
NEED FOR CODIFICATION OF LAW

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ABSTRACT

The codification of Indian common law by the British government in the nineteenth century was more than just an attempt to explain and make more certain the law. It was also an endeavor to modernize and revolutionize the law. Aside from that, it was a highly strategic effort in which substantive legal standards provided the colonial authority with a handy, unobserved, and indirect means of instituting far-reaching institutional reforms without drawing attention to themselves. The most significant of these reforms was the restriction on the vigor with which Indian customary law might develop.

Keywords: Codification, International Law, Law

INTRODUCTION

According to the definition, the term "code" refers to a systematic compilation of statutes or a body of law that is organised in such a way as to avoid duplication or inconsistency between them. Legislation is the process through which a new law is enacted, or a custom or usage is codified and codified in a clear and systematic manner, and it is implemented. Code is the term used to describe the law that has been stored in this type of container. Codification refers to the process of drafting legislation and putting it into this format. So codification implies the promulgation, compilation, and arrangement of legal texts in a cohesive way by an authority in a state that has the capacity to do so, and it is related with the systematisation of a body of law in a cohesive form.

In its broadest definition, a code is a collection of laws, a collection of legal provisions pertaining to a specific subject matter, or a collection of legal provisions in general. In further detail, it is as follows: "It is a set of rules rules or policies that have been grouped under one overall corpus and that contain a rather full set of rules on one or more legal topics. It is the result of the application of the 'esprit de méthode' to the field of law."

A code, on the other hand, is distinguished by two main functions: it collects written principles of law and it controls distinct fields of law. So, codification is the effort of bringing together legal disposition, whether legislative or regulatory, into a single organised system of that action.

HISTORY OF CODES IN INDIA

As there was a lack of uniformity in the Indian society, the British found it difficult to administrate the various practices, norms, culture, and customs that were present in Indian society. It was the goal of Macaulay to codify Indian law in order to test the efficacy of codified statutes. He aimed for a code that was "symmetric in all areas" and would ensure uniformity based on the 'utilitarianism' principle. As a result, India began its transition from an informal system based on the social norms and practices to one based on official institutions like statutes.

Local "customs and practices" had been practiced by the indigenous peoples of India for millennia. Instead of being compelled to adhere to one set of rules or regulations, the Indians had already been following their own set of rules and traditions. The Indians had unlimited freedom because there were no constraints on them. There was "path dependency" among the

Indians because they had followed this road for so long. The Indians had used this route for a very long time, thus switching to a different one would be complicated and expensive, according to this interpretation. That which has happened before has a bearing on what may happen later is another definition of route dependency. The "increased returns" or "good feedback" that has been received since it has been pursued for a long time by many individuals makes future course changes difficult.

There was a movement in the institutions from informal to formal when the British introduced formal regulations and codified laws. Criminal law was easy to adapt since it was intended to be applied equally to all people everywhere. However, Warren Hastings disagreed with the codification of Indian personal laws because he understood it was risky and wanted to avoid getting involved.

HISTORY OF CODIFICATION IN INTERNATIONAL CONTEXT

Almost as long as the history of law itself is the history of codification. There have been many attempts to codify the laws of governance, both ancient and numerous. Of course, the major goal was to preserve and spread a standard code of conduct. "The Declaration of the Rights of Man and Citizen", a product of the French Revolution, was delivered to the French Convention in 1792 and was the first attempt to codify international law. The declaration was an initiative to codify international conventions because of its universality in its declaration of the fundamental rights of all men. A precedent was set, even though the Declaration itself didn't succeed in its stated goal of condensing and codifying the law. While Bentham laid the groundwork for the concept of codifying international law, numerous conferences, conventions, and declarations have attempted to put it into practice, and including "Declaration of Paris in 1865 and its ramifications in the Crimean War" (where it set guidelines for abolition of privateering), expressions of support for codification by null parties have been made since then.

It wasn't until the League of Nations enacted a resolution in 1924 establishing a 17-person committee to write a code of international law that the actual breakthrough occurred. The Hague Meeting (the first conference to codify international law) was held in 1930 as a result. It was decided that the most important issues were nationality rules, territorial waters, and the state's responsibility for damage done to foreigners in its territory. Aside from its role as the first international law conference to deal with codification of international law, this

conference's relevance is based on the fact that it was an eye-opener. However, the Conference's consensus on only one of the three issues before it quickly discredited the notion that codifying international law was easy. International law's codification would be a lengthy, arduous, and frustrating undertaking. Although codifying international law is challenging, it is to the credit of the legal community as a whole that it continues to be relevant despite these challenges.

CONDITIONS FOR CODIFICATION

A specific historical context, as well as a certain social development, are required for codification. There are a number of circumstances that lead to the codification of the law. Roscoe Pound has pointed out the following crucial elements that must be met before codification may take place:

1. Where the prospects for juristic growth of existing legal materials have been exhausted for the timebeing, or where the judicial systems have grown entirely mature.
2. The unwieldiness, ambiguity, and archaic nature of the existing legal framework
3. The establishment of a legislative body that is effective.
4. The requirement for a single consistent law in a political body whose various sub-divisions had established or received a variety of local legislation.

CODIFICATION IN INDIA

The British Parliament's Charter Act of 1833 established a Law Commission to consolidate and codify Indian Laws, which it did. The legislation stated that a fourth member of the Governor-General in-Council for India would be a legal specialist in the formulation of laws. Thereafter, Lord Macaulay was elected as an ordinary member of Parliament, and he had a role in drafting new legislation in consultation with the Governor-General.

Since the Legislative Department was first formed in 1869, it was decided that such a significant responsibility deserved its own division. Before the establishment of said Legislative Department, legislation proposals were originated by the department responsible for the subject matter, and the Legislative Department then assumed responsibility for the Bill. While serving as Secretary of the Legislative Department, the Viceroy's Council also had a

secretary who was responsible for enacting new legislation. The Law Member and he drafted all of the bills that were brought before the Council for consideration. The Law Commission's efforts during the latter half of the 19th century resulted in a number of significant legislations. Lord Macaulay's initial work on the Indian Penal Code, which is still in effect, is just one example.

ANALYSING MERITS AND DEMERITS OF CODIFICATION OF NATIONAL LAWS

Benefits of Codifying Law

1. Codification ensures that the law is known with certainty
2. Codification also avoids the pitfalls of judicial legislation. According to Macaulay, making legislation in a country with an absolute ruler and lax morals, with no Bar and no public, is a curse and a disgrace.
3. This is the only method to avoid any legal malpractice.
4. Codification is required to preserve a country's customs.
5. The codification of law is required for national unification.

Demerits of Codification

1. Codification makes the legal system inflexible.
2. It stifles the natural growth of law.
3. A code unifies the country's laws. It is unconcerned about regional distinctions in attitudes, convictions, aspirations, customs, and traditions.
4. A code is likely to disrupt current rights and duties by introducing new ones, disrupting the legal order and causing confusion and uncertainty.

CODIFICATION OF INTERNATIONAL LAW

When it comes to international law, the significance of codification is sometimes overstated. It would be negligent of us not to acknowledge the importance of the concept of codification.

Indeed, it is difficult to envisage a legal structure that is based solely on oral regulations, uncertain and confusing conventions, and ambiguous legislative provisions. Many people believe that the legal system is confusing, clouded, and inconsistent in some ways. This point of view cannot be totally disproved because it is evident that the procedural and technical structure of laws, the sheer number of them, and the inconsistency of their variation in terms of geography and time, complicate the very essence of the law-making process. Codification, in this context, is nothing less than a machine that makes the international legal system much more manageable and straightforward. To be clear, it is not intended to replace or reduce the need for attorneys, policymakers, and other professionals in the legal area, but rather to enable for a reduction in the imbalance between such individuals and the general public. From an international perspective, it offers for a more equal level and a better system that is available to all and is rarely abused due to the absence of ambiguity in its application. As a result, the "concept of codification of international law" is now recognised as a necessary weapon in the pursuit of justice throughout the world.

MERITS OF CODIFICATION OF INTERNATIONAL LAW

The advantages of codification are quite self-evident. Every legal system is dependent on the consistency, universality, and stability of its rules. Due to the fact that international law is often developed through consensus, it is particularly deficient in all three of these fields of study. As international treaties and conventions, they are neither comprehensive nor uniform in that they regulate the law between nations, given the fact that nations join them voluntarily rather than as a result of compulsion. It is also always possible to limit the applicability of these rules to only those who are directly affected by them. As a result, the effectiveness of such techniques of international law-making is severely limited. The criteria for stability is likewise not met in the case of limited homogeneity and widespread availability. Due to the fact that customary international law is universally applicable in such a situation, it can be used to fill in the gaps. Customs, on the other hand, is not especially written down and therefore not totally certain. As a result, they too must be codified in order to provide stability to the international legal system, and it is in this context that the major value of codifying international law is highlighted.

DEMERITS OF CODIFICATION OF INTERNATIONAL LAW

While it is undeniably desirable to have such codification, the procedure itself is not without difficulties.

In the first place, nations tend to dispute because their political objectives are divergent from one another. In contrast to the codified national laws, the procedure involves a large number of participants, each of whom is equally valued and needed to give their consent. Furthermore, even if we were to ignore (or overcome) the obstacles associated with properly defining the law, codification alone would have some disadvantages. When a law is written in stone, it automatically signifies that it will be difficult to change in order to meet the needs of the current generation. Additionally, because of the legal language that is often utilised in codification, a conservative slant is unavoidable. Although this stiffness may be easily overcome by a trend toward progressive construction of such codified rules, the benefits of codifying legislation outweigh the drawbacks of doing so in the long run. Moreover, it is important to emphasise that these deficiencies do not have enough capacity to be irreversible and, as a result, do not create a situation in which the parties are unable to reach a compromise. Consequently, there is no compelling reason not to pursue the codification of law energetically, particularly in the sphere of international law, which is in desperate need of it.

CONCLUSION

Even if codification has its shortcomings, these are minimal when weighed against the benefits it provides. Codification results in the formation of a planned notion for growth. It makes it possible for the legislation to achieve the goal for which it was created. In today's world, codification has become absolutely necessary. So, it is the most effective technique of advancing legal progress, which is why it has been accepted throughout the world. Two considerations must be kept in mind when considering India: First and foremost, the uniformity of laws should be one of the most essential goals of law reform in India. Second, there must be a sense of unity between the Law Commission, the legislative, and the judiciary system. As a result, it can be stated that codification is a vital process of legislation that has both advantages and downsides. However, it is the process that filters laws from their ugly sides and purifies them in order to protect the rights of ordinary citizens.