

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 6

2021

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Legislative Amendment, Consolidation and Codification of Statutes

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ABSTRACT

A Statute can be defined as a set of laws that are passed by the legislature. Further the provisions of law written under the statute are enacted by the legislature. The classification of the same can be done under 3 main categories. The categories are Amendment, Consolidation and Codification of Statutes. Amendment means to make changes into the existing laws according to the requirement of the time. Consolidation refers to the process of bringing together the provisions of law relating to a particular subject of law. Codification on the other hand means to exhaustively describe the provisions of law regarding a particular subject of law. The article below discusses the stated topics in depth and suggests how interpretation is an essential requirement.

Keywords: Statute, Amendment, Consolidation, Codification, Legislature.

I. WHAT IS A STATUTE?

A statute can be defined as a written law that is passed and enacted by the legislature, both on the state and federal level. Legislature is a body which has been empowered by the Constitution of India to enact and amend new and old laws into the judicial system. When a bill regarding a statute is passed, it becomes a law which is therefore called as a Statutory Law.

The legislature of India is known as the Parliament. It is bicameral legislature. It consists of two house namely, Rajya Sabha and Lok Sabha. To form a Statutory Law, the bill needs to be approved by both the houses. Further, each state has a legislature of its own. In India, the state legislature is made up of Vidhan Parishad and Vidhan Sabha. For the statutes which are solely made for a particular state is passed by the both houses of the state.

In simple word, a Statute can be defined as a statement of law regarding a particular issue that might take place or be committed by a person. For e.g., the Indian Penal Code, 1860, states that any person who kills someone will be liable of committing murder under the statute. The law would be applied and binding for all the citizens of the nation.

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A statute may be classified on the basis of duration, method and object of the statute. The duration of the statute may be for a temporary period of time or for a permanent period of time. The method classification can be divided into two kinds, first is obligatory statute and second is permissive statute. The obligatory statute compels that a certain act must be done in a certain manner. On the other hand, permissive statute just merely permits an act to be done and no directions are given regarding it.

The classification of a statute on the basis of its object can be mainly divided into three topics which is:

- Amendment of the Statute
- Consolidation of the Statute
- Codification of the Statute

II. AMENDMENT OF THE STATUTE

Any kind of alteration like, adding new laws or altering the old laws or making certain changes to the existing laws, which is contained under the Constitution of India, the legislative bills or the statutes, made by the government is known as amendment. Amendments are made to the existing constitution or the statutes. These can also be made to the bills that in the course of their passage through the legislature.

The amendments to the national constitution of a nation could completely change the fundamental status of the nation's political system and governing institutions. Therefore, it is recommended that such amendments should be submitted in an exact prescribed manner and not in any other form. The two most famous countries which has faced major amendments in its Constitution is as follows:

(A) Amendments in the Indian Constitution

According to the reports made in October, 2021, a total of 105 amendments have been made to the Constitution of India since the year 1950 in which it was enacted. There are mainly three kinds of amendments made in India³.

1. The first type is the Simple Majority. In the Simple Majority, a normal voting is done in both the houses of the Parliament and decision is taken on the basis of whichever side gets the majority votes.
2. The second type is the Special Majority. In Special Majority, a specified number of votes are required from both the house of the Parliament.

³ https://en.wikipedia.org/wiki/List_of_amendments_of_the_Constitution_of_India

3. Third type of amendments are an addition to the second type. A ratification is also required by one-half ratio from the State Legislatures along with the specified number of votes. Most amendments are done on the basis of this type.

The second and third type of amendment is governed by Article 368 of the Constitution of India. The Indian Constitution is the most amended national constitution in the entire world⁴.

(B) Amendments in the United States of America's Constitution

The most popular amendments made are the ones that were made to the Constitution of the United States of America. Article V of their USA's Constitution makes the provision for amendments. The first 10 amendments that were made to the Constitution are called the Bill of Rights⁵. In a total only 27 amendments have been made to the USA's Constitution since the year 1789 in which it was enacted.

Agreement from two third of the members of each house of the congress are required for the amendments to be made in USA. There are two methods for ratification, either by the State Legislature or by the popularly elected conventions in several states. Although only during the 21st amendment the convention method was used. The method is chosen by the Congress. In many U.S. states, proposed amendments to a state constitution must be approved by the voters in a popular referendum⁶.

III. CONSOLIDATION OF THE STATUTE

According to a laymen's understanding, consolidation means the action or process of making something stronger. In legal terms consolidation can be defined as "bring together a number of existing Acts of Parliament on the same subject into one Act without changing the law in any way"⁷. By joining both the meanings, we may conclude that consolidation is basically the process of bringing together all the important and single kind of laws together into one statute, to make it a stronger one.

The purpose of Consolidation of Statutes is to form a single book of statutory law which would contain a complete and detailed form of Acts, which would repeal the previous Acts. However, it may not be just a mere compilation of all the previous provisions.

Consolidation is not only a simple compilation of different statutes which are already in

⁴ Vivek Krishnamurthi, *Colonial Cousins: Explaining India and Canada's Unwritten Constitutional Principles*. Yale Journal of International Law, Pg. 207-239 (2009)

⁵ The Editors of Encyclopaedia Britannica, Amendment in Constitutional Law, <https://www.britannica.com/topic/amendment>

⁶ Ibid.

⁷ <https://www.parliament.uk/site-information/glossary/consolidation-bill/>

existence, but all the laws and provisions are to be enacted with co-ordination with each other. The changing social circumstances should be kept in mind during the consolidation of the statutes. There are mainly 3 kinds of consolidation which are as follows:

(A) Consolidating without Any Changes

In this case, the consolidation of statutes is just the simple compilation of different statutes which are of the same category and are created for a similar kind of offence or circumstance which might arise.

(B) Consolidating with Minor Changes

In this case, the consolidation of statutes is compilation of different statutes with minor changes made to them so that it is clear for the people to understand and the compilation is not just a vague one. The minor changes might be made for making every provision well-co-ordinated.

(C) Consolidating with proper Amendments

In this case, the consolidation of statutes is not just a compilation of different statutes which are of the same, but a compilation made with major changes into it and amendment are made to the existing laws. Some of the part is revised, some new provisions are added and some of the old provisions are altered.

(D) The Rules of Interpretation during Consolidation

- 1. Presumption:** During the enactment of the consolidating Act, the general presumption that is made by people is that the Parliament is intending to bring in changes into the already existing laws. Another presumption that is made is about the words that are used during the consolidation of the Act, has the similar meaning as that of the enactment for which consolidation is taking place.
- 2. Inconsistency:** It is appropriate to refer to the previously existing laws if any case of inconsistency is found between the laws of a Consolidating Act. It should be done in a chronological manner that is according to the date of the enactment of the Act.

(E) Judicial Precedent

In a case⁸, it was argued that the provision stated under Article 26 (1) of the Matrimonial Clause Act, 1950, the term 'children' over there is limited to the legitimate child only and not the illegitimate ones. The above interpretation was rejected and dismissed by the Judge of the Court. The court further gave a liberal interpretation and stated that in such cases the

⁸ Galloway v. Galloway, 153 S.E.2d 326

illegitimate child should also be included.

In another case⁹, the Supreme court of India held that the meaning of law is to be found first, the resource may legally be have to a prior state of law. Further it was added that the evil sought is to be removed by the process through which the law was evolved.

For e.g., in England the law of Property Act 1925 which consolidated the Acts of 1922 and 1924 (Act No. 2 of 1974) if consolidating Act. Similarly, in Australia, the New South Wales Justice Act 1902 is a Consolidating Act. In India, the code of Criminal Procedure, 1974 is a consolidating Statute relating to Criminal procedure.¹⁰

IV. CODIFICATION OF THE STATUTE

The codification of statute means the statute which provides provisions regarding a specific subject of law. It exhaustively states the whole law in it regarding the subject of law. The maker of the law assimilates both, the pre-existing laws and the common laws regarding the subject while making the law.

The purpose of codifying the statute is to bring in uniformity of the laws and applying it in an orderly manner. Once the law has been codified, the makers cannot be asked to change it according to the circumstances of the society. If any major or minor change or say amendment is to be made to the codified laws, then only the legislature may change the law.

(A) Judicial Precedent

Lord Herschell in a case¹¹, while interpreting the codified statute stated that “The object of a codifying Act is to end the conflict of decisions.” He further explained that a codifying statute includes all the references that have been made in the previous cases. It makes it more reliable on the interpretation as it removes the confusions and ambiguity.

In another case¹², the Supreme Court of India while interpreting the Income Tax Act, 1992 stated that the Act is exhaustive in nature and the intentions therein show that it is different from the common rule. The preamble of the statute states that it is an act which can be consolidated and amended.

⁹ State of West Bengal v. Nipendra Nath, AIR 1966, S.C 477

¹⁰ <https://www.srdlawnotes.com/2019/03/consolidating-statute-interpretation-of.html?m=1>

¹¹ Bank of England v. Vagliano Brothers, (1891) AC 107

¹² Subba Rao v. Commissioner of Income Tax, 1956 AIR 604

V. DIFFERENCE BETWEEN CONSOLIDATION AND CODIFICATION

1. Consolidation of statutes means an Act of the Parliament which collects and states all the statutory provisions relating to a specified subject of law. it does not contain any case laws in it. On the other hand, Codification of the statute means an Act which exhaustively states the provisions related to a particular subject of law. Under codification the pre-existing provisions and case laws are also referred.
2. Consolidation comprises the whole concept of the statutory law on the subject of repeal of previous laws. Whereas, during Codification of statute only the main rules are stated in an orderly manner regarding the particular subject.
3. The recourse of enactment in Consolidation can only be taken if there is any ambiguity to resolved. Whereas, in case of Codification, the recourse of enactment can be taken into consideration in general cases as well.
4. The former statutes are repealed while Consolidation. On the other hand, while Codifying the former statutes may survive.

VI. CONCLUSION

Amending, consolidating and codifying the statutes gives the judicial system the clarity and ensures them that the provisions given are placed and used in their correct legal capacity. To draw a conclusion, it may be said that interpretation of statutes shall be done in a way which gives people maximum justice. The amendments that take place help to better the provisions of law given to us through different kinds of consolidating and codifying statutes. It is important for the judicial system to keep every aspect of laws in mind and use the power granted to them of interpretation to full extent and set examples for future while giving justice to people through their analysis.
