

HOHFELD'S ANALYSIS OF LEGAL RIGHTS

AUTHOR:

- Divya Chugh, Saumya Sharma
- Fifth Year, Hidayatullah National Law University, Raipur
- Hidayatullah National Law University, Abhanpur, New Raipur (India)
- Email : divyachugh.hnlu@gmail.com.

ABSTRACT:

A Legal right can be said 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.” According to 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.” The words commonly used to describe legal relations frequently convey multiple inconsistent meanings. The confusion that results from this inherent weakness in the language of the law has produced many attempts to reduce that language to terms that suggest a single idea. A most remarkable theory of reduction was expressed in Professor Hohfeld's formulation of a logical system of language based on fundamental legal conceptions. In the following article, the Concept of Hohfeld's Analysis of Legal Right has been explained through Jural Correlatives, Opposites and Contradictories. I begin with explaining the Hohfeld Fundamental Legal Conception followed by the relevance and the impact of his study in the Light of Modern Practice. It also throws light on the Constitution of India through Hohfeldian's Lenses.

Keywords: Interest, Legal Duty, Legal Right, Legal Relations, Reduction.

RESEARCH METHODOLOGY:

Nature of research work: This topic “Hohfeld's Analysis of Legal Rights” is a “Doctrinal” work. Doctrinal research includes studying books and established literature and not actually going to the field and doing empirical research.

Source of research work: The sources of this project are both primary (bare acts, statutes, etc) and secondary sources (books given by different authors, journals, internet, etc).

INTRODUCTION:

A legal right must obtain not merely legal protection, but also legal recognition. It has been said that the legal material can be identified with reference to the use of the word 'law' by courts. The detailed rules so identified are distributed under various heads and new categories keep on emerging such as obligations, intellectual property and others. There are different ways of classifying the texture. There are:

- (1) Duties prescribing how people ought, or ought not, to behave with regard to others, who are said to have correlative claims or rights;
- (2) Liberties or freedoms to act and not to act;
- (3) Powers to alter existing legal situations
- (4) Immunities from having existing legal situation altered;
- (5) Location of legal relationships
- (6) Principles, doctrines and standards

The first four concern legal relationships between persons and are termed 'Jural relations.' The noun 'right' can be given many meanings; it can be said as the standard of permitted action within a certain sphere. Within a particular system of ethics we discover whether a particular action is right by asking whether it is consonant with the general principles on which system is based. Hohfeld's mission, in his own admission was neither a philosophical inquiry nor a study of the nature of legal relations as an end in itself. His theory was intended on the other hand, to "aid in the understanding and solution to practical, everyday problems of the law".¹ Equally important is it to note at the outset that Hohfeld's thesis was stipulative or definitional² and therefore intended to provide no normative conclusion as to how legal relations should be structured in a society. Hohfeld had called attention to the dangers of "chameleon-hued" words. Legal conceptions are often called by the same names as their non-Legal counterparts, and Lawyers like laymen, have a tendency to identify the legal interest or "rights" in a thing with the thing itself.³ He only endeavoured to lay out a conceptual understanding of what rights, privileges, powers and immunities are, hoping thereby to bring clarity to legal literature and judicial reasoning.⁴

Every right, therefore, involves a relationship between two or more legal persons, and only legal persons can be bound by duties or be the holders of legal rights. Rights and duties are a correlative that is we cannot have a right without a corresponding duty or a duty without a corresponding right.

¹Hohfeld Some Fundamental Legal Conception as Applied in Judicial Reasoning, (1913) 23 YALE LJ. 16.<http://www.harvard.edu/faculty/cdonahue/courses/prop/mat/Hohfeld.pdf>.

² Lazarev, Hohfeld's Analysis of rights: An essential approach to a conceptual and Practical Understanding of the Nature of Rights, 1 <http://www.austlii.edu.au/au/journals/MurUEJL/2005/9.html>

³ JULIUS STONE, LEGAL SYSTEM AND LAWYERS' REASONING, 138 (2nd ed., 2004)

⁴ Arvind P. Datar, *Hohfeldian Analysis- Application of, by the Indian Judiciary: A lawyer's Perspective*, 17 SCC(weekly) (Dec. 21,2012)

This paper brings out to light how Hohfeld has dealt with concept of legal rights using his Fundamental Legal Conception.

HOHFELD'S FUNDAMENTAL LEGAL CONCEPTION

Wesley Newcomb Hohfeld was a professor at Stanford University and later Yale University who wrote only a few articles before his premature death in 1918. His most famous article *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning* became a canonical landmark in American Jurisprudence.⁵ Hohfeld's description of relations between various forms of legal entitlements reflects truths on features of legal rights. Hohfeld argued that the tendency to express all legal interest in terms of "rights" and "duties" resulted in confusion in the analysis of complex legal relations like trust, options, escrows, future interest, and corporate interest etc. in Hohfeld's own words:

*One of the greatest hindrances to the clear understanding, the incisive statement, and the true solution of legal problems, frequently arises from the express or tacit assumption that all legal relations may be reduced to "rights" and "duties" and that these latter categories are therefore adequate for the purpose of analyzing even the most complex legal interests, such as trusts, options, escrows, "future" interests, corporate interests, etc.*⁶

The prime reason for this confusion in his view was the inaccuracy of the terminology. Hohfeld observed that important legal terms, including "right" and "duty," had no agreed meaning and thereby caused muddled analysis.⁷ He notes that the term right was often used to denote several other distinct legal interests such as powers, privileges or immunities.⁸ The eight fundamental legal conceptions resulted from Hohfeld's dissatisfaction with the idea that all the Jural relations can be reduced to rights and duties.⁹ These concepts are duty, claim, liberty, no claim, power, liability, disability, and immunity. According to him fundamental legal conceptions are sui generis, which means that all the attempts aimed at creating a formal definition are not only dissatisfying but also useless. Hohfeld explained how these concepts logically related to one another through what he called "Correlatives" and "Opposites."

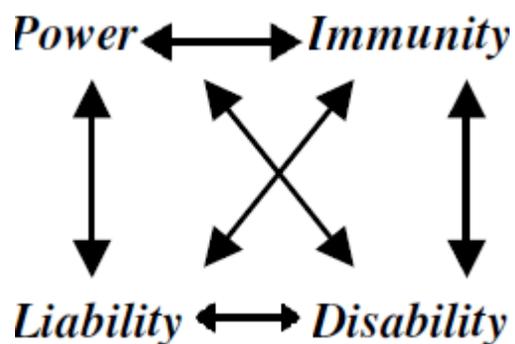
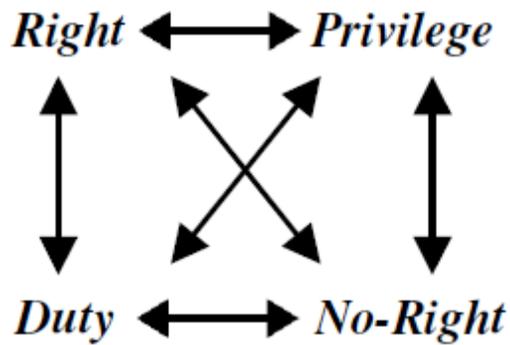
⁵Allen Thomas O'Rourke, *Refuge from a jurisprudence of doubt: Hohfeldian analysis of constitutional law* (Mar. 10, 2013) papers.ssrn.com/sol3/Delivery.cfm? abstract id=1358336

⁶ *supra* note 2

⁷ Curtis Nyquist, *Teaching Wesley Hohfeld's Theory of Legal Relations*, 52 J. LEGAL EDUC. 238, 239 (2002)

⁸ Arvind P. Datar, *Hohfeldian Analysis- Application of, by the Indian Judiciary: A lawyer's Perspective*, 18 SCC (weekly) (Dec. 21, 2012)

⁹ *Hohfeld's Scheme of Jural Relations* (Mar. 10, 2013). <http://www.ppravri.hr/hr/savjetovanja/jurihohfelds.pdf>



The vertical arrows couple jural correlatives, two legal positions that entail each other, whereas the diagonal arrows couple jural opposites, two legal positions that deny each other. The Horizontal arrows couple jural contradictories.¹⁰

Jural Correlatives

When one of these legal advantages or burdens concerning a particular subject matter, and arising from a particular transaction, is observed to inhere in one person, the correlative may be observed to inhere in some other person. The particular relation, in short comprises both correlatives.

Rights (claim) and Duties Relation [‘You Ought’]

A right is a legal claim of one person that another person acts or omits to act in a certain way. The position of the other person is described by saying that he has a duty. According to him, the term “rights” is incorrectly used for denoting something that, in a certain case, might be a privilege, a power, or immunity, and not a right in the strictest. Hohfeld himself suggested the word “claim” as a substitute for “right”, but continued to use “right”.¹¹ He pointed out that clue to right lies in duty,

¹⁰ RWM DIAS, JURISPRUDENCE, 25 (5th ed. 1994)

¹¹ A. K. W. Halpin, *Hohfeld's Conceptions: From Eight To Two*, 44 Cambridge L.J. 435 (1985).

which is a prescriptive pattern of behavior. A claim is, therefore, simply a sign that some person ought to behave in a certain way.

Privileges (liberty) and No-Rights Relation ['I May']

Just as legal rights of one person are the benefits which he derives from legal duties imposed upon other person, so the legal liberties are the benefits which a person derives from the absence of legal duties imposed upon him. They are the various forms assumed by the interest which I have in doing as I please. They are the things which I may do without being prevented by the law. The sphere of my legal liberty is that sphere of activity within which the law is content to leave me alone. Privileges may be accompanied with rights that impose duties on other people not to interfere. However, privileges can sometimes exist without the existence of a right.¹²

Powers and Liabilities Relation ['I Can']

Power denotes ability in a person to alter the existing legal condition, whether of oneself or of another, for better or for worse.¹³ "A change in a given legal relation may result (1) from some superadded fact or group of facts not under the volitional control of an human being (or human beings); or (2) from some superadded fact or group of facts which are under the volitional control of one or more human beings. As regards the second class of cases, the person (or persons) whose volitional control is paramount may be said to have the (legal) power to effect the particular change of legal relations.¹⁴ Examples of such are the following: the right to make a will or to alienate property; the power of sale vested in a mortgagee etc. The former are those which are vested in a person as an agent or an instrument of the functions of the state; they comprise the various forms of legislative, judicial and executive authority. The correlative of power is a liability. It is susceptibility to someone's exercising of a power. It is the position of one whose legal rights may be altered by the exercise of a power.

Immunities and Disabilities Relation ['You Can't']

The term "right" (generic term) is used in a fourth sense to mean immunity from the legal power of some other person. Just as a power is a legal ability to change legal relations, so immunity is an exemption from having a given relation changed by another.¹⁵ Immunity is state of being safe from modifications of one's entitlements by another. The correlative of immunity is disability. It is a lack or absence of power to change legal entitlements. For example, Diplomats are supposed to have diplomatic immunity. If they have committed a crime in their host country, they are immune against arrests and legal prosecution.

¹² Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale Law Journal 41 (1913). <http://www.law.harvard.edu/faculty/cdonahue/courses/prop/mat/Hohfeld.pdf>

¹³ e.g. covenants in restraint of trade.

¹⁴ *Hohfeld's Fundamental Juristic Conceptions*. 1 Hong Kong U. L.J. 46 (1926-1927)

¹⁵ SALMOND, JURISPRUDENCE, 42 (12th ed., 2008)

Jural Opposites

Hohfeld's concept of "opposites" conveys the message that one must have one or the other but not both of the two opposites. For example, with regard to any class of acts one must either have a right that others act in a certain manner or no right. Similarly, one must have either a privilege to do certain acts or a duty not to do them.¹⁶ A privilege to do something is to be conceived as the negation of a duty not to do it and a privilege not to do something as the negation of a duty to do it as they are Jural opposites.

Jural Contradictories

The merits of professor William's presentation is that it is possible to discern at a glance a third set of jural relations not mentioned by Hohfeld in his essay. The horizontal arrows read in both ways, in one person, X, implies the absence of liberty in Y, and vice versa.

RELEVANCE OF HOHFELDIAN ANALYSIS

W. N. Hohfeld's analysis of legal rights has often been extolled as a paradigm of conceptual clarity and rigor which anyone interested in the nature of legal rights and liberties should study. Hohfeld explains exactly how several conceptions commonly called legal rights are related, thereby providing a powerful tool for understanding discourse that utilizes the language of legal rights. But Hohfeld's analysis, though recognized and acclaimed by many legal philosophers, has not been incorporated.¹⁷The confusion which Hohfeld attempted to review continues to persist even today and hence his analysis can be used to improve the quality of legal discourse by saving judges and other lawyers from conceptual errors they are otherwise prone to commit.¹⁸

The widespread tendency to confuse rights with liberties can lead a jurist to make conceptual errors and fallacious inferences. For example, if one believes that the right to free speech is a right (in the strict sense), but in fact it is only a liberty, then one will wrongly believe that others have duties of noninterference which are correlative to this 'right'. Glanville Williams offers this as one of the clearest examples of a liberty unprotected by corresponding duties. Surely, he argues, no one is under a duty to assist me in my speech, or to provide a forum from which I may speak, or to preserve silence while I am speaking. The duties that may be thought to be owed me in virtue of my 'right' to free speech have no specific connection with freedom of speech at all. To be sure, persons have duties not to gag me, or tear me from my podium while I am making a speech. But, Williams insists, these duties are not correlative to the 'right' to free speech, but simply are part of the familiar

¹⁶ Joseph William singer, *the legal rights debate in analytical jurisprudence from Bentham to Hohfeld*, 1982 Wis. L. Rev. 975 (1982).

¹⁷ Arvind P. Datar, *Hohfeldian Analysis- Application of, by the Indian Judiciary: A lawyer's Perspective*, 21 SCC(weekly) (Dec. 21,2012)

¹⁸ Thomas D. Perry *Paradigm of Philosophy: Hohfeld On Legal Rights* (march 9th, 2013).
<http://www.jstor.org/stable/20009647>

duty not to commit a battery. Consequently, persons owe no duties to an individual who exercises his 'right' to free speech that are not already owed him in virtue of other rights he possesses. For this reason, Williams maintains that it is incorrect to describe freedom of speech as a legal right: it is merely a legal liberty.¹⁹

IMPACT OF HOHFELDIAN ANALYSIS IN THE LIGHT OF MODERN PRACTICE

The influence of Hohfeld's analysis and the impact of the imperative contained in those analyses to be discriminatory in the use of rights terminology, although persuasive must not be exaggerated. In practice the language of rights in almost every context including the context of judicial reasoning, but especially in the informal context, has developed without regard to the Hohfeldian imperative. The long standing constitutional provisions relating to rights in the USA - the Bill of Rights - are stated more in terms of immunities and disabilities than claim rights. The First Amendment to the American Constitution for instance, in providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress", creates an immunity for individuals with a correlative disability on the part of the government.

Hohfeld has not only failed to make an impact on constitutional structures which predate his essay but also modern constitutions have not been entirely as rigorous as Hohfeld proposes. The practice in most legal systems is to mix up rights, privileges, powers and immunities under the rubric of legal or constitutional protection of rights. In Indian constitution also word right has only been used to denote claim, privilege, power and liberty.²⁰

That linguistically there are differences between claim rights, privileges, powers and immunities is obvious enough but it is equally true that in practice, hardly anybody (including lawyers and judges) pays much attention to the recommendation to keep them separate in usage. While such a restricted impact may be said to have judged the Hohfeldian analysis harshly, it is by no means unfair.

CONSTITUTION OF INDIA THROUGH HOHFELDIAN LENSES

Fundamental Rights:

A close reading of the text of Part III of the Constitution of India indicates that broadly it deals with two kinds of legal interest. First, freedom or liberties on citizens/persons: for instance, the right under Article 19, the right to life and liberty under Article 21, the right to religion under Article 26 etc. Secondly, prohibition on the Government from acting contrary to certain principles: the rule of equality as embodied in Articles 14, 15 and 16 for example.²¹ It is a well settled law that the

¹⁹ Stephen D. Hudson And Douglas N. Husak, *Legal Rights: How Useful Is Hohfeldian Analysis?* (March 9th, 2013).

²⁰ *Id.* at 17

²¹ Arvind P. Datar, *Hohfeldian Analysis- Application of, by the Indian Judiciary: A lawyer's Perspective*, 23 SCC(weekly) (Dec. 21,2012).

guarantee of fundamental rights provided by the Part III of the constitution is only against the state as defined under Article 12 of the constitution.²²

The protection under the first category of rights i.e. freedom or liberties on citizens/persons (for instance, the right under Article 19, the right to life and liberty under Article 21, the right to religion under Article 26 etc.) is only against interference by the government in a citizen's exercise of rights. Thus state is not under a duty to secure to its every citizen, the enjoyment of rights enshrined therein, but only that the state must not act in a manner that infringes these rights. Indisputably absence of such a "duty" is indicative of the fact that constitution by virtue of this provisions doesn't confer Hohfeldian "right" to the enjoyment of freedoms embodied in Part III. To the contrary, the legal interests conferred by Part III are in fact, Hohfeldian "Privileges" i.e. they provide that state has a correlative "no right" to interfere in the exercise of these freedoms. This is not to suggest however, that part III of the constitution confers no Hohfeldian "rights" at all. Though Part III confers no "right" to the positive enjoyment of liberties embodied therein, it imposes a limited Hohfeldian "duty" on the state to not act in violation of these rights and thereby conferring a corresponding Hohfeldian right on citizens against State interference resulting in curtailment of those freedoms.

Parliamentary Privileges, Immunities and Power

Another area of constitutional law which offers possibilities for a Hohfeldian analysis is the protection of parliamentary privileges under Article 105 and Article 194 of the Indian Constitution. Article 105(1) provides for freedom of speech in parliament. The legal interest that this provision confers on Parliament (as in the case of fundamental rights such as Article 21 and Article 19) is that of a "privilege" which imposes a correlative "no right" of interference by others. Article 105(2) provides that No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. The import of this provision is to immunize members of Parliament from the institution of legal proceedings in respect of anything said in furtherance of their exercise of the right conferred by Article 105(1). Therefore Article 105(2) confers a "Hohfeldian immunity" on members of parliament whereas disability on every other legal person.²³ The third provision of the Article 105 provides "power" to parliament to enact legislation defining their Power, privileges and immunities which constitute a liability on others to abide by it.

²² P.D. Shadasani v. Central Bank of India, AIR 1952 SC 59

²³ supra note 21

CONCLUSION:

The words commonly used to describe legal relations frequently convey multiple inconsistent meanings. The confusion that results from this inherent weakness in the language of the law has produced many attempts to reduce that language to terms that suggest a single idea. A most remarkable theory of reduction was expressed in Professor Hohfeld's formulation of a logical system of language based on fundamental legal conceptions. Hohfeld's theory was intended, to "aid in the understanding and solution to practical, everyday problems of the law". Hohfeld claimed to have identified the eight fundamental legal conceptions, and as such to have provided a technical apparatus for legal analysis: the atomic elements into which all legal material can be reduced. Those fundamental legal conceptions are sui generis, which means that all the attempts aimed at creating a formal definition are not only dissatisfying but also useless. The most satisfying approach is to lay down various jural relations in a scheme of "opposites" and "correlatives" and, then, to proceed with stating examples of their individual scope and application in concrete cases. Hohfeld did not only correct minor technical mistakes but he also offered a radical critique of previous concepts of legal rights and liberties.

The Hohfeld's analysis can be said to have rather little impact. This may be true, it has to be admitted however that the strength of the conclusion is undiminished. In the final analysis Professor Hohfeld's contribution to the language of rights continues to be highly valued. Drawing public attention to the importance of appropriate terminology in rights cannot be ignored even if the conclusions as to what is or is not appropriate are not the same as he recommends.

REFERENCES:

BIBLIOGRAPHY:

- JULIUS STONE, LEGAL SYSTEM AND LAWYERS' REASONING, 138 (2nd ed., 2004).
- SALMOND, JURISPRUDENCE, 278 (11th ed.)
- R W M DIAS, JURISPRUDENCE, 25 (5th ed. 1994)

WEBLIOGRAPHY:

- <http://www.law.harvard.edu/faculty/cdonahue/courses/prop/mat/Hohfeld.pdf>
- <http://www.jstor.org/stable/20009647>
- <http://www.pravri.hr/hr/savjetovanja/jurihohfelds.pdf>

ARTICLES:

- Arvind P. Datar, Hohfeldian Analysis- Application of, by the Indian Judiciary: A lawyer's Perspective, 17 SCC(weekly) (Dec. 21,2012)
- Hohfeld, *Some Fundamental Legal Conception as Applied in Judicial Reasoning*, (1913) 23 YALE L.J. 16.
<http://www.law.harvard.edu/faculty/cdonahue/courses/prop/mat/Hohfeld.pdf>
- Thomas D. Perry *Paradigm of Philosophy: Hohfeld On Legal Rights*
<http://www.jstor.org/stable/20009647>
- Allen Thomas O'Rourke, *Refuge from a jurisprudence of doubt: Hohfeldian analysis of constitutional law*
papers.ssrn.com/sol3/Delivery.cfm?abstractid=1358336