

CONCEPT OF LEGAL RIGHTS AND DUTIES

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.

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".

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.

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.

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.'

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.

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