

RIGHTS AND DUTIES

FANCIES, FICTION AND REALITY

- The term 'Right' is a legal articulation for implementation/realisation of the ends in the hands of administration.
- For the public, it sounds like a source of unending expectations to be converted into enjoyable fruits, primarily by the State administration.
- Thus right is a fancy for people, viewed as fiction in case of failure and a clash of interests and views ensue in reality.

GOVERNANCE AND ITS PREDICAMENT

- Governance relies upon Administration – Administration to educate the public with regard to their rights and duties .
- Role of Administrator is pivotal, sensitive and risky too – So an administrator has to educate himself before embarking upon the given task.
- Least or no credit to the administration on success but vehement condemnation on sterile results. On many an occasion, ours is a thankless job.
- Public opinion often turns out to be ‘unruly horse’ – not fair but fair – Hence the need to know the rudiments of ‘Right’ and ‘Duty’.

CONCEPTUAL ANALYSIS – EXPRESSIONS AND EXPERIENCES.

- Law is incapable of any precise definition – So also the basic tenets of law like Rights and Duties – Legal Literature on Rights and Duties does not contain articulated definitions – Their meanings are nothing but expressions and experiences. Right and Duty are the two sides of the same coin.
- In generic sense, Right denotes ‘a standard of permitted action within a given sphere by law’.

Continued

- Legal Right
- Recognised & protected by law – respect for it is legal duty and violation of it is legal wrong – legal sanction for violation.
- Moral Right

Recognised and protected by rule of natural justice – respect for it is moral duty and violation of it is moral wrong – Sanctions in the form of social rebuke and social disapprobation.

MIGHT AND MORAL RIGHT-

Prof.Holland

- MIGHT – Carrying out one’s own wishes according to his own actions or by influencing the actions of others.
- **MORAL RIGHT – carrying out the wishes with public opinion or acquiescence, despite disapproval/resistence.**
- **Prof. Allen says “Rights spring from right”**

SPECIFIC CONTOURS OF RIGHT

- **AUSTIN** – Faculty residing in a determinate party by virtue of a given law, and which avails against a party other than the one in whom it resides.
- **HOLLAND** – Capacity residing in a person to control the actions of others with the assent and assistance of State.
- **SALMOND** – An interest recognized and protected by a rule of law, respect for which is a duty, disregard of which is wrong – Ihering’s interest theory of right is followed – Judicial enforceability is essential feature of the definition.
- **DUGUIT** – No one has any other right than always to do his duty.
- **KELSEN** – There is no such conception as “Right” in Law.

JUDICIAL VIEW OF RIGHT

- Supreme Court of India in STATE OF RAJASTHAN vs. U.O.I. (AIR 1977 SC -1361)
- “In strict sense, legal rights are correlatives of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in generic sense, the word right is used to mean ‘an immunity from the legal power of another (exemption) as liberty is exemption from the right of another.’”

THEORIES OF RIGHT

- **THE 'WILL' THEORY: - Purpose of law is to grant the individual the means of self-assertion or self-expression.**
- **Right emerges from the human Will – State cannot interfere in certain spheres of individual life.**
- **Locke referred - 'inalienable rights'.**

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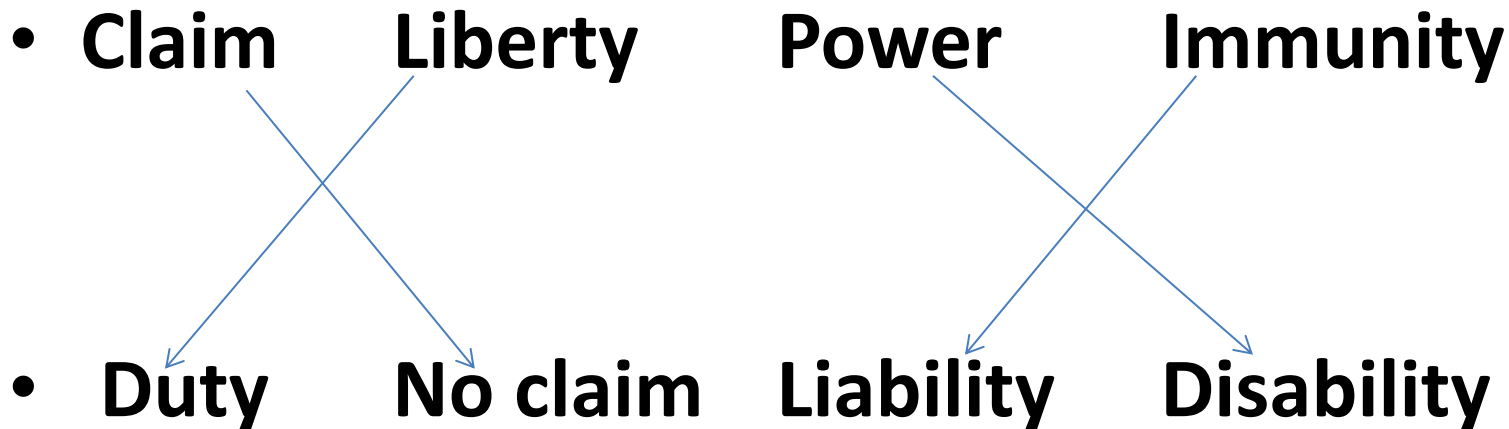
- **THE INTEREST THEORY (as propounded by German jurist Ihering): -**
- **Law has a purpose to protect certain interests and not the Wills or the assertions of individuals.**
- **These interests are not created by the State, but they exist in the life of the community itself – the State only chooses out of them such interests as it will protect.**
- **Salmond supports this theory – ‘Interest’, not the Will is the basic element of right.**
- **There may be persons without having any ‘will’, for ex. Infants, lunatics, corporations. They do not have Wills but do have interests – law protects their ‘interests’ only.**

ELEMENTS OF LEGAL RIGHT

- **SUBJECT** – No right without a subject – Person of Inherence - subject of right may be determinate or indeterminate.
- **PERSON OF INCIDENCE** – person upon whom falls the correlative duty, or against whom the right is exercised.
- **CONTENT OF RIGHT** – it obliges a person to act or forbear in favour of the person entitled to it.
- **OBJECT OF THE RIGHT** – object may be material or non-material - things in respect of which the right exists or exercised.
- Salmond adds “Title” as the fifth element.

JURAL ANALYSIS

- Jural analysis of Salmond – developed by Hohfeld – criticized by Kocourek.



- **CLAIM-** what one can force another to do or refrain from doing – a corresponding duty exists mostly.
- **DUTY-** Is a corresponding obligation upon a person to be displayed towards a person who is entitled to a right
- **LIBERTY/ PRIVILEGE** -What one can do for himself without being prevented by law i.e. free of the possibility of legal interference – one can exercise his liberty without affecting others.
- – unlawful acts generally permitted for a distinct class or limited persons under certain special circumstances. – Two types Absolute and Qualified

- **POWER** – ability of a person to produce a change in a given relation by doing or not doing an act – power to determine legal relations of others is Authority. Power to determine one’s own legal relations is Capacity.
- **LIABILITY** – Salmond used “Subjection” – may be considered as disadvantage – Hohfeld says it includes even chance of advantage - to make a will where children will be beneficiary. (Liability need not be understood in negative sense, it may include positive sense)
- **IMMUNITY** - “an exemption from having a given relation changed by another”
- **DISABILITY** – means the absence of power.

CLASSIFICATION OF RIGHTS

1. Antecedent/Primary/Principal/Substantive and Remedial/Secondary/Accessory/Adjective.
2. Perfect Rights and Imperfect Rights.
3. Positive Rights and Negative Rights.
4. Rights in Rem and Rights in Personam
5. Proprietary Rights and Personal Rights.
6. Rights in re propria and Rights in re aliena.
7. Vested Rights and Contingent Rights.
8. Legal Rights and Equitable Rights.

CLASSIFICATION OF DUTIES

POSITIVE

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PRIMARY

NEGATIVE

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SECONDARY