

RIGHTS AND DUTIES

Introduction

The law protects the legal right of every citizen. By being a citizen of the country, the people are given the legal right. It is the duty of every individual to protect the rights of each individual.

Meaning

In general word, it means that the action which is permitted by the law is called legal right or the act which is recognized or protected by the state is called legal right. The definition is given by the number of jurists like Holland, Austin, Pollock.

According to Salmond:

A legal right is an *“interest which is protected and recognized by the rule of law. It is an interest which has its duty and disregard of which is wrong”*.

According to Gray:

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

In the case of [State of Rajasthan vs Union of India](#)[1], the Supreme Court stated that “Legal rights in the strict sense are correlatives of legal duties and legal rights are defined as the interests which the law protects by imposing duties on other persons. But the legal right in the strict sense means right is the immunity from the legal power of another. Immunity is no subjection at all”.

Essential conditions of legal right

According to Salmond, there are five essential conditions that need to be fulfilled:

- **The person of inheritance/ Subject of right:**

He shall be the person who is the owner of the right. He is the subject of the legal right. Such a person is called a person of inheritance. *Example:-Y purchase a van for Rs 20,000. Here Y is the subject of the right.*

Even in the case when the property is bequest to the unborn child, the unborn child is the owner of the property even though he is uncertain.

- **The subject of duty/ the person of incidence:**

It is the duty of another person or persons to respect and recognize the right of the person. Such a person who has a legal duty is called a person of incidence. Example- If A has a legal right against B, then it is the duty of B to respect the right of A.

- **Contents or Subject Matter of legal right:**

The subject matter of legal right is an essential element. It deals with the subject matter of the legal right. It is related to do something or to refrain from doing certain acts or forbearance. It obligates the person to forbear or act in favour of the person possessing a legal right. Example-Y purchase a

van for Rs 20,000. Here Y is the subject of the right. The subject matter (Y) has a legal right and he can exclude others.

- **The object of the legal right:**

The object of the legal rights is a thing or object over which the legal right is exercised. Example- A purchases the car for Rs 1,00,000. Here the car is the object.

- **Title of the legal right:**

The title is the process by which the right is vested or conferred on the person. It is certain events by which right is acquired from its previous owner. Example- By purchase or gift or will etc.

Theories Related To The Legal Right

- **Interest Theory**

Developed by: Rudolf Von Jhering

Rudolf Von Jhering stated that Legal right is the legally protected interest. He gave importance to the interest of the people rather than the will of the people. The main objective is to protect the interests of the people and to avoid the conflict between the individual interest.

Their interest exists in the life of the community itself. They are not created by any statute.

Salmond positive view:

He supported this theory but he stated that its enforceability is an essential condition.

Salmond criticism:

He criticized the interest theory on the ground that *the interest is not protected by the state*. In order to confer a legal right, it is essential that interest should be protected and recognized by the state.

Gray view:

He said that this theory is partially correct because a legal right is not an interest in itself but it is only meant to protect the interests of an individual. He also stated that legal rights confer the right on the person to do a certain act / to forbear by imposing a legal duty on them through the agency of law "state".

Dr Allen view:

It can be said that both the theories are not contradictory to each other but it is the combination of both the theories. He tried to combine these two theories by pointing out that the essence of legal right seems to be, not legally guaranteed power by itself nor legally protected by itself, but the legally guaranteed power to realise an interest. It can be concluded that both theories are the essential ingredients of the legal right.

- **Will theory**

Supported by: Kant, Hegel, Hume

According to his theory "*rights is an inherent attribute of the human will*". The purpose of the law is to permit the expression of free will. The subject matter is derived from the human will.

Rights are defined in the terms of will by Austin, Pollock and Holland. According to John Locke, "*the basis of the right is the will of the individual*". According to Puchta the legal rights gives power to the person over the object which by means of right can be subjected to the will of the person who is enjoying the right.

Criticized by: Duguit

According to him the basis of the law is not a subjective will but it is an objective will. The purpose of the law is to protect only those acts which further support social solidarity. He further stated that the theory of subjective right is a metaphysical abstraction.

Classification of Legal Right

Right in rem and Right in Persona

The right in rem is the right available against society at large. For Example:- a crime committed under I.P.C because it is a crime committed against the state.

Right in Persona means right that is available against an individual. Example breach of Contract. When there is a breach of contract, the party who has performed the act files the suit against the breaching party. Right in Persona is temporary in nature, which can be converted into right in rem. Right in rem is a permanent in nature.

Positive Rights and Negative Rights

A positive right is a right when some action needs to be done by the person who has the corresponding duty. The person on whom the duty lies must perform some positive acts.

The negative rights are the rights which omit the person from performing certain acts. Negative rights correspond to negative duty. The person on whom such duty is imposed is restrained from performing certain acts.

Personal and Proprietary Rights

Personal rights are the right to respect the owner of the right. The personal right has no economic value and this right is related to personal status or well being. Example the right to live with dignity, the right to freedom of speech and expression.

The proprietary right is given in respect of the owner of the property. These rights are rights which has some monetary value or economic value and constitute the estate of the person. Example- patent rights, right to land, debt etc.

Perfect and Imperfect right

Perfect rights are protected and recognized by law and the suit can be instituted in the court against the wrongdoer for the breach of it. Example: A has taken the loan from B. B has the duty to pay the loan and A has the perfect right to claim the loan amount. If B fails to pay then A has the right to file the suit in the court.

Imperfect rights are those rights which are neither recognized nor protected by law. Example: if the loan becomes time-barred, then he can claim his money back but it cannot be enforced by law.

Principal and Accessory Rights

The principal right is the most important rights. They are the basic right that is vested on an individual.

The accessory right is the consequential or incidental right. They are not important but they are ostensible to basic right.

Right in Re-aliena and Right in Re-propria

Right in Re-aliena is the right available against the property of another person. Example- The right of easement. It is the result of jurisprudence concept of dominant heritage and servient heritage.

Right in Re-Propria is the right available in respect of one's own property. It results in absolute ownership. This is the result of jurisprudence *concept of ownership*.

Corporeal and Incorporeal right

Both the rights are protected by law. The corporeal right is the rights over tangible objects or material objects. Corporeal rights are having the rights over the objects which can be seen, touch or perceived. Example: I purchase the watch. The watch has physical existence so I have a corporeal right over it.

The incorporeal right is the right over the object which cannot be seen or touched. Example right to reputation.

Legal and Equitable Right

Legal rights are protected by the common law i.e Court of England. Common law depends upon the usage and custom.

Equitable rights are protected by the equity court or the court of chancellor. The basic principle is natural justice, equity, justice and good conscience.

Primary and Sanctioning Rights

The primary right is important and is a very basic right. These rights are ipso facto. These rights are independent in nature. It has a binding force. They are right in rem. Example: the right to reputation. If these rights are infringed in such case a person can approach the Courts of Law. A legal remedy is available against such right in the form of compensation or imposing a penalty or imprisonment.

Sanctioning rights are resultant rights. They are supporting rights to primary rights. They are right in persona, which results from some wrongdoing. Example: it arises when there is an infringement of primary rights.

Public and Private Rights

The public right is the right that is exercised by the State. Example- right to vote, right to use road etc. The private right is exercised by an individual for his personal benefit. Example:- right to sleep, right to clean water.

Vested and Contingent Rights

A vested right is a right which is vested on the person from the very beginning. No events are required to take place for conferring the rights of an individual. It depends on the present situation.

Contingent rights are rights which are conferred on the happening or non-happening of certain acts. This right depends upon future acts. If the act which is prescribed take place then only the right will be conferred on the person.

How Legal Right is Enforced

Ubi jus ibi remedium which means where there is a right there is a remedy. If the person's right is violated that can be approached to the court. They can get relief in the form of compensation. When the compensation does not satisfy the claim of the plaintiff then the court may order for the specific performance of the Contract. It is governed by the Specific Relief Act.

Duties

When the right is given to the person then it is assumed that certain duties are also imposed on the person. The right has its correlative duties. There are two kinds of duties when it is the obligation of the person to perform his duty when he has a legal duty but in case of moral duty he has no obligation. It is on the discretion of an individual. The duties are classified into absolute and relative duty, positive and negative duty and primary and secondary duty.

Conclusion

We can conclude that rights and duties are co-existent. In the words of Salmond, it can be said that no right exists without the corresponding duty. Every duty of the person must be the duty towards some person, in whom the right is vested and conversely every right must be against some persons upon whom a duty is imposed.