Legal Rights : Concept & Analysis

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Administration of Justice, which is essential for the society, means maintenance of rights, suppression or redress of wrongs and thereby upholding justice by means of the coercive power of the state and the primary duty of the state is to administer justice. So the terms "wrong" and "duty" are closely connected with rights and it is absolutely necessary to refer to them before discussing the important subject of legal rights.

Wrong : Prof. Salmond says, "A wrong is simply a wrong act-an act contrary to the rule of right and justice. A synonym of it is injury, in its true and primary sense of injuria (that which is contrary to justice), though by a modern perversion of meaning, this term has acquired the secondary sense of harm or damage (damnum) whether rightful or wrongful, and whether inflicted by human agency or not."

Duty : Prof. Salmond says, "A duty is an obligatory act, that is to say, it is an act, opposite of which would be a wrong. Duties & wrongs are correlatives. The commission of a wrong is the breach of a duty and the performance of a duty is the avoidance of a wrong."

Wrongs as well as duties are of two kinds-Legal & Moral. A legal duty is an act, the opposite of which is a legal wrong. It is an act recognized as a duty by law & treated as such for administration of justice. A moral or natural duty is an act, the opposite of which is a moral or natural wrong.

Definition of Legal Rights :

1) Gray-"A legal right is that power which a man has to make a person or persons do or refrain from doing a certain act or certain acts, so far as the power arises from society imposing a legal duty upon a person or persons." ii) Salmond- "right is an interest recognized & protected by a rule of right, respect for which is a duty & the disregard of which is a wrong." iii) Pollok- "Right is freedom allowed and power conferred by law." iv) But austin said- "Liberty is illusory if it is not protected by law and if law protects it, it amounts to a right."

A legal right must obtain not merely legal protection, but also legal recognition. The interests of beasts are to some extent protected by law in as much as cruelty to animals is a criminal offence. But beasts are not for that reason possessor of legal rights. He who ill-treats a child violates a duty which he owes to the child & a right which is invested in him. But he who ill-treats a dog breaks no vinculum juris between him & it, though he disregards the obligtions of humane conduct which he owes to the society or the state & the co-relative right which society or state possesses.

Essentials of Legal Rights :

i) The owner of a legal right is a person in whom such right vests. (The person of inherence).
ii) A legal right accrues against another person or persons who are under a corresponding duty to respect that right.

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iii) Another essential is its content or substance. It may be an act. It obliges the person bound to act or omit in favour of person having such right.
iv) Such right relates to something over which it is exercised.
v) Every legal right has a title. Facts must show how the right vested in the owner of the right. That may be by purchase, gift, inheritance, assignment, prescription.
Example- A man buys a house from another -
Buyer - person of inheritance (owner of right)
Seller - person of incidence
House - subject matter of the right
Peaceful possession & enjoyment of house by the - content of right
The fact of the sale of the house - title to the right.

Enforcement of Legal Rights:
Legal rights can be enforced in the following manner:
1. By awarding damages in civil cases.
2. By restitution of the thing itself when damages are not adequate.
4. Sometimes by imposing penalty in certain cases.
5. By means of an injunction.

Extinction of Legal Rights:
1. If the other party performs its duty.
2. If the same is paid by the debtor in case of payment of debt.
3. If it is waived by agreement of the parties.
4. When it becomes impossible to be performed.
5. Legal right to personal service is extinguished if promisor dies.
6. By the operation of law.
7. If the legal right becomes time-barred.

Kinds of Legal Rights:
1. Perfect & Imperfect rights: - A perfect right corresponds to a perfect duty. A perfect duty is not only recognized by law but also enforced by law. Imperfect rights are those rights which, though recognized by law, are not of perfect nature. E.g. time-barred claims.
2. Positive & Negative Rights: - According to Salmond, a positive right corresponds to a positive duty and entitles its owner to have something done for him without the performance of which is enjoyment of the right is imperfect and incomplete. Negative rights have negative duties corresponding to them and enjoyment is complete unless interference takes place.
3. Real & Personal Rights: - A real right corresponds to a duty imposed upon persons in general. A personal right corresponds to a duty imposed upon determinate individuals. A real right is available against the whole world whereas a personal right is available against a particular person. Right to possession is a real right whereas right to receive money from debtor is a personal right.
4. Rights in rem & Rights in personam: - These terms are derived from Roman terms-Actio / Jus in rem & Actio / Jus in personam. Jus in rem means a right against or in respect of a thing. Jus in personam means a right against or in respect of a person. A right in rem is available against the whole world but a right in personam is available against a particular individual only.
5. Proprietary & Personal rights: - Proprietary rights include estate, assets, property in many forms. It has some economic or monetary value—e.g., right to debt, goodwill, patent etc. Personal rights are merely elements in his well-being. Proprietary rights possess judicial as well as economic importance whereas personal rights possess merely judicial importance.

6. Inheritable & Uninheritable Rights: - A right is inheritable if it survives its owners. It is uninheritable if it dies with him. Proprietary rights are inheritable but personal rights are uninheritable.

7. Rights in re propria & Rights in re aliena: - Right in re propria is a right over own property whereas right in re aliena is a right over the property of someone else—e.g. owner of chattel has just in re propria but pledgee has just in re aliena.

8. Principal & accessory Rights: - Principal rights exist in dependently of other rights. Accessory rights are appurtenant to other rights and they have a beneficial effect on principal rights. A security is accessory to the right secured.

9. Legal & Equitable Rights: - Legal rights are recognized by common law courts & equitable rights are recognized by the Court of Chancery.

10. Primary & secondary Rights/Antecedent & Remedial Rights: - Primary rights are independent of a wrong having been committed. They exist for their own sake. They are antecedent to wrongful act or omission—e.g. right of reputation, right in respect of ones own person etc. Secondary rights are a part of machinery provided by the state for redress of injury done to primary rights.

11. Public & Private Rights: - A public right is possessed by every member of public whereas a private right is concerned only with individual - both parties are privates.

12. Vested & contingent rights: - A right is vested when all events necessary to vest it completely in the owner have happened. No more condition remains to be satisfied. On the other hand, a right is contingent when some condition remains to be satisfied.

13. Servient & Doinant Rights: - A servient right is one which is subject to an encumbrance. The encumbrance which derogates from it may be contrasted as dominant.

14. Municipal & International Rights: - Municipal rights are conferred by national law whereas international rights are conferred by International law.

15. Rights at Rest & Rights at Motion (Holland): - When a right is stated with reference to its "orbit" & its infringement, it is a right at rest. Causes by which rights are either connected or disconnected with persons are discussed under rights in motion.

16. Ordinary & Fundamental Rights: - Ordinary rights are provided by ordinary law of the land whereas fundamental rights are provided and guaranteed by the constitution.

17. Jus ad Rem: - It is a right to a right. When D sells a house to B then B has right to have the house. B's right is jus ad rem. It is always a right in personam.

Conclusion:
Legal right is a complicated juristic concept which has been simply discussed. Actually the rights, which have been given legal recognition and protection by the law of the land, are legal rights, so the legal rights may be different from country to country. One right may be legal right in Bangladesh but the same may not be legal right in India. The important side of legal rights is that these are enforceable by law.