Leases; ii) Servitudes; iii) Securities & iv) Trusts.

i) Leases – A lease is an encumbrance of property vested in one person by a right to

the possession and use of it vested in another person.

ii) Servitude – A servitude is a right to the limited use of a piece of land unaccompanied

either by the ownership or possession of it.

iii) Security – Security is an encumbrance vested in a creditor over the property of his

debtor for the purpose of securing the recovery of the debt.

iv) Trust – A trust is an encumbrance in which the ownership of property is limited by an equitable obligation to deal with it for the benefit of someone else. The owner of the encumbered property is called the trustee and the owner of the encumbrance is the beneficiary of the trust.

ENFORCEMENT OF LEGAL RIGHTS

A legal right may be enforced through a Court of Law that has been established by the State. A legal right is generally enforced by awarding damages in civil cases. If damages don't suffice, the object itself may be restored. Specific performances may also be ordered by the court. Alternatively, the court may grant an injunction for the enforcement of a legal right. The

law of injunction is mentioned in Specific Relief Act, 1963. It is a prohibitive writ which restrains a party from doing an act that affects the plaintiff from enjoying his legal right.

DUTY

A duty is an obligatory act. It is something to do or abstain from doing in favour of another person. A man has a duty towards any matter that he is legally obligated to. The term legal duty has been defined in the following ways –

Keaton – A duty is an act of forbearance which is enforced by the state in respect of a right vested in another and breach of which is a wrong.

Salmond – A duty is roughly speaking an act which one ought to do, an act the opposite of which would be a wrong.

A duty is of two kinds – **1. Moral and 2. Legal**

Moral – An act that is the opposite of which is a moral or natural wrong. A duty may be moral but not legal or legal but not moral, or both at once. For example, the act of not wasting paper is our moral duty but not legal.

Legal – A legal duty is an act, the opposite of which is a legal wrong. It is an act recognized as a duty by law and treated as such for the administration of justice. The law enforces the performance of a legal duty, and punishes the disregard of its performance.

CLASSIFICATION OF DUTIES

Duties are classified under the following categories –

Primary and Secondary Duties –

A primary duty is one which exists “per se” and is independent of any other duty. A secondary duty, on the other hand, is one which has no independent existence of other duties. A secondary duty is also called sanctioning or a remedial duty.

Positive and Negative Duties

Duties may also be distinguished into positive and negative duties. Duties that are to be performed by us at the behest of the law is known as a positive duty whilst an act that is prohibited from being performed under the law is a negative duty.

Absolute and Relative Duties

In the words of Austin, rights and duties are interdependent. He has classified duties into absolute and relative. Relative duties are those for which there is a corresponding right and absolute duties are those that do not have any corresponding rights. He mentions four kinds of absolute duties:-

Self-regarding duties such as a duty not to commit suicide or not to consume drugs or liquor, etc.

Duties towards indeterminate persons or public at large, e.g. a duty not to commit a nuisance.

Duties to those who are not human beings such as duty towards God or animals, birds, etc.

A duty towards the sovereign or the state.

RIGHTS AND DUTIES

It is an agreed fact that rights and duties are co-existent. Although there is exists a difference in opinion whether there must be a right that correlates to the duty.

Salmond says that there can be no right without a corresponding duty and vice versa. According to this, every duty must be a duty towards a person or some person, in whom a correlative right is vested and conversely every right must be a right against some persons upon whom, a correlative duty is imposed. Every right and duty has a bond of legal obligation. Austin has stated that rights are interdependent, not correlative, contrary to Salmond's opinions. He has classified them into relative and absolute duties as explained above.

Relation between Rights and Duties!

1. Rights and Duties always go together:

Rights and duties are closely related and cannot be separated from one another. Both go side by side. These are the two sides of the same coin. If the state gives the right to life to a citizen, it also imposes an obligation on him to not to expose his life to dangers, as well as to respect the life of others. If I have a right to work and earn, it is also my duty to recognize the same right of others.

2. Right of One is the Duty of Others:

Rights can be enjoyed only in the world of duties. For every right there is corresponding duty. When the people fail to discharge their duties properly, the rights all become meaningless. "I can enjoy my rights only if the others allow me to do the same. I have" the right to life and it is the duty of others to respect my life and not to cause any harm to me."

3. Rights of a Citizen also implies Duties for him:

Rights are not the monopoly of a single individual. Everybody gets these equally. This means that "others also have the same rights which I have, and it is my duty to see that others also enjoy their rights." Laski has rightly said that one man's right is also his duty. It is my duty to respect the rights of others as well as the duty to use my rights in the interest of society.

4. Rights are to be used for Social Good:

Rights originate in society. Therefore, while enjoying rights, we must always try to promote social interest. It is the duty of every one of us to use our rights for promoting the welfare of the society as a whole.

5. Duty towards the State:

Since state protects and enforces rights, it also becomes the duty of all citizens to be loyal to the state. It is their duty to obey the laws of the state and to pay taxes honestly. Citizens should always be ready to defend the state. Thus a citizen has both Rights and Duties. He enjoys rights and performs his duties. Rights and Duties are the two sides of the same coin.