

LEGAL RIGHTS

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ABSTRACT

Rights are conditions important for development of character of man. According to Laski, rights are those state of affairs of social life without which no man can be at his best. The theory of natural rights is the essential. Locke is the main exponent of this theory. According to this theory, men have certain natural rights that are inherent in man and cannot be taken away from him. These rights are relied on natural reason.

According to Locke, rights of person, liberty and property are natural and lead the state and are an obligation on the state. But, this does not offer a proper basis of rights. These are not the only rights that man needs. In fact, right of property in absolute terms may become an anti social organization. The concept of natural reason is ambiguous. Another theory is the historical theory. According to this theory man should be guaranteed rights that he enjoyed in the past like the right of property. It is also scarce theory. Rights in the present cannot be relied on the past. Some of the rights enjoyed in the past may become outdated and may not be required.

. Keywords: Conditions, inherent, liberty, natural rights, past, property

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Aim of the study:

To deal with various spheres of Rights.

Scope of the Study:

The project will be covering the meaning of rights, the peculiarities of rights, elements of legal rights, classification of rights, kinds of legal rights, relationship between legal liberty and legal right and so on.

Research Methodology:

For this project the research is doctrinal. The information and data for the project will be from various books, articles and other online resources. The research will include publication research, and other relevant sources, and will include both present and historical information related to topic. The case study of various past cases related to the topic will be referred in this project. Articles and laws related to the topic and also if there is an amendment in the previous law will also be taken into consideration.

Limitations:

The important limitation of this study is the reliance on secondary data. As the study is not empirical so the information and research is confined to books, online resources, articles in the newspapers and magazines.

Introduction

Law consists of certain types of rules regulating human conduct and that the administration of justice is concerned with enforcing the rights and duties created by such rules. The concept of a right is accordingly one of fundamental significance in legal theory. Two terms which are closely connected with Right are, wrong and duty. A wrong is simply a wrong act, an act contrary to the rule of right and justice divisible into two kinds, being either moral or legal. A moral or natural wrong is an act which is morally or naturally wrong, being contrary to the rule of natural justice. A legal wrong is an act which is legally wrong, which is contrary to the rule of legal justice and a violation of the law. In all ordinary cases the legal recognition of an act as a wrong involves the suppression or punishment of it by the physical force of the state, this being the essential purpose for which the judicial action of the state is ordained. A duty is roughly speaking an act which one ought to do, an act the opposite of which would be a wrong.

Rights

The word right is used in a variety of context. There are Fundamental Rights, Human Rights, Legal Rights and Moral Rights. There are also rights of specific groups as rights of children, rights of women, rights of minorities, rights of refugees etc. The English word 'right' literally has two meaning. In one sense, it means what is correct or just to do and the other speaks about a person's right to do something.

A legal right is commonly defined as an interest recognized and protected by law. Law cannot recognize and protect all the interests of the people. Thus it selects some interests as worthy for legal protection. Ihering regards legal rights as such of these interests which have obtained legal protection. According to him, one can be said to have a right only when there exists for one some advantage, which is protected by the state.² In every case, the existence of a legal right is dependent upon the circumstance that some human interest has secured the protection of the state.

According to Holland, a right is "a capacity residing in one man of controlling, with the assent and the assistance of the State, the actions of other".

According to Pullock "Right is freedom allowed and power conferred by law".

²N.H. Jhabvala, The elements of Jurisprudence, C. Jamnadas and Co., 2013, P.140

Salmond defines legal right as an interest recognized and protected by a rule of justice. The word 'interest' implies any interest, respect for which is a duty and disregard of which is a wrong. This definition contains two essential elements, legal recognition and legal protection. Both these elements should simultaneously and concurrently be present in an interest for its transformation as a legal right. A legal recognition of an interest without legal protection does not make it enforceable in a court of law, as for example, time barred debts. So also legal, protection of an interest without its legal recognition cannot make it a legal right.

The second part of Salmond's definition is that a legal right is any interest, respect of which is a duty and disregard of which is a wrong. Whether a person's interest amounts to a right or not depends on whether there exists with respect to it a corresponding duty imposed upon any other person. Further the right is an interest, the violation of which would be a wrong. Rights like wrongs and duties are either moral or legal.³ A moral or natural right is an interest recognized and protected by moral or natural justice, violation of which would be a moral or natural wrong and respect for which is a moral duty. A legal right on the other hand is an interest recognized and protected by a rule of legal justice.⁴

Salmond further states that rights and duties are necessarily correlatives. He also stated that, 'there can be no right without a corresponding duty and duty without a corresponding right any more than there can be a husband without a wife and a father without a child.'⁵ It is because every duty must be a duty towards some person or persons in whom a correlative right is vested. Conversely, every right must be a right against some person or persons upon whom a correlative duty is imposed.

Characteristics of legal rights

Every right involves a threefold relation in which the owner of it stands:

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

Ownerless rights are not recognised by English law. This is because, there would be nothing to prevent such a concept being used in legal reasoning. Ownership of a right may be merely contingent or uncertain. The owner of it may be a person indeterminate.

Elements of legal rights

³ S.R. Sarkal, *Nature and Sources of the Law*, SAGE publications, 2nd Edn. P. 147.

⁴ N.K Jayakumar, *Lectures on Jurisprudence*, lexis Nexis, P. 58.

⁵ *Ibid*, P. 180.

Salmond analysed right by splitting a legal right into the following five essential elements.

- i. **The owner or the subject of the rights:** A person in whom the right is vested may be called the owner or the subject of a right. He is the person entitled or the person of inherence. The owner of a right need not necessarily be certain or determinate. When the owner is an unborn person, the person entitled is uncertain. When the right is owned by society at large, the owner is indeterminate.
- ii. **The person of incidence:** he is the person bound by the duty and may be called the subject of duty. He is the person against whom the right avails.
- iii. **Content:** the act or forbearance, which the person in whom the right resides can exact, is called the content of the right. It is an act or omission, which is obligatory on the person of incidence to the person of inherence.
- iv. **The object:** Something to which the act or omission relates is the object of the right. The thing over which the right is exercised is the object. This may also be called the subject matter of the right. Holland points out the possibility of rights which have no object. Holland says that the object of the right should be some material thing. Salmond on the other hand observes that the term 'object' need not be narrowly defined. The object of a right is as essential an element in the idea of right as the subject of right itself.⁶
- v. **Title:** Title denotes certain facts or events by virtue of which the right has become vested in its owner.

An example is that, A buys a piece of land from B. here A is the subject or owner of the right so acquired. The persons bound are the public at large, for it is a right available against persons generally. The content of the right consists in non-interference with A's exclusive use of the land. The land itself is the object of the right. The title is the conveyance by which the land was acquired by A from B.

A subject in whom the right inheres and an object in respect of which it exists are the essential elements in the right. It is impossible to think of a right without an owner, though the owner may be uncertain or indeterminate. Similarly there cannot be any right without an object⁷.

Rights are classified on the basis of objects are as follows

- 1) **Rights over material things** Here the object is land, house, furniture, car, watch etc.

Rights in respect of one's own person: For example

⁶Friedmann W., Legal Theory (5th Edn.) p. 30.

⁷Ibid, P. 57.

- i. I have a right not to be killed. The object is my life.
 - ii. I have a right not to be physically injured or assaulted. The object is my body, health and integrity.
 - iii. I have a right not to be imprisoned. The object is my personal liberty.
- 2) **Rights of reputation:** The object is the good name of a person, which constitutes an asset as valuable as any material thing. A person has a right not to be libeled. Such a right has obtained legal recognition and protection
 - 3) **Rights in respect of domestic relation:** rights of companionship of husband and wife, parent's right to society, affection and the security of their children.
 - 4) **Rights in respect of other rights:** if A enters into an agreement with B to sell his land within one year, B acquires a right against A to have the land transferred to him within the stipulated time. B's present right is a right to have the ownership of land transferred to him at the stipulated time.
 - 5) **Rights over abstract property:** copyright, patent, goodwill etc.
 - 6) **Right to services:** right of a master over his servants.

Relation between Legal rights and legal liberty

Liberty or privilege denotes the absence of restraint.⁸ It is a legal freedom on the part of one person as against another to do given act or a legal freedom not to do a given act.

The view of Austin is that "liberty and right are synonymous. The liberty of acting according to one's will would be illusory if it were not protected from obstruction". When law affords such protection, it is in fact conferring a right and so liberty and right are synonymous.

Salmond writes: Rights are what others are to do for me; liberties are what I may do for myself." There is no suitable word to express the co-relative of liberty. As the co-relative of liberty would be the jural contradictory of right, Hohfeld has suggested that the word "no right" may be used as the co-relative of liberty.⁹

Right and Power

⁸ John D. Finch, Introduction to Legal Theory (2nd Edn.) P. 70.

⁹ J.B. Saral, Province of Jurisprudence Determined, Lexis Nexis, P. 114.

A power may be defined as the ability conferred upon a person to determine, by his own will directed to that end, the rights, duties and abilities or other legal relations either of himself or of other persons. The right of a person to make a will with regard to his properties, his right to alienate his property, the power of sale vested in a mortgagee, a landlord's right of re-entry upon his land, a right of action, the right to rescind a contract for fraud, the right of taking out execution in judgments, powers vested in judges and other officials for the due fulfilment of their functions are examples of power. The distinction between power and liberty consists in the fact the liberty is what one may do innocently without committing a wrong while power is what one may do effectively and validly.

Powers are divided into public and private. Public powers are those vested in a person as an agent of the state. The powers vested in judges or executive officers by law are public powers. Private powers are those possessed and exercised by individuals in their private transactions. Power may be either ability to determine the legal relations of other persons or to determine one's own legal relations.

Powers and immunity

Exemption from the power of another is immunity. The correlative of immunity is disability. A foreign sovereign enjoys immunity from legal proceedings in our courts. Immunity stands to power in much the same relation as liberty is to right. Liberty arises from the absence of a right in another and the absence of a duty in oneself. Immunity arises from the absence of a power in another and the absence of liability in oneself¹⁰.

Hohfeld brought out the distinction between the different kinds of rights by saying "A right is one's affirmative claim against another; a liberty or privilege is one's freedom from right or claim of another."¹¹ A power is one's affirmative control over a given legal relation as against another, whereas an immunity is one's freedom from that legal power over control of another as regards some legal relations.' Putting the distinction in a slightly different way, Salmond says: 'a right in the narrow sense is that which other persons ought to do in my behalf. A liberty is that which i may do innocently. A power is that which i can do effectively in respect of mine'.

Kinds of Legal Rights

➤ Perfect and Imperfect rights

Legal rights have been variously classified. According to Salmond, a perfect right is one which corresponds to a perfect duty. A perfect duty is one which is not merely recognised by law but also enforced by law. In all fully developed legal systems, there are rights and duties which, though recognised by law, are not of perfect nature. Those rights are called imperfect rights. Examples of

¹⁰V.D Mahajan, *Jurisprudence & legal theory*, Eastern Book Company(5th Edn.), P.69.

¹¹ Berolzhmeir, *Legal Philosophies*, P. 261.

imperfect rights are the claims barred by the lapse of time, claims which cannot be enforced on account of the absence of some special form of legal proof, claims against foreign States or sovereigns, claims which cannot be enforced as they do not lie within their local limits of the jurisdiction of the court, debts due to an executor from the estate which he administers. In these cases, the rights and duties are imperfect as no action lies for their maintenance. An imperfect right may be good as a ground of defence, though not good as a ground of action. An imperfect right may become perfect. The right of action may be dormant and not nonexistent¹².

➤ **Positive and Negative rights**

When a duty, which corresponds to a right, is a positive duty, that right is called a positive right. The person on whom the duty lies shall do some positive act on behalf of the person entitled. A negative right corresponds to a negative duty that a person bound shall refrain from some act, which would operate to the prejudice of the person entitled. Positive right is a right to be positively benefited; negative right is merely a right not to be harmed. In the case of a negative right, others are restrained from doing something. The satisfaction of the positive rights results in the betterment of the position of the owner. In case of negative rights, the position of the owner is merely maintained as it is.

The law is more concerned with prevention of harm than enforcement of positive benefit. Liability for harmful acts of commission is the general rule, but liability for acts of omission is the exemption.

➤ **Real and Personal rights**

A real right or right in rem is a right over a res or a thing. According to Salmond, a real right corresponds to a duty imposed upon persons in general. The right in personam or personal right corresponds to a duty imposed upon determinate individuals. It is said that a right in rem is available only against the whole world, while right in personam is available only against particular persons. It is an interest protected solely against determinate individuals. In a sense, a right in rem is a right to be left alone by other persons, that is, a right to their passive non-interference.¹³

➤ **Proprietary and personal rights**

The proprietary rights of a person include his estate, his assets and his property in many forms. Proprietary rights have some economic and monetary value. Proprietary rights are valuable and personal rights are not. Proprietary rights are elements of the wealth of a man. Personal rights are

¹²Ibid, p. 180.

¹³ Friedmann W., Legal Theory (5th Edn.) P. 276.

merely elements of his well-being. Proprietary rights merely not merely possess judicial but also economic importance. Personal rights possess merely judicial importance¹⁴.

➤ **Inheritable and Uninhabitable rights**

A right is inheritable if it survives its owners. It is uninhabitable if it dies with him. Proprietary rights are inheritable but personal rights are uninhabitable. The heirs of a proprietary owner become owners after his death. In the case of personal rights, they die with the owner and cannot be inherited.

➤ **Jus Ad Rem Or a Right to a right**

Jus ad rem is a right to a right. It is a right in personam. Eg, a contract to assign property in future, a promise of marriage etc. Here, two rights are involved. The right, which is to be transferred, may be either a right in rem or a right in personam, but the other right, that is a right to a right will always be a right in personam only¹⁵.

➤ **Rights in Re Propria and rights In re Aliena**

A right in re aliena, which is also called an encumbrance, is one which limits or derogates from some more general rights belonging to some other person in respect of the same subject matter. All other rights are rights in re propria. The owner of a chattel has jus in re propria or a right over his own property. The pledge has jus in re aliena or a right over the property of someone else. Rights in re propria are rights in one's own property. Rights in re aliena are rights over the property of another person.

There are four main classes of encumbrances, leases, servitudes, securities and trusts. A lease is the encumbrance of property vested in one man by a right to the possession and use of it vested in another. A servitude is a right to the limited use of a piece of land unaccompanied either by the ownership or by possession of it. A security is an encumbrance vested in a creditor over the property of his debtor for the purpose of securing the recovery of the debt. 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 called the beneficiary.

➤ **Principal and accessory rights**

Principal rights exist independently of other rights. Accessory rights are appurtenant to other rights and they have a beneficial effect on principal rights. A security is accessory to the right secured.

¹⁴ Dr Avtar Singh, Dr Harpreet Kaur, *introduction to jurisprudence*, lexis nexis Butterworths Wadhwa (3rd Edn.) P. 69.

¹⁵ Supra n.2

Servitude is accessory to the ownership of the land for whose benefit it exists. The rent and covenant of a lease are accessory to the ownership of the property by the landlord. Covenants for title in a conveyance are accessory to the estate conveyed. A right of action is accessory to the right for whose enforcement it is provided.

➤ Legal and Equitable rights

Legal rights are those recognised by common law courts and equitable rights are those rights recognised only in the Court of Chancery. Principles of equity evolved in English law in order to mitigate the rigor of ordinary law. In spite of the fusion of law and equity by the Judicature Act 1873, the historical distinction still survives and is relevant in some situations. When two legal rights are found inconsistent, the first in time generally prevails. When a legal right and an equitable right are in conflict, the legal right will prevail over the equitable right, even though subsequent in origin, provided that the owner of the legal right acquired it for value and without notice of prior equity.¹⁶

➤ Vested And Contingent Rights

A vested right is a right in respect of which all events necessary to vest it completely in the owner have happened. No other condition remains to be satisfied. In the case of a contingent right, only some of the events necessary to vest the right in the contingent owner have happened. According to Paton " When all the investitive facts which are necessary to create the rights have occurred, the right is vested; when part of the investitive facts have occurred, the rights are contingent until the happening of all facts on which the title depends.

➤ Primary And Secondary Rights

Primary rights are also called antecedent, sanctioned or enjoyment rights. Secondary rights are called sanctioning, restitutory or remedial rights. Examples of primary rights are the right of reputation, the right in respect of one's own person, the right of the owner of a guardian etc. Secondary rights are a part of the machinery provided by the state for the redress of injury done to primary rights.

CONCLUSION

With duties we may contrast obligations. Moreover a duty consists in positive acts, not in mere abstaining from acting: a duty not to do something, except in so far as this is a manner of describing a duty to do something else, a duty not to reveal something in a negative way of describing a positive duty to keep it secret, is a duty of a rare and unusual sort¹⁷.

Duties like wrongs are of two kinds, being either moral or legal. These two classes are partly coincident and partly distinct. When the law recognizes an act as duty, it commonly enforces the

¹⁶J.K. Paton, *The Elementary Principles of Jurisprudence*, P. 48.

¹⁷ P J Fitzgerald, '*salmond on jurisprudence*', universal publication(12th ed.)

performance of it, or punishes the disregard of it. A duty is legal because it is legally recognized, not necessarily duties of imperfect obligation.

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