

Course Name- B.A.L.L.B. IVth Sem.

Subject- History

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Topic- Law Commission and

Codification of Law prior to 1947

First Law Commission

Introduction:

In pursuance of the authority conferred by Sec. 53 of the Charter of 1833, the first Law Commission was appointed in India in 1834. The commission consisted of Lord T.B. Macaulay, as chairman and 4 members namely, C.H. Cameron, J.M. MacLeod, G.W. Anderson and F. Millet. The first 3 members represented Madras, Bombay and Calcutta respectively. The commission met in India in 1834 for the first time. The said Charter placed the first Law Commission wholly under the control of the Governor-General-in-Council which determined from time to time the subjects, upon which the commission shall proceed to work and submit reports. Accordingly, the commission was assigned the following tasks:

1. Codification of penal law;
2. The law applicable to non-Hindus and non-Muslims in respect of their various rights (Lex Loci Report);
3. Codification of civil and criminal procedural law etc, etc.

1. Codification of penal law (Draft Penal Code):

As the system of administration of criminal justice was most unsatisfactory, the local government directed the commission to take its first step to tackle this branch of law.

The members of the commission prepared a draft penal code which they submitted to Lord Auckland, the Governor-General on 2nd May, 1837. It could not be immediately enacted into a code and had to wait upto 1860 due to the following reasons:

(a) The substantive civil law and the law of procedure were dark and confused;

(b) The illness of two members, threw the work on Macaulay.

This draft of I.P.C was mainly the work of Lord Macaulay and on account of it; it is called “Macaulay's Code”. Thus the draft code became law in 1860, and the said code is still continuing in the country for the administration of criminal justice.

2. Lex Loci Report:

Another important subject to which the commission was required to devote its attention was the problem of uncertainty of the substantive civil law which was applicable to the Christian's, Anglo-Indian's and Armenian's. There was no lex-loci or law of the land for non-Hindus and non-Muslims residing in mofussil areas. However, there was law for those non-Hindus and non-Muslims who inhabited in presidency towns. There was a lot of uncertainty with regard to the civil law applicable to the Christians, Anglo-Indian's and Armenian's residing in the mofussil. Thus, the attention of the first Law commission was directed to this problem in 1837. The first Law commission after careful study and consideration submitted its report on 31st Oct. 1840 to the Government. The first Law commission submitted its report

under the chairmanship of Andrew Amos and recommended that an Act should be passed making the substantive law of England the *lex-loci*, the law of the land outside the presidency towns in mofussil areas and which shall be applicable to all except Hindus and Mohammedans. While applying the substantive law of England certain restrictions were imposed and they are:

- Only those laws were to be applied which were to be suitable to the conditions prevailing in India;
- The English law not to be opposed to any regulation of any presidency;
- All questions concerning marriage, divorce and adoption concerning persons other than Christian's were to be decided by the rules of the sect to which the parties belonged;
- Rules of equity as applied in England were to override the substantive law of England.

Thus the first Law commission submitted a draft bill on 22th May 1841 to the Government. The *lex-loci* report of the first Law commission was sent to all the presidencies in India for their opinion. But it was first halted by the preoccupation of Lord Auckland and secondly it received criticism. In the meantime the directors ordered not to pass any law for declaring *lex-loci* and the matter remained pending until 2nd law commission was appointed. However, one portion of the *lex-loci* report of the first Law commission was implemented was “The Caste Disabilities Removal Act, 1850”. This piece of legislation had immense effect on the Hindus and Muslims

who were not to lose now any interest in property merely by their conversion to other religion.

3. Civil Procedure Code: The commission drafted a code of civil procedure and suggested various reforms in the procedure of civil suits.

4. Law of Limitation: The First Law commission drafted a valuable report on the law of Limitation and with a draft bill on it, submitted it to the Government on 26th Feb, 1842.

5. Stamp Law: Another matter referred to the commission was stamp laws which were in a state of conflict and confusion. The commission submitted its report on 20th Feb, 1837. It was till 1860 that a comprehensive law relating to stamps was passed for the whole of British India.

6. Other Digests and Guides: While the draft codes prepared by the first Law commission were being discussed, several Digests and Guides were published in India. Some of them are:

- i. A guide to the civil law of the presidency of Fort William;
- ii. Magistrates guide for Bengal;
- iii. Campbell's collection of the Regulations of the Madras presidency;
- iv. Beaufort's Digest of criminal law of the presidency of Fort William;
- v. Bayne's criminal law of the Madras presidency;

- vi. Clark's Regulations of the Government of Fort St. George;
- vii. Fenwick's index to the civil law of the presidency of Fort William;
- viii. Harrison's code of the Bombay Regulations;
- ix. Sutherland's Regulations of the Bengal code.

Contribution of the first Law commission:

Although any effective results could not be obtained from the first Law commission's report yet it served a very useful purpose by exposing the uncertainty of law in the country. The commission's report successfully attracted the attention of the people in this country of the complex problems of the legal system.

Second Law Commission:

Under the provisions of the Charter Act of 1853, the second Law commission was appointed in England on 29th Nov. 1853. The second Law commission was composed of the following persons - Sir Edward Rayan, Robert Lowe, Lord Sherbooke, V.H. Cameron, J.M. MacLeod and T.F. Ellis.

Task Assigned to second Law commission:

The task entrusted to the commission was to examine and consider the recommendations of the first Law commission and enactments proposed by it, for the reform of the judicial establishment's, judicial procedure and laws of India. The life of the second Law commission was fixed for three years, which was to expire in 1856. Section 28 of the Charter Act, 1853 authorised Her Majesty to direct the commission to

submit reports on these Matters and every such report was to be submitted within a period of three years after the passing of this Act.

Reports:

The second Law commission submitted four reports to the Indian Government. The first report was submitted in 1855, second, third and fourth reports were submitted in 1856.

First Report:

In the first report, the commission submitted a plan for reforms in judiciary and in courts procedure.

Second Report:

In its Second report the commission agreed with the *lex-loci* report of the first Law commission. It suggested that there must be a substantive civil law for persons in the mofussil who had no law of their own. The second Law commission expressed the firm view that no attempt should be made to codify the personal laws of the Hindus and Mohammedans - because any such attempt "might tend to obstruct rather than promote the gradual process of improvement in the state of population".

Third and Fourth Report:

In these two reports, the commission submitted a plan for the amalgamation of the Supreme Court and Sadar courts and a uniform civil code of civil and criminal procedure

applicable both to the High Court's to be formed by that amalgamation.

Achievements of the second Law commission:

The recommendations of the commission resulted in important legislation's e.g.

- i. The penal code proposed by Macaulay was taken up, revised and finally passed in the year, 1860;
- ii. Codes of civil procedure and criminal procedure were passed in the year 1859 and 1861 respectively;
- iii. The draft on the law of Limitation as submitted by the first Law commission was also taken up and passed into law in 1859;

Third Law Commission:

On 2nd Dec. 1861, Third law commission was appointed under the chairmanship of Lord Romilly. The commission consisted of six members - Sir W. Erle, Sir Edward Rayan, Lord Sherbooke, Robert Lowe, J.M. MacLeod and J. wills. Later on retirement of Erle and Wills their place in the commission was taken up by W.M. James and John Henderson and on death of Henderson, Lord Lush succeeded him. This phase become famous as "The Golden Age of Codification".

Task Fixed for Third Law Commission:

Firstly, the third Law Commission was appointed with the purpose "to prepare for India a body of substantive law and in preparing the same law of England should be used as a

basis, but which once enacted should itself be the law of India on the subject it embraced”.

Secondly, the third Law commission was also charged with the duty of considering and reporting on such matters relating to the reforms of the laws of India as might be referred to them by the Secy. of State

. Thirdly, the commission was requested that the result of their labour on one branch of civil law should be reported before they began their deliberations on another branch, as the plan of successive report's on the various departments of law would greatly facilitate the necessary measures which must be taken up in India for giving effect to the recommendations of the commission.

Reports:

The Third Law Commission submitted Seven Reports.

Reports Subjects Year or date of submission Act 1 st The Indian Succession Bill 1863 1865, 2 nd The Contract Bill 1866 1872, 3 rd The Negotiable Instruments Bill 1867 1881, 4 th No draft on any code was submitted in 1867, but the commission submitted its observations in reply to certain remarks and objections of the Government of India against the Inclusion of section's dealing with the law of specific performance in the draft law of contract contained in its second report. 5 th The Evidence Bill 1868 1872, 6 th Transfer of property Bill 1870 1882, 7 th Revised Draft of Criminal Procedure 1870 1861

Achievement of Third Law Commission:

The Third Law Commission submitted draft of six major pieces of legislation within a short span of nine years, which was tremendous achievement. But the commission unfortunately came to an end on an unhappy note in 1870 due to strained relation between the commission and the Government of India.

Fourth law commission:

Though many important branches of law had been codified so far, still some remained un-codified. Thus, in 1875, Lord Salisbury, the Secy. of State for India, called the attention of the Government of India about the urgent need for the appointment of a law commission. Later, in 1877, the Government of India, while accepting the proposals of Lord Salisbury, entrusted Dr. Whitely Stokes with the preparation of bills dealing with Private Trusts, Easement, Alluvion and Dilution, Master and Servant, Negotiable Instruments and Transfer of Property Act. Thus, on 11th Feb, 1879, these bills were referred to the Fourth Law Commission for consideration and report. The commission submitted its report on 15th Nov. 1879. In its only report, the Fourth Law Commission made the following recommendations:

- The process of Codification of substantive law's should continue;
- The English law should be made the basis of the future codes in India and it's material should be recast;

- The eventual combination of those divisions as part of a single and general code should be borne in mind;
- The law of actionable wrongs should be codified;
- Uniformity in legislation should be aimed at, but local and special customs should be treated with great respect;
- In re-casting English materials due regard should be had to native habits and modes of thought. The form and proposition of codes should be broad, simple and readily intelligible;
- The legislature should then deal with the law of property in its whole extent;
- Existing law of persons should not be expanded at present by codification except that the operation of the European British Minors Act, 1874 should be extended;
- Preparation should be made for a systematic chapter on interpretation;
- The laws relating to the Private Trusts, Easement, Alluvion and Dilution, Master and Servant, Negotiable Instruments and Transfer of Property Act should be codified and bills already prepared should be passed into law subject to suggested amendments;
- Concurrently the laws relating to Insurance, Carries and Lien should be codified.

Thus, the legislative Council of India on the recommendation of the law commission passed codes relating to Negotiable Instruments in 1881 and those relating

to Trusts, Transfer of Property and Easement's in 1882. The law of civil wrong (Torts) was not codified though Indian civil Wrongs Bill was prepared and till today this area is un-codified and is mostly covered by English law of Torts.

Thus, with fourth law commission came to an end the phase of law commission's and no more law commissions were appointed thereafter during British period.