

1- Codification

Codification is the arrangement of laws and rules into a general system. It is not like usual legislation. Usual legislation treats a special matter, like the law of agricultural reform. Codification is more general: civil codification, for example. Legislation means setting legal rules which develop the society. Codification aims at developing the legal rules. It is the business of the parliament.

Codification makes legal rules more exact. It benefits from the legal rules of other societies.

In ancient Iraq, the first codification was Orkajeena Shareea in 2355 B.C. The second codification was Ornemwa Shareea in 2100 B.C. Then came Aishtaar Shareea in 1935 B.C. The fourth codification was Hamuraabi Shareea in 1694 B.C. The Roman codification appeared in around 450 B.C. Therefore, the Iraqi codification is perhaps the oldest codification in history.

Modern codification appeared first in France. It issued the French Civil Law in 1804. In Egypt, two codifications appeared before the end of the nineteenth century.

In modern Iraq, different codifications appeared:

- 1- Law of Commerce which appeared in 1943. It was replaced by the second Law of Commerce in 1984.
- 2- The Civil Law in 1951.
- 3- Law of Civil and Commercial Pleadings in 1956.
- 4- Law of Labour in 1958.
- 5- Law of Sanctions in 1969.
- 6- Law of Penalty Case in 1971.

Codification helps to stop the municipal legislative body from enacting redundant or inconsistent new ordinances, and lets the council or board view the body of law as a whole and note any gaps in coverage which may need legislation.

2- Recodification

Recodification refers to a process where existing codified statutes are reformatted and rewritten into a new codified structure. This is important since, over time, a code containing outdated or inconsistent laws arises from the legislative process of amending statutes.

Terminology

Codification تقنين

Legislation تشريع

Sanctions عقوبات

Pleadings مرافعات

Agricultural reform اصلاح زراعي

Law of commerce قانون التجارة

Penalty cases محاكمات جزائية

1. Legislation

There are six sources of law in Iraq: legislation, custom, Islamic Shareea, rules of justice, judiciary and jurisprudence.

Legislation is the most important source of law. It means the legal rules which the state puts. They are binding on everybody. Legislation is also the operation of writing a text which will be a legal rule. It should be clear and exact. Everybody should obey it.

Legislation aims at developing the society. It should change its rules from time to time in order to suit the changes of life.

There are three kinds of legislation:

1- Constitutional legislation: it sets the system of the state. It is also called the constitution. The people should take part in writing it. The first constitution in Iraq appeared on March 21, 1925.

2- Ordinary legislation: it is set by the authority. The parliament sometimes allows the authority to legislate some necessary things. The parliament also legislates thing which the society needs. They become legal after the president certifies them.

3- Sideways legislation: it is the authority not the parliament which issues sideways legislation. It includes instructions and internal system of offices and companies.

2. Custom

Like legislation, custom is an important source of law. However, legislation is written. Customs is not written. It comes as a social habit. People respect it because it organizes their life. They find it useful for them to follow it. if it does not break legislation, the court will apply it.

A custom should be general. Everybody should obey it. it should be old enough. It should be stable and regular.

A custom should encourage good behavior. It develops itself with the development of the society. Therefore, it is more flexible than a written law.

A custom is three type:

1- comprehensive: everybody in the state should obey it. Muslims in Egypt, for example, say that the furniture of a house would belong to the wife, not the husband!

2- local: it is obeyed in some parts of the country only, like the customs of tribes in Iraq.

3- professional: it concerns a certain job, like counting the interest in different banks. Each bank counts a certain interest on the money it lends to people.

If the comprehensive custom and the local custom do not agree, people follow the local custom. Custom has no place in some laws, like the financial law and the commercial pleadings.

In Iraq, custom completes legislation. If legislation does not say anything about a certain matter, the judge goes to custom.

Terminology

Legislation

Judiciary

President

Jurisprudence

Operation

Constitution

Instructions

Sideways

Exact

Ordinary

Comprehensive

Local

Professional

State

Regular

Custom

Apply

Stable

3. Islamic Shareea

Islamic shareea has been an important source of law. Islamic countries depended on Islamic shareea from the seventh century until the nineteenth century as their law. This shareea was a complete system from regulating life and spreading good behavior among Muslims. It consists of Holy Quran and the tradition of our prophet, Muhammad. It is a divine legislation in its source. It is a positive law as Muslims depended on it in writing more and more legal rules.

When France invaded North Africa, the Islamic shareea became less important as a source of law. After that, the Ottoman State borrowed some French legal rules and put them instead of Islamic rules but the Ottoman State issued its civil law in 1876, depending on Islamic shareea only. It organized the personal status affairs of the state.

In Iraq, Islamic shareea is now a source of law in two fields inly: personal status affairs and financial dealing. Personal status affairs include marriage, divorce, will, inheritance,... financial dealings organize the financial activities in the society and protect the rights of the people.

The Iraqi Civil Codification says: (if legislation does not say anything about certain matter, the court should go to custom, if custom does not say anything about it, the court should go to Islamic Shareea. If al- Shareea says nothing about it, the court should depend on the rules of justice).

Therefore, we may say that Islamic shareea is the third source of law in Iraq.

4- Rules of justice

Justice means the feeling of equality. It says that every person should have his rights. Nobody should take the rights of others. This feeling is built on a group of rules. They are called the rules of justice. They aim at organizing the society in the correct way. They depend on equality. Equality is a system of natural justice. If legislation, customs and religion do not give the answer to the judge, the judge will depend on equality. He will use his mind. He will think of a good answer.

Rules of justice are general. They are binding on everybody. But they are not as strong as legal rules. They change with the change of life. **sometimes they are not clear. They aim at equality and happiness. But how to find equality and happiness? There is no single answer.**

Rules of justice made the Roman law more flexible. If a person disobeys a legal rule with good intention, the punishment will be not severe.

In England, rules of justice are as important as legal rules. Sometimes, rules of justice and legal rules disagree with each other.

In Islam, rules of justice are very important. They spread equality and justice in the society. They encourage legal reform from time to time.

However, rules of justice should not allow a judge to make his own rules. He should not depend on himself only. He should respect the existing rules.

Terminology

Justice

Flexible

Punishment

Legal reform

Existing

Equality

5 & 6- Judiciary and jurisprudence

In Iraq, there are four formal sources of law. They are legislation, custom, islamic shareea and rules of justice. A judge goes to them for answers. There are also two interpretive sources of law. They are judiciary and jurisprudence. If something is not clear in the formal sources, they explain it. They complete each other. a jurist learns from the experience of a judge. A judge learns from the opinion of a jurist.

D/ **Judiciary** is a group of judges in a country. It also means the collection of decisions issued by the courts of a country. It is the practical side of law. It first appeared in Roma. It was one of the sources of Roman law.

In the Islamic society, it appeared with Islam. Islam spread justice. Muhammad was the first Muslim judge.

In England, judiciary is a formal source of law. A judge sometimes depends on previous decisions made by other judges. This is because the English law is not codified.

D/ **Jurisprudence** is the second interpretive source of law. It means the opinions of justice. It is the scientific side of law. It puts theories. Judges depend on these theories. In Islam, jurisprudence began with the holy Quran. After that, different schools of Islamic jurisprudence appeared. Discretion also appeared. It developed the legal system. It encourages the judge to study the situation carefully before taking decision.

Terminology

Judiciary مجموعة القضاة او مجموعة القرارات التي تصدرها المحاكم

Jurisprudence الدراسة العلمية للقانون- فقه القانون