

Chapter: Legal Rights**1) What is Legal Right?**

The concept of legal rights of fundamental significance in modern legal theory, because we cannot live without rights, which are recognized and enforced by law. Different jurists have attempted to define legal rights some of them are as follows.

2) Meaning and definition of legal right -

Many definitions of legal rights have been given by various writers some of them are as follows
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(a) Holland - According to Holland, "A right is a capacity residing in one man of controlling, with the assent and the assistance of the state, the action of others. Every right gets its validity by State.

(b) Salmond - According to Sir John Salmond, "Legal right" as "an interest recognized and protected by the rule of legal justice"

(c) Pollock - According to Pollock "Right is freedom allowed and power conferred by law"

(d) Austin - According to Austin "A person can be said to have a right only when another or others are bound by law"

(c) Allen - According to Allen, " Right is a legally guaranteed power to realize an interested"

(d) Buckland - According to Buckland "A legal Right is an interest or an expectation guaranteed by law."

(e) Ihering - According to Ihering, "A legal right is a legally protected interest"

Essential elements of Legal Right

According to Salmond, every legal right has five Essential elements which are as follows-

i) The person of inheritance/subject of the right

The first essential element of the legal right is that there must be a person who is the owner of the Right. He is the subject of the legal right. He is sometimes described as the person of inheritance.

Example - X purchased a car for 1 million dollars. here 'X' is called subject of right.

The owner of a right need not be a determinant or fixed person. If an individual owes a duty towards Society at large, and indeterminate body is the subject of inheritance. In the case of the bequest to an Unborn person, the owner of the right is an Unborn child who is an uncertain person

ii) The person of incidence / Subject of the Duty -

A legal right occurs against another person or persons who are under a corresponding duty to respect that right. Such a person is called the person of incidence or the subject of the duty.

Example- If X has a particular right against Y, X is the person of inheritance and Y the subject of incidence.

iii) Subject matter or Contents of legal rights-

Another essential element of a legal right is its content or substance. Contents of the legal right deals with the subject matter of the legal rights. It relates to some act to do or not to do any act or forbearance. It obliges a person to act or forbear in favor of the person who is entitled to the rights.

iv) Object of the legal rights-

Another essential element of the legal right is the object of the right. The thing or an object over which the right is exercised is called 'Object of Right'. In above example Car is the object of right.

v) Title to right

Title is nothing but the name given to the legal right. Title is a process, by which the right is vested/conferred. Purchase, gift, etc confers title on person

Classification of legal rights-

1) Right in Rem and Right in Persona -

'Rem' means world and 'Persona' means persons. The Right in Rem is the right available against the whole world while right in Persona is the right against a particular person. Right in Persona generally arises out of contractual obligations for example - breach of contract. Whereas right in rem is generally outcome of law.

For example - Tort, Crime.

Right in Persona is generally transitory in nature, which can be transferred in right in rem. Right in rem is a final thing, whereas right in Persona is transitory in nature.

2) Personal and Proprietary Right -

Personal right is in respect of person of owner of right whereas Proprietary right is in respect of property of which the person is an owner. Proprietary Rights are those, which constitute a man's property or wealth. These are the rights, which possess some economic or monetary value and constitute the estate of the Person. Right to land, debts and Goodwill or patent rights are all Proprietary right.

Personal right includes right to safety, to reputation Personal rights are also important like Proprietary right. For example - right to reputation. Personal Rights is having no economic value. They relate to Person's well-being or status.

3) Positive and Negative Rights -

Positive rights have corresponding Positive duty. Positive right therefore the right when some positive act is required to be done by the person who has the corresponding duty. Thus the person on whom such duty lies must do some positive act.

While on the other hand negative rights are those rights when some negative act by way of omission is required. Negative rights correspond to negative duty, and the person on whom such negative duty lies shall omit (not to do) such act.

4) Principal and Accessory rights -

The principal right is a basic or main right vested in Persona under law. They are Vital and important Rights. While accessory right is incidental or consequential right. They are not essential but are apparent to the more basic general right.

5) Perfect and Imperfect Rights -

Perfect right corresponds with perfect duty. Perfect rights are recognized and also enforced by law and an action can be taken against the wrongdoer by filing a suit in Court of Law for the breach of it.

While Imperfect right corresponds with Imperfect duty, which are not recognized by law and hence cannot be enforced by law.

For example 'A' advanced loan to 'B'. 'B' is bound to repay that Loan. 'A' has perfect right to recover loan from 'B' and 'B' has perfect duty to pay the amount of loan to 'A'.

If 'B' failed, then 'A' can file Suit against him in court of law for recovery of loan. But if it is time-barred loan, for example no suit filed within the limitation period (within 3 years) and 'A' was sleeping over his right for a pretty long time. 'A' can claim for the same as it becomes imperfect right which cannot be enforced by law.

6) Right in Re-proporia and Right in Re-aliena -

Right in Re-proporia is a right in respect of one's own property. Right in Re-proporia contemplates absolute ownership. Thus it is the outcome of jurisprudence aspect of ownership.

Whereas right in Re-aliena, is the right in respect of property of another person. Right in Re-aliena is the outcome of jurisprudence aspect of dominant heritage and servient heritage. For example - right of easement.

7) Vested and Contingent Right -

Vested and Contingent rights are depending on the relationship as to owner of right and right itself. Vested right means which is already vested in person, the person already has such right through it depends upon the happening of certain events, that event is going to happen. (See also... Vested interest)

Whereas is in Contingent interest the right is dependent upon happening or non-happening of certain events which may or may not happen.

8) Legal and Equitable Right -

Legal rights are the rights given by common law Courts of England. Common law was based on statute by way of custom, usage. Equitable rights are the outcome of law of equity given by the court of chancellor, or equity Court based on principle of natural justice and conscience of Lord Chancellor.

By Judicature Act 1873, 1875 both systems are unified, but as per J. Snell 'Both the systems flow in one stream but their water does not mix.'

After the unification of the both these systems English law came into existence. But still there are certain principles and rights, which are classified as equitable right and legal right.

9) Corporeal and Incorporeal Right -

Here a fine distinction is made of the subject matter of the right. Corporeal rights are having physical existence. For example - I owned a book, the book has physical existence, so my right in respect of the book is Corporeal in nature.

Whereas incorporeal rights are those right in respect of such subject matter having no physical existence.

Example - copyright of the book or trademark. Both Corporeal Incorporeal rights are legally protected rights.

10) Primary and Sanctioning Right -

Primary right is basic right. It is independent Right. These are the right ipso facto. for example - right in rem; right to reputation, Right to satisfy is the primary right. If right of reputation is violated then there is legal remedy. in Tort or in Crime. There is force behind it. Sanctioning rights are the consequential rights. They are not right ipso facto. They are right in Persona, which originates from some wrong.

Example - from violation of another right. Thus Sanctioning Right is supporting right to primary right.

11) Public and Private Rights –

Legal Rights can also be classified into Public Rights and Private Rights. Public Rights are those Vested in by State.

Example - Right to use High-way, right to vote etc. A private Right is one which is exercised by an individual to protect his benefit.