



THE FIRST LAW COMMISSION AND ITS RECOMMENDATIONS

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ABSTRACT

The First law commission played a significant role in the legal history of India, the basis for the present day laws and codes are the drafts made by the commission in the late 19th century. These rough drafts of the codes were amended over the time with needed changes according to the needs of people and eventually they became the law in India. In a way we can infer that the work of the First law commission was the basis for the future legal system and the development of the law in India.

The genesis of the modern law is from the essence of the existing laws, since the Hindu and Islamic law was prevalent in India before the modern Common Law principle from the Britain, it is essential to understand and inculcate the existing principles. This job was done by the first law commission which served as a foundation for the modern-day legal system and laws. The age old authentic Indian practices and the religious laws and rules were surveyed by the commission and preserved as the reports, which later on served as the remains of the extinct traditional practices and laws.

The key recommendations of the commission were the IPC, CPC, The Caste disabilities removal Act and the law of limitation. All of these codes are very significant and they hold important place in the history especially in the legal history of India. In this paper all of

these recommendations will be discussed to get an insight of these laws at the time of their genesis.

FIRST LAW COMMISSION AND ITS RECOMMENDATIONS

The Law commission plays an important role in the revision, curation, and gradation of the law in a state. All the existing essential codes such as the Indian penal Code, the code of civil procedure, the law of limitation Act, and The Criminal Procedure Code were coded according to the recommendations of the Law commissions over the years. In the present day also law commission performs a very important role in the legal system. The history of the formation of the first law commission can be traced back to 1847. The charter Act of 1833 brought in the concept of the law commission in India.

The major reason for the constitution of this commission is to survey the existing rules and practices in India and introduce new western laws and common law principles in India. For the above-stated reason the western law cannot be applied directly to India since the conditions and the circumstance of India are very distinct with various cultures, religions, languages, religious laws, and customary practices, and after the entry of the British various Acts and rules and regulations passed by the company. In this situation and the condition of the country, the survey and the study of the existing practices and principles are essential for the introduction of new principles. This work is the basis for a formal legal system that caters to the need of the Indians, suffice the need of the people, and provides stable and formal laws and codes based on which justice will be delivered.



After the first law commission, many subsequent law commissions were formed and are still being constituted in the country, the work done by the first law commission is highly commendable and unforgettable. It is very important for us to understand the conditions and the situations of India prior to the commission and to analyze the recommendations, whether these recommendations are useful and the actual efficiency of the recommendations to get an overview of the importance of the commission. This paper intends to study and explain the same, along with the above-stated reason if we clearly observe the key recommendations of the law commission including the IPC, CPC, The Caste Disabilities Removal Act, and the Law of Limitation Act.

The above-mentioned recommendations are considered to be landmarks of the legal system in India. Some of these recommendations such as the IPC, CPC, and the concept of limitation are still in use and are highly regarded in the justice system in India. We can infer that the present-day formal legal system in India has its roots in legal history. In the coming chapters all the above-mentioned aspects elements, and the recommendations of the first law commission will be discussed in detail.

LEGAL SYSTEM BEFORE THE CONSTITUTION OF THE LAW COMMISSION

History is evident of the fact that the present judiciary system and the existing law in India had got its foundations from the British

during the colonial period. Almost all the existing codes such as the Indian penal Code, The Criminal procedure Code, the civil procedure code, and many other codes were first introduced and compiled by the British. The first law commission which was constituted in 1835 was the first explicit initiative taken by the British to verify the existing laws and the suggested recommendations to develop the legal system In India, before examining the recommendations and the findings of the First law commission we have to first examine the existing conditions or the condition of the legal system prior to the constitution of the Law Commission. A well-organized court system and a well-developed legal system are both needed for a sound and successful administration of justice.¹ Throughout their political career in India, the English worked hard to develop a judicial system that was both liberal and appropriate to the country's needs. As early as 1661, the procedure began. From 1600 until 1833, the English created and dismantled many court systems in an attempt to establish a proper judicial system. India had been devoid of law for a long time. The authorities made no explicit effort to build a legal system alongside the court system. Without an adequate, certain, and well-defined collection of laws, the Courts attempted to administer justice to people. Judges had a lot of power. Law principles varied by location, court, and individual. Coherence, homogeneity, and predictability were lacking in the judicial system. The administration of justice was haphazard, arbitrary, and inconsistent.² However, there came a moment when attempts to establish and define the law

¹ Bijay Kishore Acharya, *Codification in British India* (1st edn, S K Banerji & Sons 1914)

<<https://archive.org/details/dli.calcutta.10178/page/261/mode/2up?view=theater>> accessed 3 June 2022.

² *ibid.*



began. Many key codes on essential legal matters were developed in India. In a short period of time, India's legal system has progressed from uncertainty to clarity, from diversity to uniformity, and from confusion to coherence.

The history of codification in British India can be divided into three periods:

From 1601 to 1765, i.e., from the date of Queen Elizabeth's Charter to the time when the Moghul Emperor conferred perpetual Dewanny authority over Bengal, Behar, and Orissa on the East India Company. II. Regulation Law Period, 1765-1833 And III. From 1834 onwards, i.e., the partial codification period in British India. In 1601, Queen Elizabeth granted the Governor and Company "or the greater part of them being assembled, "power to make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances," as to them or the greater part of them being then and they represent, shall seem necessary and convenient for the good government of the said Company and all factors, masters, mariners, and other officers employed or to be employed in any of the vessels. They also had the authority to revoke and change it if the situation demanded it.

A charter of Charles II in 1661 established the East India Company's first judicial powers, and until 1765, the Company's responsibility for the administration of law in India was limited to the Company's factories and branches. The fact that distinct authorities served as courts of law in Madras, Bombay, and Calcutta after 1661 is only to be expected given the various times and circumstances in which the Company's authority in each of these cities arose. It had come to exercise authority in Madras under grants from Indian rulers (1639); in Bombay as a representative

of King George III of England (1668), who had accepted the island of Bombay as part of his Portuguese bride's dowry; as a zamindar in Calcutta, where he was granted the villages of Satanuti Govindpur and Calcutta (1698). However, in all three Presidency towns, a Mayor's Court was established by George I's charter of 1726, which was not a court of the Company as it had been in Madras, but a court of the King of England, despite the fact that it was exercising its authority in a land to which the King of England had no claim to sovereignty. Though it is not clearly stated, the articles of the charter make it obvious that the law intended to be enforced by these courts was English law; and it has long been accepted theory that this charter introduced English law—both common and civil law—into the Presidency towns.

The question of whether the civil law of England should be applied to Indians emerged, not for the first time, but in an acute form.

The Charter of 1726 is often regarded as the first and last to bring English law to the presidency towns. It is a well-known notion that has been applied by courts for a long time.

The Charter of 1726 was the catalyst for the introduction of English Law, which was not repeated thereafter. After the French captured Madras in 1746 and restored it in 1749, George II granted a new charter for all the Presidency towns in 1753, which stated explicitly that the Mayors' Courts were not to trial cases between Indians, and that such actions were to be decided by both parties by consent.

The second period in the codification of the laws started when the British were granted the Diwani of Bengal Bihar and Orissa to the



East Indian Company, since then both the authority and the responsibility of the legal and administrative works were on the shoulders of the British. In the year 1769 since there was the additional duty of Deewan giri the provision for the appointment of the British servants was carried out on the large scale. They were deployed to supervise the native collecting officers and the responsibilities of these officers was also to supervise the proceedings in the courts, i.e., to ensure that the justice is administered. Since there were multiple laws and religions in the country there was constant conflict of the application of the laws. Leaving people to their own laws and solving the conflicts with no proper guidelines or the preceding laws created a havoc in legal system.³ Three Mayors' Courts were formed in the three colonies of Calcutta, Madras, and Bombay by the Charter of 1726. Because the Charter of 1726 was universally applied to all presidential towns, it was under this Charter that the English Law was first regularly introduced in these settlements. In these locations, the entire English Law—Common or Statute at the time—was introduced. Many further Charters were issued by the Crown after the Charter of 1726, establishing Courts in the presidency towns at various dates. Charters from 1753 and 1774 were among them. The Charter of 1753, which reinstated the Mayors' Courts, was just as much of a legislative act as the Charter of 1726.

In 1753, the 1726 Charter was changed. The Mayors' Courts were not to trial cases amongst Indians at the time; such actions were to be decided among themselves unless both parties agreed to submit the matter to the

Mayor's Court for resolution. This appears to be the first time the Indians have been denied access to their own laws and customs.

The legislation that the Supreme Court would apply to the Indians was not specified in the Act of 1773 or the Charter of 1774. However, evidence suggests that the new Court was not willing to ignore Native Laws on Marriage and Succession.

The Court in the Patna Case is using the Mohammedan Succession Law. However, the Act of Settlement in 1781, in section 17, stated that all questions of Inheritance and Succession as well as all matters of Contract and dealing between parties, should be determined in the case of Mohammedans and Hindus by their respective laws, and where only one of the parties is a Mohammedan or Hindu, "by the laws and usages of the defendant." Only in two cases—inheritance and contract—was Section 17 of the Act of 1781 reserved the Hindu and Mohammedan indigenous personal laws.

However, the Calcutta Supreme Court construed it liberally rather than literally. Their personal rules applied to more than just the two titles stated. In all familial and religious concerns, Hindus and Muslims were allowed to follow their own laws and customs. On a parallel line, Madras and Bombay stood. Armenians, Portuguese, Christians, Jews, Anglo-Indians, and Parsees were among the people who lived in the presidency towns. Because no reservation of any type had been made in their case, the Supreme Courts applied English Law to these individuals.

³ RT Hon. Sir George Claus Rankin, *Background To Indian Law* : (Cambridge University press 1946)

<<https://archive.org/details/in.ernet.dli.2015.83249/mode/2up?view=theater>> accessed 3 June 2022.



Article XXXIII of the Bengal Constitution was the first and most important act that established a legal system in Bengal, Bihar, and Orissa. Article XXXIII of Warren Hastings' plan of 1772 was the first and most important act that established a legal system in the mofussils of Bengal, Bihar, and Orissa.

'In suits concerning inheritance, marriage, caste, and other religious institutions, the laws of the Koran, with respect to Mohammadans, and those of the Shaster, with respect to Gentoo, shall invariably be adhered to; on all such occasions, the Maulvies or Brahmins shall respectively attend to expound the law, sign the report, and assist in passing decree,' it stated. For nearly a century, the Hastings and Impey norms governed the question of which substantive law the Adalats should apply in carrying out their judicial duties.

In the vast majority of instances, no law had been established; the courts were left to their own devices.⁴ Only a few areas, such as inheritance, marriage, caste, and other religious usages and institutions, were particularly addressed in the Hastings plan. These issues did not cover the entire range of litigation with which the courts are frequently faced. Hastings' scheme and later Regulations provided neither explicit instruction or sufficient guidance on the law to be applied by the Courts to other types of litigation. As a result, a significant chasm existed. The Courts were to act with justice, equity, and good conscience in this vacuum.

The principle of "justice, equity, and good conscience" referred to the Judge's discretion. The Judges' discretion was not limited in any way. The Judges were free to decide the cases

before them in any way that appeared to them to be fair to both parties. Confusion and uncertainty in the country's legal system were unavoidable consequences of such a situation. One Judge's discretion was not the same as another's. Judges had different ideas about what constituted equity, justice, and fair play. As a result, no one knew what principles should be used in any given situation. As a result of this situation, a chaotic, ambiguous, and incoherent legal system has developed. The Legislature could have done anything to help, but it remained largely quiet on substantive law issues throughout this time period.

Beginning in 1833, the process of codification, or the enunciation of the law in plain, specific, and explicit language, began only after the charter of 1833, which was passed by Parliament, proposed the formation of an All-India Legislature, the creation of a new office of the Law Member, and the appointment of an Indian Law Commission

THE FIRST LAW COMMISSION

As mentioned earlier, the charter Act of 1833 was the basis for the formation and the constitution of the law commission in 1837. To begin with, it established a true All India Legislature with the power to enact laws and regulations for all regions under the Company's control and government at the time. As previously stated, the legislative powers granted on the various Provincial Governments have been extended and evolved over time, and various laws and regulations have been passed in order to carry out those authorities. However, rather than being uniform, the regulations issued by the

⁴ *ibid.*



many local administrations were frequently in conflict, resulting in a great deal of legal confusion in British India at the time. In British India, a significant flaw in the administration was the lack of legal certainty. Finally, the Charter Act of 1833 provided for the appointment of a Law Member of the Governor General's Council under Section 40 of that Statute.

He was to be chosen from among those who were not East India Company servants, and he had no right to sit on the Council or vote except at meetings to make laws and regulations.

Section 53 of that Statute provided for the establishment of a Law Commission and periodic commissions "into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the said territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the said territories." This provision further stated that the commissioners must submit reports that fully detail the findings of their investigations. The First Law Commission was appointed in 1834 in accordance with the requirements of the Charter Act of 1833.⁵

The members of the Commission were as follows:

Mr. Macaulay, who eventually became Lord Macaulay Mr. G.W. Anderson, Mr. J.M. Macleod, Mr. F. Millet

The Commission's final three members were drawn from the Company's civil service, representing the three Presidencies of

Calcutta, Madras, and Bombay. In 1834, the Commission convened for the first time. The condition of criminal law in several parts of India was in a state of disarray. The Supreme Courts in the three presidential towns administered English Criminal Law, which had been influenced by local government regulations here and there. It was a fabricated situation.

It was a fictitious and convoluted system devised in a foreign country with no regard for India. It was necessary to undergo considerable changes and alterations in order to put such a legal system into compliance with Indian conditions. In the three provinces of Bengal, Bombay, and Madras, the situation of criminal law was similarly a mess. Mohammedan Law of Crimes was the law of the land in Bengal and Madras provinces, and it extended to everyone. The Mohammedan Criminal Law was rudimentary and unfit for a civilized nation. As a result, the respective governments enacted major adjustments through their regulations in order to make the system functional.

The Criminal Law of Bombay was codified in 1827 by Monstuart Elphinstone and adopted in Regulation XIV of 1827, giving it a better favorable position in this regard. The Bombay system of Criminal Law was so superior to other provinces' laws that it was digested while the others were not. However, there were flaws with the Bombay Digest. The criteria by which crimes should be categorized and punishments distributed were not given sufficient consideration when it was drafted. The Anglo-Indian Criminal Law Regulations were enacted by various

⁵ MP Jain, *Outlines of Legal History* (N M Tripathi Private LTD 1952).



authorities independently of one another, with no cooperation.⁶

As a result, the numerous criminal law systems in use in the various provinces lacked coherence and uniformity. Even on the same subject, one government's regulations had provisions that were vastly different from the others. Criminal law had become such a jumble of statutes that it was the first subject to be codified. The First Law Commission, led by Macaulay, was tasked with writing an Indian Penal Code in response to directions from the Governor General in Council. In 1837, Macaulay submitted to the government a draught of the Penal Code, which was primarily his work. It was not possible to enact it into a law right away.

Coming to the other reforms of the first law commission almost all the laws and codes such as the CRPC, IPC, CPC many other Anglo-Indian codes most importantly the limitation Act and the caste disabilities Act were framed and coded by the First law commission. Though they were not applied in their original draft in the later future but the work of the first law commission is commendable and unforgettable in the legal history of India. Still in today's modern world the major substantial and other laws in India are completely based on the drafts and the structure provided by the recommendations of the law makers of the first law commission. During the time of chaos when there was a system of anarchy was prevailing since a decade the law commission had actually reviewed and recorded the existing diverse laws since the establishment of the company to the charter Act 1833, Apart from that they also reviewed

the existing the religious laws and the authorities and the customary practices of the people. This survey and the review of the existing laws was not helpful for them to formulate codes but also it was recorded in the pages of history for the future generations to access and learn the actual scenario in the India back then.

In this paper the some of the major reforms such as the caste disabilities act 1850, The law of Limitation, The India Penal Code and the Civil procedure Code will be comprehensively discussed in the coming chapters.

THE CASTE DISABILITIES REMOVAL ACT 1850

The Act of 1833, which made India accessible to English and other Europeans, was repealed in 1834. By Act XI of 1836, European British subjects were made subject to the county courts in civil proceedings, without the power of appeal to the Supreme Court that the Act of 1813 had provided. The Privy Council had concluded that even aliens in Calcutta were qualified to possess land under Act IV of 1837. There was a huge body of the domiciled community-East-Indians, Eurasians, today also known as Parsis and Armenians, whose laws in their country of origin were difficult or impossible to verify; and Portuguese in big numbers. Jews, particularly in Malabar, must be treated as a distinct population. Many individuals were cut off from any legal connection with the country from which they had sprung by the illegitimacy of themselves or of some ancestor, as the Commission rightly pointed out; many, too, were not able to trace and

⁶ Radhika Singh, *Despotism of Law Crime and Justice in Colonial India* (Oxford university press).



prove their pedigree and establish it as valid according to the appropriate law in the circumstances prevailing in the East, due to mixed ancestry or otherwise. For all of this, the courts outside of the Presidency towns were to be guided only by justice, equity, and good conscience.⁷

In Bombay, we might be able to save a little money for 'custom of the nation and law of the defendant,' but it's not much. The Panis, Jews, Portuguese, and Anglo-Indians were all people who had a shady legal situation. All that was not covered by section 17 of the Act of 1781—a section that only referred to Hindu and Mahomedan laws and specifically mentioned only two 'titles' of these laws, namely succession and contract—was covered by English law as the law of the place administered by the courts of the place within the Presidency towns. The Law Commission acknowledged that rulings had established that English law for this purpose did not include the entire law of England, but simply that which was suitable to the country's conditions;

Anyone who took a comprehensive view of British India's legal system saw a stark contrast—not just between two separate sets of courts, the Company's and the Queen's, but between two legal systems.

Both within and beyond the Presidency towns, arrangements were created for Hindus and Mahomedans to enjoy their own laws, however it was not the identical provision in both locations.

Aside from the unique provisions provided for those two personal laws, there existed a general law that applied *prima facie* to everything and everyone as the territorial law

inside the cities of Calcutta, Madras, and Bombay. The fact that this general law was the law of England was easily established by the terms of the Charter of 1726; that it applied within the towns not only to Englishmen and other Europeans, but also to Indians, except where special provisions had been made for Indians, was no more than an application of Lord Mansfield's fourth proposition in *Campbell v. Hall*, 1774, "Whoever purchases, lives, or sues there puts himself under the law of the place."

"Anyone who buys, lives, or sues in that location is subject to the local laws. The law in these cities may have been dubbed *lex terrae* if the areas in question had been larger: the Commission used the phrase *lex loci* to signify "law of the place." "Law of the territory In the lack of personal or other special law, a *lex loci* prevailed within these towns; justice, equity, and good conscience reigned supreme outside of these towns."⁸

The Commission's description of how the Company's courts worked in cases not governed by Hindu or Mahomedan law did not appear to be unfair or materially inaccurate, because it took into account the fact that in many of these cases, the courts were able to do justice on common-sense lines without having to determine and follow any particular system of law. Contract disputes would be settled in most cases based on the parties' actual or supposed purpose, or on a basic, obviously just basis. Regarding land revenue and tenures, many circumstances would rely on local custom or established rules. Cases that could not be fairly decided without reference to the specific positive institutions of a developed system of law would, in general, be cases of

⁷ Bijay Kishore Acharya (n 1).

⁸ *ibid.*



succession: cases in which there is little to be considered common ground between East and West, or even between one Western country and another, Western court. In a minute dated 14 June 1845, Sir Herbert Maddock disputed the Commission's account of the practice, claiming that the mofussil courts did not attempt to administer the substantive law of the country of the party or parties concerned, and that they instead tried to decide such cases according to equity and good conscience after hearing evidence as to custom in certain matters.

The Indian Law Commission proposed that an Act be passed making the substantive law of England the law of the land outside the Presidency towns, applicable to all persons except Hindus and Mahomedans-but excluding from the law of England for this purpose (1) anything that was not applicable to the people's situation, (2) general statute law passed after 1726, (3) anything that was inconsistent with tenures local Regulations, (4) the English system. Land shall descend according to the law of the place where it is located, whereas movables should descend according to the law of the domicile.

The English law, as amended by English equity, was to be administered by the mofussil courts on these principles. The English principles of law were not to apply to anyone who practiced any religion other than Christianity when it came to marriage, divorce, or adoption. There was to be a provision for any rule or usage that had been passed down through the generations by any race or people not known to have ever been seated in a place other than India, as well as any other good and legitimate custom. This was the impact of the 1840 suggestions, as expounded by the Commission in the

suggested Art, which they drafted in 1841 and published in 1845.

On the complaint of Christian converts and missionaries, this proposal was also intended to give effect throughout India to the principle already enacted for Bengal (section g of Regulation VII of 1832), that renunciation of the Hindu or Mahomedan religion should not entail the loss of property rights—a principle to which legislative effect was given in 1850 by Act XXI of that year. The 1850 Act is frequently referred to as the "Freedom of Religion Act" or the "Caste Disabilities Removal Act," however this is a misnomer as the *lex loci* clauses had been repealed at that time. By declaring that the Hindu or Mahomedan law shall not be allowed to deprive any party not belonging to either of those persuasions of a right to property, or that any law or usage which inflicts forfeiture of rights or property as a result of any person renouncing his or her religion shall not be forced, the legislature effectively overturned the Hindu law provisions that penalize renunciation of religion or caste exclusion.

THE INDIAN PENAL CODE

THE INDIAN PENAL CODE has erased the criminal law that came before it to such an extent that the British efforts to preserve and develop the criminal law that they discovered in India have vanished. Today, it's surprising that the criminal law that governed the majority of British India didn't break free from its Mahomedan roots until 1862. Mahomedan criminal law would not have lasted nearly as long if it hadn't been extensively altered to adapt to current and western ideas of policy and behavior. Criminal law was no exception. The Mahomedan criminal code had been



continued as the law of the land in Bengal and Madras, and it was applicable to both Hindus and Mahomedans. In Bombay, the goal was to apply Hindu criminal law to Hindus and Mahomedan law alone to Mahomedans. The Regulations comprised a number of significant provisions that indicate each Presidency's attempt to adapt Mahomedan and other law to the conditions of India and make it in some way consistent with British authority.

The lack of uniformity in the laws of the Presidencies emphasized the defects of the law in each Presidency even more than when the same defects reappeared in each; and alongside the penal law, which was thus variously adapted to the country districts of the provinces, the law of England remained the basis of the criminal jurisdiction of the Supreme Courts in the three Presidency towns, untouched by any Regulations.⁹

The Regulations had addressed all of the major issues prior to 1833. Non-Muslims were no longer subject to the Mahomedan penal code in Bengal in 1832, and Bombay had a statutory criminal code in 1827. However, until the Penal Code of 1860 and the Criminal Procedure Code of 1861 were into effect, the Mahomedan criminal code was never completely abolished. Throughout the first part of the nineteenth century, British administrators bore abundant proof to the scope and reality of their power over all subjects save European British citizens.

The Mahomedan code remains the foundation of our criminal law, but it has been so altered and added to by our regulations that it is hardly recognizable; and there has, in fact, grown up a system of our

own, well understood by those whose profession it is, and towards which the original Mahomedan law and Mahomedan lawyers are really little consulted, by practice and continual emanative enactments. Still, the Mahomedan law is the hidden foundation upon which the entire edifice is built; without it, we would have no definition of or jurisdiction to prosecute many of the most common offences."¹⁰

However, the most comprehensive and systematic exposition of Indian criminal law before to the Code may be found in Beaufort's Digest, a massive tome in which the intricacy, lack of structure, and various sources are all detailed for the benefit of practising lawyers.

Before the Charter Act of 1833, British India was the India of the 'Regulations laws passed by the separate legislatures of Bengal, Madras, and Bombay, before the Charter Act of 1833 had established one legislature for the entire country, with authority over all the inhabitants, whether European British subjects, Indians, or others.¹¹

This change allowed Parliament to work toward a common law for India, and it resulted in Macaulay's appointment to the Council, the Indian Law Commission, and the Penal Code, which he drafted. His draught was finished in 1837, but the Code was not enacted until the mutiny, which spurred a number of other long-awaited legal reforms. The Penal Code was passed in 1860 and took effect on January 1, 1862. The Code is mostly based on the First Law Commission's Draft from 1837.

⁹ Barry Wright, 'Macaulay's India Law Reforms and Labour in the British Empire'.

¹⁰ Jain (n 5).

¹¹ Wright (n 11).



Sir Barnes Peacock, who was the Law Member of the Government of India at the time, deserves credit for modifying Macaulay's draught and getting the Penal Code into law. In India at the time of Macaulay's writing, the criminal justice system was inconsistent, fragmentary, and haphazard. The First Commission did not believe that any of the existing legal systems should serve as the foundation for the Code. The Commission compared the proposed Code to each of these systems and incorporated their suggestions. They also compared their findings to some of the most well-known Western legal systems.

They benefited greatly from the French Code and judgements of the French Courts of Justice on issues relating to its interpretation. The French Code served as a fantastic model and provided some useful advice on specific areas when it came to numerous formal questions.

Mr. Livingston's Louisiana Code was a valuable resource for the Commission. However, the English Law provided the basis for much of the Code's content. The Law of England, stripped of formality and local characteristics, abridged, simplified, made understandable and precise, is the basis of the Code, according to Whitley Stokes. 'Both the draught and the revision,' Stephen believes, 'are highly creditable to their authors; and the result is eminently creditable to its writers; and the result is eminently creditable to its authors; and the result is eminently creditable to its authors'

The draft and revision, in Stephen's opinion, "are both eminently creditable to their authors," and "the result of their successive efforts has been to reproduce in a concise and even beautiful form the spirit of the Law of England ; the most technical, the most

clumsy, and the most bewildering of all systems of criminal law." In comparison to English law, the Code has a significant advantage. Its arguments are straightforward. The numerous offences have been defined to a high degree of specificity. Many of the rules of English law have been integrated into the laws of the United States.

Many of the rules of English law have been amended and included into the Code. The Code differs from English law in a number of ways. In addition, the Code recognises and attempts to address some of India's unique difficulties. The Commission carefully studied India's unique circumstances in order to avoid making conduct unlawful where there was little likelihood of gaining a sufficient benefit from applying the Criminal Law, as well as to make special provisions for offences unique to India.

The Indian Penal Code has a great deal of success. Its arguments are clear and succinct, and even a casual observer may see its value if he compares it to the existing Penal Law in the country at the time of its enactment. It has helped to reduce crime in the country. The Indian Penal Code was passed in 1860, yet it is still the same today as it was then because of its inherent worth and excellence. Only a few minor changes to the law have been made over this time. Despite its enormous success, it may be time to reform and re-enact the Penal Code. Its layout isn't really scientific.

The High Courts have given several important and conflicting judgements throughout the course of their long history of operation, leaving some topics in doubt. Furthermore, numerous changes in ideas and thoughts have occurred among civilised people since Macaulay's time, and the Penal Code's provisions need to be updated in light of present thought trends. 'It is Draconian in



its severity in terms of sanctions,' is a long-standing criticism of the Code.

'The Penal Code is one of the most widely lauded Acts of the Indian Parliament, and despite its numerous flaws, it has served its purpose admirably.' Its phrases are rarely anything short of horrible. Today, no civilized country imposes such harsh penalties as the Penal Code does. Heavy punishments have long been out of vogue in England, and the Penal Code's fragrance of sanctity and perfection should not stop indigenous legislatures from properly revising the sentences and bringing them in line with modern civilized standards.

THE CIVIL PROCEDURE CODE

The law in this crucial branch was almost anarchic until the introduction of the code of civil procedure. It is self-evident that in any system of jurisprudence claiming to provide for the proper administration of public justice, some method of bringing the issues in dispute between the parties involved before the tribunal to be judged must be established. Many norms must be adopted to promote certainty, order, precision, and regularity in these procedures, as well as for the proper dispatch of business with reference to the rights and convenience of all suitors. The Anglo-Indian Courts have always sought to ensure that man and man are treated equally. But no one can claim that their procedure was ever known for its certainty, order, or precision, and its lack of uniformity is unquestionable.¹²

'There were no fewer than nine different systems of civil procedure simultaneously in force in Bengal: four in the supreme court, corresponding to its common law, equity,

ecclesiastical, and admiralty jurisdictions ; one in the court of small causes at Calcutta ; one in the military courts of requests ; and three in the east India company courts, one for regular suits, a second for summary suits, and a third applicable to the jurisdiction of the deputy collector which were known as the resumption suits.¹³

The supreme court's procedures, as well as the procedures jurisdictions, are all based on George III's charter, dated march 26, 1774. The method on either side was comparable to that of the equivalent court in England, with the exception that the witnesses *vie voce* examinations were written down and the depositions were signed by the witnesses. I have not been able to determine the source of the small causes court method. This court did not have any written pleadings. Act xi of 1841 governed the procedure in military courts of requests. No written pleas were used in these courts as well.

Lord Cornwallis issued a code of regulations in 1793 that established the civil procedure of the company's courts. That code applied primarily to regular proceedings, as the courts' practice was more like to that of equity courts than common law courts, and there was only one clan of instances for which it was deemed necessary to give a simpler method.

These were cases involving the forcible takeover of contested land and crops. However, the brief procedure was extended to matters involving the collection and exaction of rent a few years later.

Through Bengal Regulation 8 of 1831, the summary jurisdiction in cases of forcible dispossession was transferred to the

¹² RT Hon. Sir George Claus Rankin (n 3).

¹³ Bijay Kishore Acharya (n 1).



Magistrates, and the summary jurisdiction in cases of rent, which had gradually expanded to encompass almost every question between the zamindar and the raiyat, was transferred to the collector of land-revenue by Act IV of 1841.

Written pleadings, consisting of a plaint, an answer, a reply, and a rejoinder, were filed in Suita in the Company's Courts. The Practice were not bound by any rules, and everyone recounted his narrative in his own unique way. As a result, the pleadings were sometimes acrimonious, verbose, and repetitive, and they frequently failed to bring the parties to a direct issue. No doubt, a regulation enacted in 1814 compelled the Judge to settle the questions, or rather to fix the points to be decided, once the proceedings were completed. However, the lower Courts mostly ignored this "most entire some regulation" (as it was dubbed by the Judicial Committee), and the parties were free to bring in their exhibits and lists of witnesses whenever it was convenient, with a petition specifying the point to prove which they were adduced. At the final hearing, no particular course of action was prescribed. The Judge either read the pleadings and depositions himself or heard to a corrupt Native officer read them. The parties were then heard, and the normal procedure in this case was for the Judge to ask one of the parties' vakils a question, which was then replied to the best of his abilities by the opposing vakil, and then a lot of wrangling between the opposing pleaders. The Judge decided both fact and law, as he still does, but his decision was frequently overturned by the appeal court on purely technical reasons that had no bearing on the case's merits or jurisdiction ", Mutatis mutandis, civil

procedure systems were similarly widespread and, it should be stressed, equally flawed in other parts of British India "¹⁴,

The evils arising from this state of affairs had long been felt; first, in 1834, the statute 3 & 4 of William IV; c. 85, sec. 53, provided that certain persons styled Indian Law Commissioners should inquire into all existing forms of judicial procedure in force in any part of British India, and should suggest such alterations as they believed would be beneficial in those forms.

The commissioners of the first law commission advocated significant changes and appear to have developed a Code of Civil Procedure. Mr. A. J. Moffatt Mills (a judge of the Sadr Dwan Adalat) and Mr. (later Bir H. B.) Harington were appointed' special Commissioners for revising the Code of Civil Procedure' in 1853, and the result of their labors was a draught entitled The Code of Civil Procedure of the Courts of the East India Company,' which was printed in 1854 and presented to another body of Commissioners in England. Sir Charles Wood, then President of the Board for the Affairs of India, gave these instructions to the Commissioners.

It is certainly most desirable to adopt a simple system of pleading and practice that is uniform, as far as feasible, throughout the entire jurisdiction, and that can also be applied to the administration of justice in India's lower courts. The discomfort that a diversity of method brings to an appellate jurisdiction will therefore be avoided, and the procedures in the new Court' will serve as a model and guidance for the Mufassal's lesser tribunals. With the exception of the Court of Small Causes in Calcutta, the Commissioners

¹⁴ WHITLEY STOKES (n 9).



produced and submitted to Her Majesty in their first report a draught code of procedure for all ordinary civil courts in the Lower Provinces of Bengal.

Similar regulations for the civil courts in the North-Western Provinces and the Presidencies of Madras and Bombay were provided in their third and fourth reports, both dated May 20, 1856. In 1857, Mr. (now Sir Barnes) Peacock filed four bills based on these draughts into the Legislative Council, which were referred to Select Committees. Act VIII of 1859 combined these bills and made them law. According to Sir Barnes Peacock, the following were the most significant enhancements:

- (a) It allowed Civil Courts to issue injunctions to prevent a defendant from committing waste, injury, or breach of contract;
- (b) It allowed the Civil Courts to appoint receivers or managers for the preservation, better management, or custody of property in dispute; and
- (c) It allowed the parties to a suit to present a case to the Judge in the form of an issue and agree in writing to abide by the Judge's decision.
- (d) As originally proposed, it eliminated the need to go through all of the time-consuming and technical forms of pleading in the Supreme Courts.

A Civil Procedure Code that combines several draughts Act VIII of 1859 established Drafts. The Supreme Courts, the Presidency Small Cause Courts, and the Non-Regulation Provinces were initially exempt from the Code. However, over time, it came to be used to describe practically all of British India. It was also made relevant to the High Courts in

the exercise of their jurisdictions by their Letters Patent. The 1859 Code was revised by a number of subsequent Acts. Its layout was poor, and it had numerous flaws. 'Again, the Code of 1859 was unquestionably ill-drawn, ill-arranged, and incomplete, and there had been a large number of decisions, which showed either some inconvenience in the Code's rules or some ambiguity of expression, or absence of direction, which had given rise to disputes,' according to Stokes. To some extent, these issues were resolved by judicial decisions; however, the decisions, no matter how well they interpreted the language of the Code, did not always lay down the rules that were most beneficial to suitors; and even when the decision did lay down the best rule, it was often convenient to enshrine it in the written law.

As a result, the revision of the 1859 Code began, the new Code was divided into ten Parts, each of which dealt with —

- I. General Suits.
- II. Incidental procedures are the second part of the discussion.
- III. Suits in specific situations.
- IV. Special proceedings,
- V. . Provisional remedies,
- VI. Appeals
- VII. . Reconsideration of the decision.
- VIII. Referrals to the High Court (Chapter VIII).
- IX. Exceptional rules for chartered High Courts.
- X. Miscellaneous matters

The draft was presented to the Council, with a preliminary report dated March 8, 1875, and circulated to the Local Government. In September 1876, the updated Bill was presented to the Council with a further report dated September 13th, 1876, explaining



several revisions in the text proposed by the comments of various law experts. In 1877, the Council received a final report documenting numerous more improvements. The Bill was signed into law on March 30, 1877, following a famous address by Sir Arthur. Within a short period of time, it became evident that several formal and substantive adjustments were needed. The Code, Act XIV of 1882, was updated once more. The Code has functioned satisfactorily on the whole, despite the fact that it has undergone certain changes since its inception. As the name implies, the Code of Civil Procedure governs the many areas of civil court procedure in the country.

REPERCUSSIONS OF THE RECOMMENDATION OF THE FIRSTLAW COMMISSION

As mentioned in the earlier chapters the codification of the Indian laws had actually begun in the third phase of the history of the codification of the law in British India. During this period the role played by the first law commission is commendable and unforgettable. The codification and the curation of the laws and codes in India is the solid foundation of the present-day law and the legal system of India, however, there were some difficulties and objections to the codification of the Anglo-Indian codes by the British especially the Law commission since it was the authoritative body for the suggestion and drafting the codes and law in British occupied India. One of the first objections to the codification, in general, is the incompleteness or the insufficient nature of the codes proposed and drafted by the lawmakers. History is evident for the cumbersome debates and discussion of the already passed codes and the numerous amendments to the codes this created an

unfavorable opinion in the minds of the common man who was very much frustrated with the changing rules and laws. The creation of the codes and the stringent application of them in a country like India where the law is in its budding stage affects the growth and narrows the scope of the development it restricts the application to the stated and illustrated cases so the future growth of the law and the emergence of the law according to the changing times was constricted. The law was mostly codified by the British appointed officers though the Indians participate they do not have the absolute authority and the final say in the making of law, this led to the eruption of the various issues on the ground level application of the curated laws in the day to day lives since the British were unaware of the situations and the conditions of the Indians. Another effect of the same cause is the misuse and the unfair judgments by the judges since the laws made were not actually suitable at the ground level. India is a country with diverse people with diverse personal laws and beliefs in the process of codification at least one of these groups suffers damage or a disadvantage this created the objections among various groups of people. The multitude of population and the existence of the diverse customary practices and laws was also an issue in law-making. The above-mentioned limitations and the abjections are more general against the codification of the laws in India now coming to the recommendations of the first law commission there are several repercussions associated with each of the recommendations which will be discussed briefly below.

The caste disabilities Act



The caste disabilities act of 1850 is one of the first recommendations of the Law Commission, this law preserved the rights of the Anglo Indians and the converted Christians. Though this law was equitable and had tried to protect the interests of the above-mentioned groups it had faced a lot of negative feedback and there was reluctance in the minds of people to comply with the law. Hinduism and Islam are age-old established religious practices in the country, these religious beliefs are deep-rooted in the society and the minds of the people, since both the religions opposed the conversion of the religion the firm believers of the religions were completely against the newly made law. Adding to that the British until then never tried to interfere with the religious practices and the beliefs of the people, this was the first after the gradual spread of Christianity through missionaries. Missionaries were very active in the spread of Christianity in India and the number of conversions was increasing day by day during that time this has threatened the existence the supremacy of the existing two religions so the believers were threatened with the rise of the new religion. Not recognizing the rights of the converted people and the Anglo Indians would further promote the conversions. Therefore, this act received hatred among the religious heads and the staunch believers of the two religions. The lex loci report which was also the basis for the Act was criticized by few of the people since there was no authority in the hands of the British to change the existing practices except for the island of the Bombay in the other provinces they were just having the authority of the Diwani, although unofficially British were controlling India still, the existence of Islam as the law of the land and the Mughal throne was against the British to change or alter the existing

position of the law of the land or to incorporate the Britain legal principles is considered to be unfair by the experts and the international law commentators.

The Indian Penal code

The Indian Penal Code's first draft which was produced in 1857 by lord Macauley is applauded and known to be one of the greatest recommendations of all time of the first law commission. It had served the purpose of its genesis however there were several critics who had expressed various conflicting opinions regards to the application and the implementation of the code. Before coming to the actual views, it is highly important to understand the changing circumstances in England, immediately after the codification began in India there was a huge transformation of the nature of the England which drastically reduced the intensity and the necessity of the draconian punishments, this new change was not incorporated in the drafts of this code. There was a popular opinion among the scholars that the punishments for the offenses in the penal code were draconian and the intensity of the punishments was high such as lifetime imprisonment, death punishment, labored imprisonment, and many more sorts of punishments. Adding to that the prisoner management was criticized, the draconian rules of the penal code were utilized against the common man, and the law was misused. The application of the code was completely restricted to the drafted codes since the code was drafted by the English who were unaware of the ground realities of the country the drafting of this code was incomplete and ambiguous this resulted in the ambiguity in the decision making and sentencing.

People were accustomed to the Islam criminal law for many decades, which was



way more liberal than the English so the drafted penal code was not readily welcomed by the people and the people were not completely aware of the newly introduced code. Even today in contemporary times when there were numerous amendments in the code still, we can find the need to change and further clarify some of the laws. Therefore, we can understand that the original draft proposed had very much sufficed for the purpose and is commendable considering the prior conditions and regarded as the successful attempt for the most of it but still there are a few aspects of it which were highly criticized.

The Civil Procedure Code

While coming to the Civil procedure Code and the condition of civil law in India it was haphazard when compared to the criminal law. This is due to the presence of the clear law i.e., the Islam principles of the criminal law and there were no solid prevalent rules for the civil law and the procedure. Prior to the curation of the code, there were no solid rules and regulations for the procedure adopted to the court and there were no solid guidelines for the judges to apply and infer the laws, after the introduction of the civil procedure code these situations of ambiguity and anarchy improved or it was believed to be improved. Again, here we have to consider the unfamiliarity of the native Indians with the intricate and complicated procedures of the English system which was really difficult for them to adopt. This led to the adoption of easy methods such as the third-party settlements and many other informal settlements which cost a fortune. The code was religiously followed with proper sense and application due to insufficiency of knowledge of the common law principles or procedures. The language was also a barrier

since there were only a few people who were well versed in English to interpret the codes in the day-to-day life. The codification was done in such a way that it further complicated the process and the procedure for the civil cases this led to the misuse of the power by the judges since a common man was not able to understand the intricacies of the code and even the lawyers for that matter had taken the advantage of this situation. However we need to agree that it was a great start towards the advanced and developed legal system.

CONCLUSION

After the comprehensive study of the first law commission and its recommendations, we can understand the importance of the codification and curation of the laws. Before the constitution of the law commission, a situation of anarchy prevailed in the country with no proper laws and procedures in the justice system. The real victims of this anarchic situation are the common men. With no concrete law to rely on, the justice delivery was solely based on the abstract principles of justice equity, and good conscience. The legal system and the principles were not applied uniformly throughout the country, every province and place have its own set of rules and regulations to follow this created numerous rule which was not clear and not effective on the ground level. In these conditions, there was a dire need for a codified, standardized law based on which the decisions will be taken and the justice will be delivered.

For the above-mentioned purpose, the constitution of the first law commission and the subsequent law commissions was done. The work of the first law commission is considered to be exceptionally commendable since they complied with and surveyed all the



existing laws and they recommended the much-needed codes and laws for the development and advancement of the legal system in India. The key recommendations include the Indian Penal Code, The Civil procedure Code, The Caste Disabilities Removal Act, and The law of Limitation. Through the examination of the drafts of these codes made by the law commission, we can clearly infer that they were successful and they are the pillars of the Indian legal system based on which the entire legal system was constructed.

Conclusively we can understand that though the law commissioner of the first law commissioners was not completely successful in serving the main purpose of coding however their tremendous effort in the curation and the culmination of the laws is highly commendable and unforgettable in the pages of history.

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