



## CODIFICATION OF HUMAN RIGHTS VIOLATIONS

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### **Introduction**

Civil law jurisdictions rely, by definition, on codification. A notable early example was the Statutes of the Grand Duchy of Lithuania, in the 16th century. The movement towards codification gained momentum during the Enlightenment and was implemented in several European countries during the late 18th century. However, it only became widespread after the enactment of the French Napoleonic Code (1804), which has heavily influenced the legal systems of many other countries. Contrary to popular belief, common law has been codified in many jurisdictions and in many areas of law ( examples: criminal codes, civil codes)<sup>i</sup>.

Following the First World War and the establishment of the League of Nations, the need for codification of international law arose. In September 1924, the General Assembly of the League established a committee of experts for the purpose of codification of international law, which was defined by the Assembly as consisting of two aspects: putting existing customs into written international agreements, developing further rules. In 1930 the League of Nations held at the Hague a conference for the purpose of codification of rules on general matters, but very little progress was made. Following the Second World War, the International Law Commission was established within the United Nations as a permanent body for the formulation of principles and codification of international law.

Law Reform has been a continuing process particularly during the last 300 years or more in Indian history. In the ancient period, when religious and customary law occupied the field, reform process had been ad hoc and not institutionalized through duly constituted law reform agencies. The first Law Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay which recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. Thereafter, the second, third and fourth Law Commissions were constituted in 1853, 1861 and 1879 respectively which, during a span of fifty years contributed a great deal to enrich the Indian Statute Book with a large variety of legislations on the pattern of the then prevailing English Laws adapted to Indian conditions. The Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act. etc. are products of the labour of the first four Law Commissions<sup>ii</sup>.

In 1835, a separate department known as the Legislative Department was functioning as a sub-division of the Home Department managed by an Assistant Secretary who prepared the draft Bills needed for legislations. During 1869, it was felt that so important duty ought to be entrusted to a distinct department and thus a separate department known as the Legislative Department was constituted<sup>iii</sup>.

After independence, the Government of India established the First Law Commission of Independent India in 1955 as a non-statutory body and re-constituted every three years. The Twenty-first Law Commission was constituted on 1st September, 2015. Law Commissions have so far submitted 262 reports. It is time to examine the codification of human rights violations and its inevitability in India.

### **Substantive law**

Substantive law consists of written statutory rules passed by legislature that govern how people behave. These rules, or laws, define crimes and set forth punishment. They also define our rights and responsibilities as citizens. There are elements of substantive law in both criminal and civil law. It is codified in legislated statutes or can be enacted through the initiative process. In the Indian Penal Code, the Criminal law of India has been codified. It deals specifically with offences, being the substantive law. There are special law also like Prevention of Dowry Prohibition, etc, which codifies crimes and punishments.

Substantive law stands in contrast to procedural law, which is the "machinery" for enforcing those rights and duties. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings, as well as the method and means by which substantive law is made and administered.

Criminal law doctrine governs the investigation, apprehension, trial and punishment of persons who violates statutes defining conduct that transgresses social norms to such an extent that the conduct may be deemed criminal. Criminal law violations enable the government to deprive individuals of property, liberty and even life. For this reason, criminal law doctrine is subject to unique scrutiny and is continually reassessed to guard against unjust punishment.



The substantive criminal law can be divided into three sub-categories: (a) the definition of criminal offences, (b) affirmative defences that may permit the accused to avoid a criminal conviction even if he/she committed the criminal offences; and (c) limitations on permissible types of punishments for particular crimes<sup>iv</sup>.

In India, Protection of Human Rights Act, 1993, this is a special substantive law, deals with the promotion and protection of human rights without codification of human rights violations and its punishments.

### **Codification**

The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties<sup>v</sup>. The United Nations requested that all the member countries have to codify the human rights violations.

National Human Rights Commission's annual report 2004 – 2005 says that it has been more than 12 years since the Protection of Human Rights Act, 1993, entered into force. The Commission has been deeply concerned towards the non-fulfilment of the promise of Section 30 of the Protection of Human Rights Act, 1993, which provides for speedy trial of offences arising out of violation of human rights by designating, in each district, a Court of Session to be a Human Rights Court to try the offences. It is a matter of great regret that even after so many years, there has been lack of clarity as to what offences, precisely, can be classified as human rights offences<sup>vi</sup>. National Human Rights Commission proposed an amendment in it 2001-2002 annual report.

Protection of Human Rights Act does not specify Human Rights offences. However, PHR Act does contain definite indications as to what would be construed as such offences. The phraseology, “offences arising out of violation of Human Rights,” defined in Section 2(1) (d) of PHR Act would throw sufficient light, as respects the necessary and requisite parameters for identifying such offences<sup>vii</sup>. This judgment instigated the discussions on importance of codifying of human rights violations.

Highlighting some anomalies and shortcomings in the Protection of Human Rights Act 1993, the Madras High Court has expressed the hope that lawmakers will enact appropriate amendments to make it "workable". Justice S Nagamuthu of the Madurai bench of Madras High Court said sections 2(d) and 30 of the Act were vague. A conjoint reading of these two provisions may lead one to believe that all offences committed by public servants relating to human rights shall be tried only the human rights courts.<sup>viii</sup> The central theme of the this verdict is codification of human rights violations.

Codes may be of the following kinds: 1. Creative code is that code which makes a law for the first time without any reference to any other law. It is law-making by legislation, example: Indian Penal Code, 2. Consolidating code is that code which consolidates the whole law - statutory, customary and precedent, on a particular subject and declares it. This is done for systematizing and simplifying the law, example: Transfer of Property Act. 3. The codes which make laws as well as consolidate the existing law on a particular subject fall under this class.

The main merits of codification are; By codification law becomes certain and it no longer remains vague and uncertain as it generally is in precedent and custom. The codification makes law simple and accessible to everybody. By codification, law on any particular point is made accessible and known to everyone so that the citizens come in a position to know their rights and duties well. By codification, law is logically arranged in a coherent form and there occurs no chance of conflict or inconsistency arising among the different provisions of the law. Codification makes the law simple and stable. Stability is very essential for law so that the people may have confidence in it and the legal transactions may be made easily. Codification brings uniformity which in turn helps in the planned development of the country.

Codified laws have uniform and wider application. This helps in developing affinity and unity among the people who are governed by the same laws. The existence of fixed principles of law avoid dangers of arbitrary, biased and dishonest decisions. Law applies equally to all without any distinction. The function of the court is merely to apply and enforce the law. It is one of the cardinal principles of law that justice should not only be done but also appear to be done. This can be achieved only when there are fixed principles of law.

The law serves to protect the administration of justice from the errors of individual judgement. The problem of adjudication are sometimes difficult. Law represent the collective wisdom of the community and overrides the will and reason of judges and magistrates. Another advantage of law is that it is more reliable than individual judgement. Human mind is fallible and judges are no exception. The wisdom of the legislature which represents the wisdom of the people is safer and more reliable means of protection than the momentary fancy of the individual judge<sup>ix</sup>.



### Classification

State Human rights Commission, Tamil Nadu (Procedure) Regulations, 1997, classified the human rights violations. Subject wise classification of the complaints shall be made as per the list in the Appendix I, which may be modified or amended from time to time as per the orders of the Chairperson<sup>x</sup>. The categorization may be the walking towards the codification. The details of the classification as follows:

**Table 1**

Major Head	Sub-Head
Children	Child Labour
	Child Marriage
	Child Prostitution
	Exploitation of Children
	Immoral Traffic in Children
	Cruelty to Children
	Neglect of Children

**Table 2**

Major Head	Sub-Head
Health	Exploitation of the mentally retarded
	Public Health hazards
	Malfunctioning of Medical Professionals

**Table 3**

Major Head	Sub-Head
Jail	Custodial death
	Custodial rape
	Deprivation of legal aid
	Harassment of prisoners
	Irregularities in Jail
	Unlawful Solitary confinement

**Table 4**

Major Head	Sub-Head
Criminal Gangs	Harassment by gangs
	Harassment by local goonda
	Mischief by anti-social elements

**Table 5**

Major Head	Sub-Head
Labour	Bonded labour
	Exploitation of labour
	Forced labour
	Hazardous employment
	Slavery
	Traffic in human labour

**Table 6**

Major Head	Sub-Head
Minorities	Discrimination against minorities
	Discrimination against S.C./S.T.
	Harassment OF S.C./S.T.

**Table 7**

Major Head	Sub-Head
Police	Arbitrary use of power
	Abduction/Kidnapping
	Abuse of Power
	Attempted Murder
	Custodial death
	Custodial rape



Custodial torture Custodial violence Death in police firing Death in police encounter Fake encounters Failure in taking lawful action False implications Illegal arrest Unlawful detention Police motivated incidents Rape Victimization
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**Table 8**

Major Head	Sub-Head
Pollution	Ecological disturbances Pollution affecting surroundings

**Table 9**

Major Head	Sub-Head
Religion-Community	Communal violence Group clashes Racial discrimination Religious discrimination

**Table 10**

Major Head	Sub-Head
Women	Abduction, Rape and Murder Discrimination against women Dowry death or attempt Dowry demand Exploitation of women Gang rape Indignity of women Immoral trafficking of women Rape Sexual harassment

**Table 11**

Major Head	Sub-Head
Miscellaneous	Disappearance Unlawful actions of public servant Unlawful eviction

There is a lack of clarity regarding the offences that can be classified as human rights offences. Because of this lacuna, these (human rights) court have not been adequately discharging the purpose for which they are meant<sup>xi</sup>.

**Conclusion**

For the promotion and better protection of human rights and administration of human rights justice, codification of human rights violations is very essential. In order to fulfil the lacuna and strengthen the human rights institutions, it is essential to concentrate on the following measures.

1. Adding codification of human rights violations in the Prevention of human Rights Act, 1993 is essential. The parliament has take steps to make suitable amendment in the law.
2. The National Human Rights Commission and Law Commission of India have to work for the codification of human rights violations.



3. The ministry of law and justice, Government of India has to initiate the proceedings for the early codification of human rights violations.

Codification of law is not an easy job, but inevitable and indispensable. Without codifying the human rights violations, effective functioning of human rights commissions and courts will not be realistic.

#### **Reference**

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<sup>i</sup> [https://en.wikipedia.org/wiki/Codification\\_\(law\)](https://en.wikipedia.org/wiki/Codification_(law))

<sup>ii</sup> <http://www.lawcommissionofindia.nic.in/main.htm#a1>

<sup>iii</sup> <http://lawmin.nic.in/intro.htm>

<sup>iv</sup> <http://www.eolss.net/sample-chapters/c04/e6-31-02-04.pdf>

<sup>v</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights in Vienna, 25 June 1993.

<sup>vi</sup> Annual Report 2004-05, National Human Rights Commission, New Delhi, 2005, p.184.

<sup>vii</sup> “Tamil Nadu Pazhankudi Makkal sangam Vs. Government of Tamil Nadu”, op.cit. p.669.

<sup>viii</sup> [http://zeenews.india.com/news/state-news/human-rights-act-has-anomalies-madras-hc\\_653564.html](http://zeenews.india.com/news/state-news/human-rights-act-has-anomalies-madras-hc_653564.html), dated September 07, 2010.

<sup>ix</sup> <http://www.articlesbase.com/national-state-local-articles/advantages-of-codification-of-law-3830887.html>

<sup>x</sup> Notification No.SRO C -(a)/97,Tamil Nadu Government Gazette, Part III, Section2, Issue No.409, Issue, Part III - ,Issue NO 409, Aug 8, 1997, p4.

<sup>xi</sup> D.Banerjea, Ed., Human Rights and Central Para Military Forces, Part I, Allied Publishers Private Limited, 2005, p.209.