THEORIES OF LEGAL RIGHT

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In connection with the definition of rights, there are, however, three theories which need a consideration.

1. **Firstly, a right is legal because it is protected or at least recognized by a legal system.**
2. **Secondly, the holder of a right exercises his will in a certain way, and**
3. **Finally, that the will is directed to the satisfaction of certain interest.**

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1. Protection Theory of Rights
2. Will Theory of Rights
3. Interest Theory of Rights

1. Protection Theory of Rights

According to SALMOND

"A legal right is the terms of recognition and protection by the legal order, or by the rule of right. It is an interest, the violation of which would be a wrong and respect for which is a duty."

This definition involve here two points-

- Firstly, that right is an interest,
- Secondly, that it is protected by a rule of law.

2. Will Theory of Rights - Will as the Basis of Right

This theory says that the purpose of law is to grant the individual the means of self-expression or self-assertion. Therefore, right emerges form the human will.

- The definitions of right given by AUSTIN and HOLLAND lay down that the "will" is the main element of a right.
- A strong support to the theory has been given by the doctrines of natural rights.

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- According to AUSTIN, right of a person means that others are obliged to do or forebear from doing something in relation to him. AUSTINIAN conception of right is obviously based on sovereign power of the state. Likewise, AUSTIN defines duty of an obligation the breach of which is punishable because of the penal sanction attached with it.

- Justice HOLLAND - Legal right is nothing but a permission to exercise certain natural powers to obtain protection under certain conditions. It has the support of public force for its protection, substitution or redress by compensation.

- POLLOCK and VINOGRADOFF also define rights in terms of "will".

- LOCKE believed in "inalienable" rights. He declared that in certain spheres of individual life the state could not interfere. According to him, the basis of the right was the will of the individual.

Will Theory Criticism-

- IHERING as in Interest Theory
- DUGUIT is vehemently opposed to the "will" theory. According to him the basis of law is the objective fact of "social solidarity" and not the subjective will. The law is to protect only those acts or rights which further "social solidarity". The idea of will is anti-social.
- The "will" theory has been criticized on other grounds also. Those who greatly emphasize the element of will confuse the fact with abstract ideas, that is, they do not make the distinction between "what is" and "what ought to be".
- PATON says that "will is an essential element in the general conception of legal right, but it is not the only element".

3.Interest Theory of Rights

- Propounded by the German jurist **IHERING.** *("spirit of Roman law")*

- IHERING defined rights as 'legally protected interest' and does' not emphasize on the element of will in a legal right. He asserts that the basis of legal right is "interest" and "not will". The main object of law is protection of human interests and to avert conflict between their individual interest. 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 has criticizes IHERING's theory on the ground that it is incomplete since it completely overlooks the element of recognition by the state.

- Prof. GRAY - The interest theory was only partly true. A legal right is not an interest in itself but it is only a means to extend protection to interests.
- According to BUCKLAND, a legal right is "an interest or an expectation granted by law".
- PATON defines a legal right in terms of recognition and protection by the legal order.

Arguments in favour of Interest Theory

- The main argument given in support of the "interest" theory that the "interest“ and not the "will" is the basic element of right is that there are cases where a person may have rights without having any "will".
- (*as Infants, lunatic and corporations*. This argument is not very sound, because in all these cases a will is operative, that is *of the guardian of the infant, or the lunatic, or of the members of the corporation,)*

- Prof. PATON has pointed out, "in truth it is an exaggeration to set interest" and "will" to much in opposition to each other.

- ALLEN -*“The absence of legal right seems to me to be not logically guaranteed power by itself, not legally protected interest by itself, but the legally guaranteed power to realize an interest“.*

Criticism of Interest Theory

- Prof, **K.N. Lewellyn-** No value to be gained from the interests - rights and rules - remedies set up except to bring out to underscore that law is not all, rior even the major part of society.

- **Lundstedt** (Member of the Scandinavian school) - A right is simply the favorable position enjoyed by a person in consequence of the functioning of the legal machinery.

- **Rosco Pound-** The expression "right" which is a juristic concept as distinguished from legal concept, is the most ambiguous word in the legal as well as in the juristic literature. Since as a noun it has been used in various sense, right, therefore, becomes a complex of rights, interests and values.