

LAW OF LEGAL RIGHTS AND DUTIES

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A. Meaning and Definition:

laws are the essence of the rules that regulate the human conduct and the administration of justice is nothing but the enforcement of the said rights and duties by the State duly backed with its physical force, rights duties and wrongs are the fundamental concepts of prime importance to the jurisprudence of every civilized society. विधि नियमों का सार है जो मानव आचरण को नियंत्रित करते हैं और न्याय का प्रशासन कुछ नहीं अपितु राज्य द्वारा कथित अधिकारों एवं कर्तव्यों का विधिवत समर्थित प्रवर्तन है जो कि अपन भौतिक बल, अधिकारों, कर्तव्यों और कमियों की मूल अवधारणाएं जो प्रत्येक सभ्य समाज के विधिशास्त्र के लिए अति महत्वपूर्ण हैं।

Legal rights are defined as under in four classes: -

- (i) Legal rights in the strict sense. कठोर अर्थों में विधिक अधिकार
- (ii) Liberty as rights. अधिकार के रूप में स्वतंत्रता
- (iii) Power as rights. अधिकार के रूप में शक्ति
- (iv) Immunities. उन्मूक्तियां

➤ **Salmond:**

Legal rights in an interest recognised and protected by rule of legal justice. It is that interest, to show respect for which it is the duty. And it will be a wrongful act, if one does not show the respect to or disregard him. विधिक अधिकार विधिक न्याय नियमों द्वारा मान्य और संरक्षित हित है।

➤ **Holland:**

Right is ability posed by a person to control actions of others and to have self protection with the help and assistance of the state. विधिक अधिकार राज्य द्वारा व्यक्ति को स्वयं की आत्मरक्षा करने एवं दूसरों के कृत्यों को नियंत्रित करने का अधिकार है।

➤ **Austin:**

A party has a right when another or others are bound or obliged by law to do or forbear some thing towards or regard to him. एक पक्ष को अधिकार होता है जबकि अन्य उसके प्रति कुछ करने या न करने के लिए विधि द्वारा बाध्य होते हैं।

➤ **Ihering:**

Rights are legally protected interest. अधिकार विधि द्वारा संरक्षित हित है।

➤ **Pollock:**

Right is a freedom allowed and a power conferred by law. It is an interest or exception granted by law; it is an authority to compel others. विधिक अधिकार विधि द्वारा प्राप्त स्वतंत्रता और शक्ति है। यह विधि द्वारा प्रदत्त एक हित या अपवाद है। यह एक प्राधिकार है जो दूसरों को बाध्य करता है।

The main elements in this definition are two:

First, a rule of right means a rule of law, or, in other words, that which is judicially enforceable. Thus, according to Salmond, a right must be judicially enforceable.

Second, a right is an interest. The element of Interest is essential to constitute a right. So far as Salmond's first element is concerned, it is a corollary to his definition of law.

Supreme Court of India also interprets the definition of right in case of State of Rajasthan v. Union of India, AIR (1977) SC 1361 as:

In the 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 immunity from the legal power of another, immunity is an exemption from the power of another in the same way as liberty is an exemption from the right of another, Immunity, in short, is no subjection.

Rights guaranteed by the Indian Constitution:

The Constitution of India has guaranteed certain rights to the citizens of India which are known as Fundamental Right which is considered to be the most important rights. If these rights get violated then the person has the right to move to the Supreme Court of India or The High Court for enforcing rights.

Following rights are guaranteed by the Court:

Right to Equality (Article 14)

Right to freedom (Article 19)

Right against Exploitation (Article 23 and 24)

Right to Freedom of Religion (Article 25)

Right to Life (Article 21)

Right to Constitutional Remedies (Article 32)

B. Nature of legal Rights and Duties:

Generally, a duty is an obligation and a right is an entitlement. They may exist as a moral or a legal matter. For example, morally, a person may have a duty not to hurt another's feelings. However, case law and statutes provide the legal framework or parameters defining when harmful communications constitute defamation and the procedures governing obtaining redress.

Rights may also exist on a moral or legal matter. For example, an employee has a moral right to be treated with appreciation and respect by an employer. Employment and discrimination laws provide the legal framework defining an employee's rights to freedom from being disadvantaged by an employer's discriminatory intent based on certain grounds, such as age, sex, handicap, or religion. A moral right cannot be the basis for seeking relief through the legal system. There must be a law creating a right before that right can be enforced through the legal system.

The Elements of a Legal Right:

There are four elements or characteristics of a legal right.

The subject: Subject means the person in whom the right is vested, or the holder of the right. There can be no right without a subject

The act of forbearance: Right relates to some act or forbearance. It obliges a person to act or forbear in favour of the person who is entitled to the right.

The object of right or the res concerned: it is the thing in respect of which the right exists or is exercised.

The person bound or the person of incidence: It means the person upon who falls the correlative duty.

In addition to these four elements, Salmond has given a 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'.

In this way, according to him, every right involves a three-fold relation, in which its holder stands:

It is a right against some person or persons.

It is a right to some act or omission such person or persons.

It is a right over or to something to which that act or omission relates.

Wider sense of legal right: In its wider sense it includes other legally recognized interests without considering whether they have a corresponding legal duty or not. Salmond has pointed out that the term right-duty was often used to indicate relationships which were not in reality the same. It causes confusion in legal argument. He said that the term legal right in its generic sense means any advantage or benefit which is in any manner conferred upon a person by a rule of law. Right in this sense, there are four distinct kinds:

Right

Liberties

Power

Immunities

Each of these has its correlative, namely

Duties

No rights.

Subjections (or Liabilities).

Disabilities.

This analysis of Salmond was carried further by Hohfield. He analyzed it with greater accuracy. This has been again developed by many other jurists.

Claim and duty:

Salmond has used the word 'right' at the place of claim. Therefore, the word 'claim' has been used here. Claim indicates what one can force another to do, or to refrain from doing. The person who can so force is said to have a claim and the person who can be made to act or forbear is said to have a duty.

Liberty and no claim: Liberty means that what one can do for himself without being prevented by the law, or, in other words, he is free of the possibility of legal interference by others'. It is that sphere of a person's activity within which the law leaves him alone.

Privilege, Absolute and Qualified:

Privilege has been mentioned in a bracket along with liberty. In some respects it is akin to liberty, but in other respects it differs. Liberty includes those acts which are generally lawful for all. Privilege means those acts which are generally unlawful.

Power and liability:

Power is generally defined as an ability on the part of a person to produce a change in a given relation by doing or not doing a given act. The makings of will or alienating property are examples of such ability.

Power is of two kinds:

Public.

Private.

Public power is that which is vested in a person as an agent of the state, as the judicial or executive power of the officers.

Private power is that power which is vested in a person as citizen for his own interest. Liability gives the sense of being affected by an act of a person who has power' to do it. In other words, the person whose rights can be altered by the exercise of power is said to be under liability.

Immunity and disability:

Immunity is defined as a freedom on the part of one person against having a given legal relation altered by a given act or omission on the part of another person. It is opposite of liability. So it is also said that it is an exemption from having a given legal relation changed by another.

Claim= No Claim.

Duty=Liberty or privilege.

Power=Disability.

Liability= Immunity.

The correlative of immunity is disability. Disability means the absence of power.

Immunity is the Opposite of liability; disability is the opposite of power.

C. Theories of Legal Rights:

1. The Will Theory:

This theory says that the purpose of law is to grant the individual the means of self-expression or self-assertion. Therefore, right emerges from the human will. Holmes In his definition of right puts the same view more clearly. He defines legal right as nothing but a permission to exercise certain natural powers and upon certain conditions to obtain protection, restitution, or compensation by the aid of public force'. Hegel, Kant, Hume and others say that by right is meant the power of self-expression or will.

Will-Theory criticized: Duguit is vehemently 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 idea of will is anti-social. The will theory has been criticized on other grounds also. Those who greatly emphasis the element of will confuse the fact with abstract ideas, that is, they do not make the distinction between what is and what ought to be.

2. The Interest Theory:

The profounder of this theory is Ihering-a great German jurist. He defines legal right as a legally protected interest'. According to him, the basis of right is interest' and not will'. His definition of law is in terms of purpose'. Law always has a purpose. In case of rights the purpose of law is to protect certain interests and not the wills or the assertions of individuals.

3. Social Solidarity Theory:

Duguit is the exponent of this theory and according to him the basis of legal right is social solidarity. He maintains the right of an individual as hypothesis and not a reality. One has only the duties and no rights.

D. Kinds of Legal Rights and Duties:

Rights and duties are the very important elements of law. The administration of justice, in most part, consists of the enforcement of rights and the fulfillment of duties. Duties are an obligatory act. It is an act the opposite of which would be a wrong. The duties and wrongs are correlated, i.e. they have a mutual relationship.

- **Duties:**

1. **Positive duties and Negative duties:** A positive duty implies some act on the part of the person on whom it is imposed. If a person owes money to another, the former is under a duty to pay the money to the latter. This is a positive duty. A negative duty implies forbearance on the part of the person on whom it is imposed. For example, if a person owns lands, others are under a duty not to make any interference with that person's use of the land. This is a negative duty.

2. **Primary duties and Secondary duties:** A primary duty is that duty which exists per se and independent of any other duty. The duty not to cause hurt to any person is a primary duty. A secondary duty is that duty whose purpose is only to enforce some other duty. If a person causes injury to another, the former is under a duty to pay damages to the latter. This is a secondary duty. The duty not to cause injury is the primary duty. When a breach of this duty has been committed, the secondary duty to pay damages arises.
3. **Moral duties and legal duties:** Moral duties do not have the restraints of law; if they are discharged they are only moral wrong. Legal duties are impositions of law. They may be absolute duties towards state or relative duties towards the person.

Austin's View:

The duties which are always correlated with a right are called relative duties. Austin, who supported, says that there are four kinds of absolute duties:

Duties not regarding persons.

Duties owed to persons indefinitely.

Self-regarding duties.

Duties owed to the sovereign.

To *Austin* only some duties are absolute having no corresponding rights; they are the duties towards the state that punishes the wrong doer.

- **Duties enriched under Indian Constitution:**

Article 51-A of the constitution of India guarantees certain duties to every citizen of India. Article 51-A of the Indian constitution states that it shall be the duty of every citizen of India To respect the provisions of Constitution and respect the National Flag and National Anthem:

To safeguard the sovereignty and integrity of India

To follow the noble ideals of national struggle

To defend the country and contribute to national service when called

To preserve the national heritage of the country;

To promote and maintain the harmony of brotherhood amongst people of India.

To protect the dignity of women

To protect the natural habitat and including forests, lakes, rivers, and wildlife;

To protect public property and to avoid violence;

To contribute to the development of the nation in all spheres.

- **Rights:**

- 1. Perfect and Imperfect rights:**

A perfect right means a right which has a correlative duty that can be legally enforced. Generally, when law recognizes a right, it prescribes a remedy also and when the right is violated, it enforces it. An imperfect right is that right which, although, recognized by law, is not enforceable, such as the claims barred by time.

- 2. Positive and negative rights:**

A positive right is that right which has a correlative positive duty. In case of positive right the person having the right can compel the person upon whom the correlative duty is imposed to do some positive act. The scope of a negative right is only that the person having the right shall not be harmed.

- 3. Rights in rem and rights in Personam:**

Generally most of the rights in personam, are positive right and rights in rem are mostly negative rights.

- 4. Proprietary and personal rights:**

Proprietary right means a person's right in relation to his own property. Personal rights are rights-relating to status and that arising out of contract. Mainly two points of distinction between proprietary and personal rights are put forward. First that proprietary right is valuable; personal rights are not valuable. Second, that proprietary rights are transferable, personal rights are not transferable.

- 5. Vested and contingent rights:**

A right is a vested right when all the facts happening or not happening of which it is necessary to create or vest the right, have happened or not happened. If only some of such facts have occurred then the right is a contingent right. It would become vested when all the facts have occurred. A vested right creates an immediate interest. It is transferable and heritable. A contingent right does not create an immediate interest, and it can be defeated when the required facts have not occurred.

- 6. Legal and equitable rights:**

The rights recognized and enforced by the common law courts were known as legal rights and the rights recognized and enforced by the chancery courts were known as equitable rights.

- 7. Primary and Secondary rights:**

The Civil rights are generally classified as primary, antecedent or substantive rights. The secondary rights are sanctioning, adjustive or remedial rights. The secondary rights help to maintain to vindicate the primary rights.

8. Antecedent and remedial rights:

They are known by other names also, such as primary and secondary rights, principal and accessory rights. Pollock calls them as substantive and adjective rights. When a right exists independent of any other right and for its own sake it is an antecedent right. When another right is joined to it then so joined right is called a remedial right

9. Municipal and International rights:

The rights within the states are municipal rights. The rights in the international world are international rights.

10. Ordinary and Fundamental rights:

Rights conferred are ordinary rights where as those which are conferred by the Constitution as a policy as in alienable fundamental rights. We know ordinary rights have got to be in tune with fundamental rights, if they abridge or take away the fundamental rights, void, to that extent.

E. Relationship of Rights and Duties. अधिकार और कर्तव्य में संबंध