



# CONCEPT OF RIGHTS

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# CONCEPT OF RIGHT

- In India, privilege has been given to every citizen to live with liberty. But these rights are enforceable only when another person has some act which he does want to do. Also, the citizens have the duty to protect the rights of another person living in society. Therefore, duty and rights go hand in hand with each other. When there is a breach of duty from one person, there is a breach of the right of another person. In this article, I would like to discuss the jurisprudence of rights and duty and their relationship with each other.

- **John Austin** – According to Austin, “A party has a right when another or others are bound or obliged by law to do or forbear towards or in regard to him”.
- **Rudolf Von Jhering** – Jhering defined rights as “legally protected interests”. The law does not protect all such interests. The interests of men conflict with one another and the law is the rule of justice and protects only certain interests. John Salmond – Salmond defines right as- an interest and it is protected by the law. To be interesting, it should not be merely recognized but it should be accepted by law.
- **Holland** – Legal rights were defined by Holland as the “capacity residing in one man of controlling, with the assent and assistance of the state and the actions of others.” He followed Austin’s definition

- **Supreme Court of India** also interprets the definition of right in case of State of Rajasthan V Union of India[AIR (1977) SC 1361] as: “In the strict sense, legal rights are correlatives of legal duties and are defined as interests whom the law protects by imposing corresponding duties on others. But in a generic sense, the word ‘right’ is used to mean immunity from the legal power of another, immunity is an exemption from the power of another in the same way as liberty is an exemption from the right of another, Immunity, in short, is no subjection.”

# Negative Rights


- Negative rights, or negative freedom, means *freedom from* something. Your negative right imposes a negative duty on others, meaning a duty to do nothing and not interfere.
- My negative freedom requires only that you respect the right by not preventing me in doing it. Examples of negative rights are the right to live, to be free, freedom of speech, freedom of religion, freedom from violence, freedom from slavery, and property rights.

# Positive Rights

- Positive rights, or positive freedom, means *freedom to* something. Thus, your positive right places a positive duty on others, i.e. a duty to offer something or act in a certain way.
- My positive right requires you to respect it by complying with it. Examples of positive rights are the rights to free schooling, free healthcare, a job, and a minimum wage.

# Elements of a Legal Rights

- According to Sir John Salmond, each legal right has 5 essential elements –
- **The Person of Inherence** – Person of Inherence means the subject matter. In simple terms it means who the right is vested. There can be no right without a subject. The person of inherence not only includes an individual but also society at large.
- **The Person of Incidence** – the person of Incidence is a person who is under a duty to obey the rights of another person. In general, it means if the person has committed the breach of his duty then the other has the right against him.

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- **Contents of the Right** – Contents of Rights include that the person is under obligation to perform an act.
  - **The subject matter of Right** – It is something to which the act or omission relates, that is the thing over which a right is exercised. This may be called the object or subject-matter of the right.
  - **Title of the Right** – Salmond has given the fifth element also, that is, “title”. He says that “every legal right has a title, that is to say, certain facts or events by which it was acquired from its former owner”



# Kinds of Legal Rights Rights guaranteed by the Indian Constitution

- The Constitution of India has guaranteed certain rights to the citizens of India which are known as Fundamental Rights which are considered to be the most important rights. If these rights get violated then the person has the right to move to the Supreme Court of India or The High Court for enforcing rights. Following rights are guaranteed by the Court.
- Right to Equality (Article 14)
- Right to freedom (Article 19)
- Right against Exploitation (Article 23 and 24)
- Right to Freedom of Religion (Article 25)
- Right to Life (Article 21)
- Right to Constitutional Remedies (Article 32)

# Enforcement of Legal Rights

- A legal right may be enforced through a Court of Law that has been established by the State. A legal right is generally enforced by awarding damages in civil cases. If damages don't suffice, the object itself may be restored. Specific performances may also be ordered by the court. Alternatively, the court may grant an injunction for the enforcement of a legal right. The law of injunction is mentioned in the Specific Relief Act, 1963. It is a prohibitive writ which restrains a party from doing an act that affects the plaintiff from enjoying his legal right.



**THANK YOU**