**Legal Rights**

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1. **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.

1. **DEFINITION OF RIGHT**

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

1. 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?
2. **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.
3. **John Salmond** – Salmond defines right as an interest recognized 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.
4. **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
5. **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.”
6. **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.”
7. **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 aa 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 interests. 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 realize an interest.
* Thus, it would be sensible to say that both “will” and “interest” is essential ingredients of a 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’, and ‘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 –

**Illustration**

“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”