



“बेटी बचाओ, बेटी पढ़ाओ”

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Faculty Name	: JV'n Tanushi Sahni (Assistant Professor)
Program	: LLB – I Semester / I Year
Course Name	: JURISPRUDENCE
Session No. & Name	" 1.3 Introduction of Rights and Duties

Academic Day starts with –

- Greeting with saying ‘**Namaste**’ by joining Hands together following by 2-3 Minutes Happy session, Celebrating birthday of any student of respective class and **National Anthem**.

Lecture Starts with-

- Topic to be discussed today- Today We will discuss about Introduction of Rights and Duties
- Lesson deliverance (ICT, Diagrams & Live Example)-
 - PPT (10 Slides)
 - Diagrams

INTRODUCTION OF RIGHTS AND DUTIES

THEORIES OF LEGAL RIGHTS – WILL AND INTEREST THEORY

Will Theory (Austin, Holland, Pollock)

Also known as the ‘choice theory’

According to this theory your having a right to something means that you have control over others’ free will in regard to it; otherwise, they can do as they please. Someone violates your right by acting contrary to your will in regard to your right’s object.

Austin says that “A party has a right when another or others are bound or obliged by the law to do or forbear towards or in respect of him”

Holland defines right as “A Capacity residing in a person to control the action of others”

Pollock defines right as “Freedom allowed and power conferred by law”

Interest Theory (Ihering, Salmond, Buckland, Allen)

Your having a right to something means that it is in your interest, or is to your benefit, and someone else has a duty to provide it. Someone violates your right by not doing his or her duty to provide the thing that is in your interest.

Buckland defines right as “an interest or expectation guaranteed by law”

Allen defines right as “a legally guaranteed power to realize an interest”

Ihering says “Right is a legally protected Interest”

Salmond as Ihering also defines right as “an interest recognised and protected by law” but he differentiates his definition from the one Ihering gave in the sense that according to Salmond the interest here could only be a human’s interest or societies interest.

Like laws preventing someone from killing animals, Here the animal has an interest here but he doesn’t have a right, here the law is protecting the interest of

not the animal but the owner or the society in general. So the Interest protected by a right is always human interest.

Important Definitions by other Jurists

Kant defines right as “Authority to compel”

According to **Laski**, “Rights are those conditions of social life without which no man can seek in general, to be himself at his best.”

T. H. Green explained that “Rights are powers necessary for the fulfilment of man’s vocation as a moral being.”

Beni Prasad stated that “Rights are nothing more nor less than those social conditions which are necessary or favourable to the development of personality”

Holmes defines right as “a permission to exercise certain natural power and upon certain conditions to obtain protection, restitution or compensation with the aid of public force.”

Duguit totally rejects the idea of right, he says that man is a social animal and has many social relationships, these relationships are always duties and never rights and that is why law contains only duties without any corresponding rights and “the only right a person has is to always do his duty”

So Duguit focuses on duty and denies the existence of right, lets see what the jurists have to say about duties.

DUTIES

Duties are an essential part of Rights, Early Greek Philosophers and ancient Hindu philosophers talked in term of duty and not right. Dharma was the duty of every person.

In 1976 Part IV-A has been added by the constitutional (forty second amendment) Act which inserts Article 51A which provides for Fundamental Duties.

Salmond defines duty as “*An obligatory act, that is to say, it is an act opposite of which would be a wrong. The commission of a wrong is the breach of duty and the performance of duty is avoidance of wrong*”.

Salmond says that there can be no right without a corresponding duty and no duty without a corresponding right, the same way there cannot be a husband without a wife and vice versa.

Duties and rights are said to be co relative, which means that there cannot be a duty unless there is someone to whom it is due, similarly there cannot be a right unless there is someone from whom it is claimed and there cannot be a wrong unless there is someone who is wronged

Austin disagrees with this notion; he divides duties into **relative duties** and **absolute duties**.

Relative duties have a corresponding right

Absolute duties don't have a corresponding right to it.

Examples of absolute duties are Self regarding duties (duty not to commit suicide), duty to indeterminate person or to the public (duty not to commit a nuisance), Duties to not a human (duty towards god, sovereign or animals)

Hibbert differentiates between “divine right”, “moral right” and “legal right” with his definition i.e. “A right is one person’s capacity of obliging others to do or forbear by means not of his own strength but by the strength of a third party. If such third party is God, the right is divine. If such third party is the public generally acting through opinion, the right is moral. If such third party is the State acting directly or indirectly, the right is legal.”

- **University Library Reference-**
Text Book on Jurisprudence and Legal Theory –V D Mahajan
- **Suggestions to secure good marks to answer in exam-**
Understand the Concept of Rights and Duties

Explain answer with key point answers

Right means an exercise on us , but duty is an obligation

- **Questions to check understanding level of students-**

What is the difference between rights and duties?

- **Small Discussion About Next Topic-**

Types of Rights and Duties

- **Academic Day ends with-**

National song' Vande Mataram'