

LEGAL RIGHT/DUTY/ASR

Law is a bundle of rights and duties.

Law creates rights and duties.

Right= Entitlement/ claim

Duty= Obligation

EVERY LEGAL RIGHT HAS THE FOLLOWING 5 CHARACTERISTICS:

(1) There must be a person of inherence The person of inherence is the *owner of the right* or the person entitled to the rights. A legal rights is always vested in a person and such a person is called the person of inherence.

There must be a person of incidence:

(2) A legal right operates against some person who is under a duty to *obey or respect that right*. The person who has to obey or the person who has to respect the right is called the *person of incidence or the 'subject of the duty'*.

- ***DUTY BEARER**

- *Example:*

- A creditor who has a right to receive money from the debtor is the right holder or the person of incidence, whereas the debtor who has a duty to pay the debt is the person of incidence.

CONTENT

(3) There must be an obligation to do or not to do something: The *content of a legal right may be an act or an omission in favour of the person entitled.*

A legal right may therefore imply the doing or not doing of something on part of the person bound.

**Do sth or refrain others from doing sth with respect to the object*

Examples:

(1) *Right not to allow trespassing over one's land*

(2) *Right to receive goods under a contract.*

(4) There must be an object of the right: The right (act or omission) must relate to some 'thing'. The word 'thing' is used in a wide sense and includes:

(a) Tangible thing E.g.: Right to property

(b) Intangible things E.g.: Right to reputation, right to good will etc.

(5) Every legal right has a title: Title signifies the source of the legal right i.e. it signifies how the owner of the right became the owner of the right.

Following are the modes by which a person acquires title to a right: (1) Citizenship (E.g. Fundamental Rights), (2) Purchase, (3) Inheritance, (4) Gift etc.,

R2V=Stat R(A326)Right to be registered as a voter

CONSOLIDATED EXAMPLE

We now take a consolidated example to understand the above mentioned five characteristics of a legal right.

Example: Suppose A buys a house from B, now

- Person of **inherence** is the buyer (i.e. Mr. A)
- Person of **incidence** is the seller (i.e. Mr. B) and all other persons. **(Right in rem)**
- The **content** of right will be that nobody must disturb the peaceful enjoyment of the house.
- The **object** of the right is the house.
- The **title** is got by purchase.

Duty

- **Rights and duties are correlatives.(CORRESPONDING)**
- A duty is an obligatory act, that it to say, it is an act opposite of which would be a wrong. **Duties and wrongs are correlatives.** The commission of a wrong is that breach of a duty and the performance of a duty is the avoidance of wrong.
- A legal duty is an act the opposite of which is a legal wrong. It is an act recognized as a duty by law and treated as such for the administration of justice.
- Duties may be ***positive or negative***. When the law obliges us to do an act, the duty is called positive. When the law obliges us to forbear from doing an act, the duty is negative.

Correlatives

- You have a right to marry but no one has a duty to marry you.
- You have a right to sell but no one has a duty to buy
- You have a right to enter into a contract but no one has a duty to enter into a contract with you.
- Of course, others have a duty not to prevent you from marrying, selling or entering into a contract

Right & Duty

- Right (static –no legal action can be taken-but if there is infringement –dynamic/legal action/injustice/law is broken)
- However, here **right means entitlement / claim**
- **Duty means an obligation or a responsibility**
- Right-> infringement of a right->wrong->liability->remedy
- Duty->breach of duty->wrong->liability->remedy
- Wrongdoer incurs liability/Victim entitled remedy.

- **PRIMARY AND SECONDARY DUTIES:** Primary duties are those which *exist per se and independently* of any other duty. An example of a primary duty is to forbear from causing personal injury to another. A secondary duty is that which has *no independent existence but exists only for the enforcement of other duties.* An example of a secondary duty is the duty to pay a man damages for the injury already done to his person. It is also called a remedial duty.
- **ABSOLUTE AND RELATIVE DUTIES:** Absolute duties are owed only to the State. *The breach of an absolute duty is generally a crime and the remedy is the punishment* of the offender and not the payment of any compensation to the injured party. **Relative duties are owed to a person** other than the one imposing them. The breach of a relative duty is called a civil injury and its remedy is compensation .

Kinds of Legal Rights

Positive and Negative Rights:

- A positive right corresponds to a positive duty and is a right that he on whom the duty lies shall do some positive act on behalf of the person entitled.
- **Scope of a positive right is to receive a positive benefit.**
- A negative right corresponds to a negative duty, and is a right that the person bound **shall refrain from (shall not do) some act** which would operate to the prejudice of the person entitled.
- Example: A is taken as apprentice in B's business and A agrees not to serve in any rival business for 3 years. Now B has a negative right to see that for 3 years A does not serve in a rival business.
- **In any society, the number of negative rights are much more than positive rights.**

Proprietary and Personal Rights:

- Proprietary right means a person's right in relation to his ***own property, estate, assets or other monetary benefits.***
Example: A man may have proprietary rights in his house, car, land, furniture, shares etc.
- Personal rights are rights in relation to a person's status. Thus, **right to reputation, freedom of speech, free choice of profession, freedom to marry any person, etc. all examples of personal rights.** Corresponding to a personal right is a personal duty such as an obligation not to harm somebody's reputation.
- Proprietary rights can be valued in terms of money (E.g.: right to estate, money, car etc.); whereas personal right cannot normally be valued in terms of money (E.g.: **freedom of speech, profession, movement, marriage etc.**)

Inheritable and Uninheritable:

- **Proprietary rights are inheritable.** Thus, the right to property, estate, car, land etc. is inheritable and survives its owner.
- **Uninheritable rights dies (i.e. are destroyed) with the death of the owner of the right.** Personal rights are uninheritable. Thus the right to freedom are uninheritable rights i.e. they extinguish with the death of the owner of the right.

Rights in *rem* and Rights in *personam*

- A right in *rem* is one which is available ***against the whole world***. Example: **Right to your money, car, house etc.**
- A right in *personam* is one which is available **against a particular person (or group of persons) only**. Rights in *personam* normally arise due to 'contract'. Example: li) X contracts to sell his house to Y for a certain sum. X does not fulfil the contract. Y now has a right to sue X for damages for breach of contract. This is a right in *personam* and is available only against X and not against anybody else.
- Generally speaking rights in *personam* are positive (requiring a specific act).

Principal and Accessory rights:

- The word principal suggests ‘main’ or ‘primary’. A principal right is the **main or primary right vested in a person** under the law. The word accessory suggests ‘subordinate’ or ‘additional’. An accessory right is a ***secondary, subordinate or additional right which is connected to or arises out of the principal right.*** Examples: (i) **The right of a person towards a tree is a principal right. The right to enjoy the fruits of the tree is an accessory right which flows from the principal right** (ii) **The right to fight a law suit is a principal right. The right to engage a lawyer is an accessory right** (iii) **The right of the landlord to the land owned is a principal right. Whereas the right to enjoy rents is an accessory right.**

General Rights and Special Rights:

- The concept of General and Special Rights was propounded by H.L.A. Hart in 1955. According to Hart, **general rights are rights which are possessed equally by all members of a society**; for instance, the **right to vote in elections, the right to park their car in a parking zone, the right to enter a public park etc.**
- On the other hand, **special rights are those that arise out of special transactions between specific individuals or from some special relationship between them**; for instance, **the right to alimony, contractual rights, right to receive interest on deposit in bank etc.**

Indicate the sources of law

- Child marriage =
- Sex with minor wife a rape=
- Registration =
- Restitution of Conjugal Rights =
- Consent and No objection letter=
- Customary rites and ceremonies=
- Companionship=
- Adultery not an offence=
- Legitimacy of the child=
- Maintenance=

Rights & Duties(Variance-content/nature)

- We cannot place all rights in the same category and all duties in the same category**
- There is variance in terms of the content , nature and consequences of rights and duties.**
- Sometimes though there is a breach of duty- still may not have legal consequences (child marriage/compulsory MR)**
- Sometimes a person would be able to do sth though does not have a right to do (companionship)**
- Sometimes a right may be ineffective(RCR)**
- Sometimes a legal duty imposing a legal obligation may not be effective (Restitution of conjugal rights)**
- Sometimes law may be unequal and thus unfair (Prohibition of child marriage 2006/Adultery/Comship)**

Rights & Duties(Variance- content/nature)

- Sometimes there is a duty but no right= The duty of marriage through registration in case of interfaith marriages**
- Sometimes there are no rights/duties but there are other consequences =Adultery as a ground for divorce**
- Civil servant=Duty not to take a companion(but nobody has a right)**

Raj IPS officer dismissed over extramarital relationship

- Pankaj Kumar Choudhary (2009 Batch)
- MHA order
- Unbecoming of the member of the service
- Violated rule 3(1) of the All India Services (Conduct) Rules 1968
- Established relation with another woman as wife and fathered a child from her.

Compulsory Registration- Raj/Hariyana/Punjab/Jhark/Kar Del/HP/MP/AP/TN/Ker/UK/guj/Mah

- Non-registration not to invalidate marriage=Raj/Hariyana/Punjab/Jharkand/Karnataka
- Other States=Not mentioned the consequences for non registration
- Penalty (Fine)=200(hp) 1000(TN)500 (hariyana) 1000 (Punjab)(Raj=not mentioned)/Kerala=not mentioned /1000(AP)(Maha=5000/6months imp to HB/3Kar
- The Kerala Registration of Marriages (Common) Rules, 2008 has a provision on **Consequences of non-registration (but silent)**
- **THE DEVIL IS IN THE DETAILS.**

Compulsory Registration

- 4 States have in their name Compulsory registration of marriages but also contain a provision stating clearly that "Non-registration not to invalidate marriage". Karnataka Act(1976) also says so.
- Maharashtra=husband is punishable and the punishment is 6 months imp/5000fine. Karnataka also mentions about 3 months imp on defaulters.
- Kerala contains a provision with the name consequences of non-registration but it does not say that the marriage would be invalid if unregistered

- **PROBLEM1**: The marriage of Saroj Rani and Sudarshan Kumar took place in March 2016. Both are high caste Hindus belonging to Telengana. The marriage was not registered. Sudarshan Kumar is a Hardware engineer in a Private Company at Hyderabad. Saroj Rani was born in January 2000 and Sudarshan Kumar was born in December 1993. Saroj Rani was quite unhappy with Sudarshan Kumar from the beginning and in fact in December 2016 she left the husband's house without even informing Sudarshan Kumar and started living with her parents in Warangal.

- **Sudarshan Kumar repeatedly requested Saroj Rani to come back and join him mentioning his right for restitution of conjugal rights under section 9 of the Hindu Marriage Act, instead she sent a “consent and no objection letter” for his second marriage requesting him to marry another woman and not to pester her any more.**

- **In August 2017, Sudarshan Kumar made a proposal to one of his colleagues Mini (also a Telugu and a Hindu) explaining the situation and asking her to be his companion. She consulted her parents and agreed to the proposal, after which, both have exchanged garlands in a temple before a small gathering of relatives of Sudarshan Kumar and Mini. They started living together and Mini gave birth to a child in October 2018. Saroj Rani has lodged a complaint in January 2019 against Sudarshan Kumar alleging that he has committed the offence of bigamy as well as filed a petition for maintenance under the Criminal Procedure Code.**

- **S.494-IPC: - Marrying again during lifetime of husband or wife: Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of for a term of seven years.**

- **Note: Section 9 of the Hindu Marriage Act, 1955:When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.**

- **The Prohibition of Child Marriage Act, 2006**
- **Section 2 (a) “child’ means a person who, if a male has not completed twenty one years of age and a female, has not completed eighteen years of age. Section 2(b) “child marriage” means a marriage to which either of the contracting parties is a child.**

The Prohibition of Child Marriage Act, 2006

- **Section 3. Sub Section (1). Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage. Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of marriage.**

The Prohibition of Child Marriage

Act, 2006

- **Section 9: Whoever being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.**

The Prohibition of Child Marriage

Act, 2006

- **Section 10: Whoever performs, conducts or directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to five lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.**

- **Section 7 (Hindu Marriage Act): Ceremonies for a Hindu marriage.-**
- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
- (2) Where such rites and ceremonies include the saptpadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

- **Section 16(Hindu Marriage Act): Legitimacy of children of void and voidable marriages. —**
- (1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

CRIME

CIVIL WRONG

1. Act or omission
2. Guilty intention

- Consequence=Punishment to the wrong doer

1. Act or omission
2. Infringement of a right

- Consequence= Any other but not punishment to the wrong doer