

Lecture-31



Codification of laws

The 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.