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COMMON LAW SUPREME COURTS. A COMPARATIVE APPROACH

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Abstract

The biggest part of a Supreme Court's activity is oriented to interpreting statutes and regulations generated by the state.

In the common law countries we have a small ammount of time to solve the great disputes of our time.

The modern statutory law has a negative effect for the common law.

In time, together with the separation of some former states from the United Kingdom, constitutional changes enforced in these countries determined a gradual separation from the UK's judicial system.

Begining with the introduction of the Statute of Westminster in 1931, Australia, Canada, New Zealand, the Republic of Ireland and South Africa acquired legislative powers equal to Britain.

This gave the possibility to these countries to make and enforce their own laws.

This has determined the creation of hybrid systems.

These judicial institutions do not follow the model of the UK system..

Keywords: *United Kingdom , common law , supreme courts, diversity*

1. General aspects

One of the main aspects of the common law is represented by the legal precedent.

Judges are providing the reasoning of their decosions through precedent, citing cases to support their conclusion while distinguishing between cases cited by that counsel in favor of an opposing result. In the same time, legal precedent is the mechanism by which judgesare communicating between them, giving in the same time guidance to prospective litigants and the practicing bar.

This process has importance for supreme courts, whose decisions are compulsory for all lower courts within their jurisdiction.

Due to this reason, in most common-law jurisdictions, the supreme court decides relatively few cases but draws heavily on precedent for the opinions it issues.

The only exception is the Supreme Court in India, being in contrast to its counterparts in other common law countries, deciding thousands, rather than tens, of cases.

2. South Africa

Judicial independence is enforced by the courts. [1]

Section 165 of the Constitution judiciary is verbally expressing that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice, no person or structure of state may interfere with the function of the courts, that the structures of state, through legislative and other measures, must avail and forfend the courts to ascertain the independence, impartiality, dignity, accessibility and efficacy of the courts and that an order or decision issued by a court binds all persons and organs of state to which it applies.[2]

The judiciary in South Africa is composed of the Constitutional Court, the Supreme Court of Appeal, High Courts, Magistrates Courts and other courts established or recognised by an Act of Parliament.

The President and Deputy President of the Supreme Court of Appeal are appointed by the President of South Africa after consulting the JSC – Judicial Service Commission. Other judges of Constitutional Court are appointed by the President after consulting the president of the Constitutional Court and the bellwethers of parties represented in the National Assembly. The President must appoint the judges of all other courts on the advice of the JSC. [3]

Judicial Service Commission has in its composition the president of ther Constitutional Court, the president of the Supreme Court of Appeal, one judge president, the Minister of Equity, two practising advocates, two practising attorneys, one law professor, six deputies of the National Assembly, four delegates to the National Council of Provinces and four persons designated by the President.[4]

The High Court generally deals with all commercial, delictual, family, insolvency, copyright, enrichment, indemnification, administrative law, building, motor conveyance accidents, etc. is consequential.

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[1] See An International Bar Association Human Rights Institute Report *Beyond Polokwane: Safeguarding South Africa's Judicial Independence*, p.14

[2] See An International Bar Association Human Rights Institute Report, Op. Cit, p.

[3] See An International Bar Association Human Rights Institute Report, Op. Cit, p.14

[4] See An International Bar Association Human Rights Institute Report, Op. Cit, p.15

The following courts are established or apperceived in terms of Acts of Parliament. [5]

We are speaking here about courts having admiralty jurisdiction, labour courts, labout appeal courts, Competition Appeal Court, the Land Claims Court and the Electoral Court.[6]

The Electoral Court, with the status of the High Court, has jurisdiction to review any decision of the Electoral Commission.[7]

3. India

The Constitution mentioned the establishment of the Supreme Court, which is the interpreter and the guardian of the Constitution. The Supreme Court is the monitor of the constitutional guarantees. [8]

The Constitution is stipulating the independence of the Supreme Court including all the High Courts and the subordinate Courts.

The Supreme Court possesses and relishes the biggest judicial power. It is accountable to anybody.

The jurisdiction and powers of the Supreme Court of India are more extented than those of the highest court of many other countries. It is a Federal Court, a court of appeal, a court of record, a sentinel of the fundamental rights, and a guardian of the Constitution.

The jurisdiction of the Supreme Court is divided in primary jurisdiction, appellate jurisdiction and advisory jurisdiction.[9]

Primary jurisdiction is regulated by article 131.

Appellate jurisdiction is mentioned in articles 132 – 136 (constitutional matters, civil matters, criminal matters,, writ jurisdiction, appeal by special leave, review jurisdiction and federal court's jurisdiction). [10]

Advisory jurisdiction is stipulated by the article 143.[11]

The primary jurisdiction of the Supreme Court is exclusive and the functions of the Supreme Court under art. 131 are primary federal in character and are destinated to disputes between the government of India and any of the States, the

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[5] See D. van Loggerenberg, *Specialization of South African Judge s and Courts:Multi-Adept, Multitasked, Multifacced,* p.4

[6] See D. van Loggerenberg, Op. Cit, p.4

[7] See D. van Loggerenberg Op. Cit, p.5

[8] See K. Chakrabarti, *Free Legal aid and equal justice under the Constitution of India and the role of the Supreme Court,* p. 122

[9] See K. Chakrabarti, Op. Cit, p.122

[10] See K. Chakrabarti, Op. Cit, p. 123

[11] See K. Chakrabarti, Op. Cit, p. 123

Regime of India and any state or states on one side and any other state or states on the other side, or between two or more states excruciating.

The dispute must have connections with any question of law and fact on which the subsistence or extent of licit right depends.

But the primary jurisdiction of the Supreme Court shall not elongate to the following disputes :[12]

- A dispute arising out of any treaty, acquiescent, covenant, engagement, sanad and or other homogeneous instrument, which having been entered into or executed afore the commencement of the Constitution, perpetuates in operation, after commencement.

- Which provides that the verbally expressed jurisdiction shall not elongate to such a dispute.

Primary jurisdiction of the Supreme Court is withal omitted under Article 280 and 290 of the Constitution of India. The mundane disputes of commercial nature though between the regime of India and the states were not maintainable under art. 131.

Appellate jurisdiction in regard to the interpretation of the Constitution.[13]

An appeal shall lie to the Supreme Court from any judgement, decree of final order of a High Court under Article 132 of the Constitution, whether in a civil, malefactor or other proceedings, if the High Court certifies under article 134 that the case involves a substantial question of law as to the interpretation of the Constitution.

Where such a certificate is given, any party in the case may make appeal to the Supreme Court on the ground that any such question as aforesaid has been erroneously decided.

Article 132 deals with the appellate jurisdiction of the Supreme Court in constitutional cases involving a substantial question of law as to the interpretation of the Constitution.[14]

The words "a substantial question of law" denote a question, regarding which there is difference of opinion among the High Courts and there is no direct decision of the Supreme Court on that question.

Appellate Jurisdiction in civil matters is mentioned in the article 133. [15]

As to the appeals from High Court in civil cases under article 133 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, decree or final order in civil proceeding of a High Court only if the High Court certifies under article 134 that the case involves "a substantial question of law of general importance" and that in the opinion of the High Court "the verbalized question

[12] See K. Chakrabarti, Op. Cit, p. 123
[13] See K. Chakrabarti, Op. Cit, p. 124
[14] See K. Chakrabarti, Op. Cit, p. 124
[15] See K. Chakrabarti, Op. Cit, p. 124

needs to be decided by the Supreme Court". However clause(3) of art. 133 provides that no appeal shall lie to the Supreme Court from the judgment, decree or final order of a single judge of the High Court.

Prior to the passing of the Constitution (thirtieth Amendment) Act, 1972,an appeal could prevaricate to the Supreme Court under article 133, against the judgment, decree or final order of a High Court, in a civil proceeding if the High Court certified that the amount or value of the subject matter of the dispute both in the court of first instance and additionally in appeal was not less than 20,000 rupees, that the judgment, decree or final order involved, directly or indirectly, some claim or question reverencing property of the like amount, or that the case was fit one for appeal to the Supreme Court. [16]

The Constitution 30 Amendment has abstracted the condition of monetary value or the monetary valuation test and now an appeal may lie, even in suits of minute value, to the Supreme Court only if the High Court certifies that the case involves a substantial question of law of general paramountcy and needs to be decided by the Supreme Court.

Appellate jurisdiction in criminal matters is regulated by article 134. [17]

Under article 134 of the Constitution, appeal shall lie to the Supreme Court from any judgment, final order or sentence in a malefactor proceeding of a High Court, as of right, in two designated classes of cases, without a certificate from High Court, where the High Court has,on an appeal inverted an order of acquittal of an inculpated person and sentenced him to death, or if the High Court has withdrawn for tribulation afore, itself any case from any court subordinate to its ascendancy and has in such tribulation convicted the inculpated person and sentenced to death. [18]

On the other hand, the, appeal may withal lie to the Supreme Court under article 132 from a malefactor (criminal) proceeding if the High Court certifies that the case involve substantial question of law as to the interpretation of the Constitution.[19]

Albeit no appeal prevarications from a malefactor proceeding of the High Court to the Supreme Court under the Constitution except in the abovementioned situations, but the Parliament is empowered to make any law conferring on the Supreme Court further power to auricularly discern appeals from malefactor is consequential.

In exercise of the power contained in clause (2) of article 134, the Parliament enacted the Supreme Court (Enlargement) of Malefactor Appellate Jurisdiction Act 1970. Section 2 of this Act provides that an appeal shall lie to the Supreme Court

[16] See K. Chakrabarti, Op. Cit, p. 125
[17] See K. Chakrabarti, Op. Cit, p. 126
[18] See K. Chakrabarti, Op. Cit, p. 126
[19] See K. Chakrabarti, Op. Cit, p. 126

from any judgment, final order or sentence in a malefactor proceeding of a High Court, without a certificate of fitness obtained under article 134 in the following cases [20]

- if the High Court has,on appeal,inverted an order of acquittal of an inculpated person and sentenced him to confinement for life or to confinement for a period of not less than 10 years;

- if the High Court has withdrawn for tribulation afore it self any case from any court subordinate to its ascendancy and has in such tribulation convicted the incriminated person and sentenced him to confinement for life or to confinement for a period of not less than ten years.".

The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, preclusion, quo warranto, and certiorari, whichever may be felicitous, for the enforcement of any of the rights.

This extra mundane jurisdiction of the Supreme Court for enforcement of Fundamental Rights is, however, not exclusive but concurrent with that of High Courts under article 226 of the Constitution.

The most consequential nature of . this remedy under article 32, unlike article 226, of the Constitution is that, it itself forms a component of Fundamental Rights under Part III of the Constitution and issuance of writs for enforcement of Fundamental Rights is not discretionary but can be claimed as a matter of right.

The Supreme Court is thus constituted as the sentinel and guarantor of Fundamental Rights by article 32 of the Constitution.

The fundamental rights assured by the Constitution will remain suspended, while a proclamation of emergency is made under article 352.[21]

The Supreme Court, under article 136 of the Constitution, may, in its discretion, grant special leave to appeal from any judgment, decree, resoluteness, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India.[22]

The Supreme Court relishes wide discretionary power and the right of the Supreme Court to regale appeal, by special leave in any cause or matter determined by any Court or tribunal in India, preserve military tribunal, is illimitable and unfettered.

Under this plenary puissance, the Supreme Court grants special leave to appeal in exceptional cases, where grave and substantial manifested iniquity has been done.

Article 137 confers on the Supreme Court power to review any judgment pronounced or order made by it. The puissance of review is, however, not an

[20] See K. Chakrabarti, Op. Cit, p. 126
[21] See K. Chakrabarti, Op. Cit, p. 132
[22] See K. Chakrabarti, Op. Cit, p. 132

intrinsical power and is subjected to any law made by the Parliament. This puissance is exercisable in accordance with the rules of the court made under article 145 and on the grounds mentioned in Order 47 Rule 1 of the Civil Procedure Code, 1908. The review petition has to be moved afore the same Bench which has passed the judgment in question. The puissance of review can be invoked "for rectification of mistake and not to supersede a view"

The Supreme Court is declared to be a court or record. Article 129 of the Constitution provides that "The Supreme Court shall be a court of record and shall have all the potencies of such a court including the potency to penalize for contempt of itself'.[23]

The power of the Supreme Court to penalize for its contempt is plenary and the Court can initiate the contempt. The Court, under this article has the puissance to penalize for the contempt of courts,subordinate to it.

The jurisdiction of the Court under rticle 129 is held to be independent of the statutory laws and the object of vesting such a puissance in the Court is to uphold the majesty of law, the rule of law, which is the substructure of democratic society.

Article 143 confers power or. the President to consult the Supreme Court on matters of public consequentiality. Clause (1) of article 143 utilizes the word "may" which designates that the Supreme Court is not bound to answer a reference made to it by the President, but the advisory opinion of the Supreme Court is not binding on the President. However, the views expressed by the Court in the exercise of the advisory jurisdiction, are binding on all courts[24].

Article 141 of the Constitution of India provides that "The law declared by the Supreme Court shall be binding on all Courts within the territory of India". [25]

The expressions of Article 141 designate that the Supreme Court does not merely interpret the law; it may additionally make or engender law. Customarily the judiciary is, traditionally concerned with the interpretation and application of Laws, but in modem times, "it is now fairly settled that the courts can so mould and lay down the law, formulating principles and guidelines, as to acclimate and adjust to the transmuting conditions of the society, the,ultimate object being to dispense justice".

As one of the pillars of democracy, the Supreme Court as the guardian of the Constitution and sentinel of the fundamental rights is under constitutional obligation to step in for the interest of equity till such time the legislature acts or the executive discharge its respective constitutional roles and obligations to cover up the gap.

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[23] See K. Chakrabarti, Op. Cit, p. 134
[24] See K. Chakrabarti, Op. Cit, p. 136
[25] See K. Chakrabarti, Op. Cit, p. 136

The Supreme Court has invoked the potency vested under article 142 in variants of cases involving different fact and situation for doing consummate equity.[26]

Article 142 is allowing the Court to make orders, issue guidelines and directions, which have the effect of law, by virtue of article 141. The potency conferred by this provision is elastic enough to be moulded to suit the given situatio-n to do consummate equity with wide amplitude. However, the puissance under article 142 being curative in nature, cannot be acclimated to supplant the substantive law.

The words - "for doing consummate justice" are wide enough to take within its fold undefined situations or matters which demand intervention of the Supreme Court to do consummate equity. But exercise of the puissance is not liberate from any restrictions, such as : [27]

- The Court cannot pass orders concerning a issue which could be settled only through a mechanism prescribed in another statute.

- Article 142 could not be pressed into accommodation to achieve something indirectly, which could not be achieved directly.

It is the Constitutional obligation and obligation of all civil and judicial ascendant entities to act in avail of the Supreme Court. Article 144 of the Constitution states that "All ascendant entities, civil and judicial, in the territory of India shall act in avail of the Supreme Court".

Article 144 requires the ascendant entities to go by the orders passed by the Supreme Court. Any endeavor to question the correctness by such orders is not permissible and such an endeavor would be an abuse of the process of the court. [28]

It is doubtless that independent and impartial judiciary is the pillar of liberty.[29]

The Supreme Court has declared that the "Judicial Review" is a "basic feature" of the Constitution . In India the Parliament is Supreme and not the judiciary like in American System, but the judiciary is endowed with the constitutional power to declare a law as unconstitutional if (i) it is beyond the competence of the legislature according to the distribution of potency,

it is in contravention of the fundamental rights ensured by the Constitution or of any other indispensable provisions of the Constitution in articles 286, 299, 301,304.[30]

But the provisions of the Constitution, which conferred powers to the Supreme Court are amendable at the behest of the Legislature and thereby the judiciary could have been devested of some of its vital constitutional potencies, and functions. Such endeavors, commenced with the Constitutional 24th Amendment Act. 1971

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[26] See K. Chakrabarti, Op. Cit, p. 136

[27] See K. Chakrabarti, Op. Cit, p. 141

[28] See K. Chakrabarti, Op. Cit, p. 141

[29] See K. Chakrabarti, Op. Cit, p. 141

[30] See K. Chakrabarti, Op. Cit, p. 141

3. Australia

The High Court of Australia performs several judicial functions that are fundamental to the federal system. It determines appeals from all state supreme courts and inferior federal courts and it has pristine jurisdiction in several kinds of is consequential, including those involving the interpretation and application of the constitution. [31]

This denotes that the Court is the final arbiter of disputes concerning constitutionality of laws enacted by the federation, as well as those of the states.

The High Court consists of seven judges, appointed by the federal regime, who hold tenured office until the age of 70. As such, the judges exercise very substantial powers in a manner that is institutionally independent of the political branches of regime. In this context, the most consequential causes of constitutional transmutation in Australia have been the proclivity of federated regimes to press the scope of their potencies up to and controvertibly beyond their constitutional limits and High Court decisions which have mostly affirmed those exercises of power. [32]

However, while the Court has done much to fortify the federation, the states are still fundamental to the system of regime. The states perpetuate to play a consequential role in federal politics and remain vigorous centres of regional and local political engagement. Moreover, recent developments suggest that the High Court may be taking a renewed interest in preserving the role of the states within the Australian constitutional system.[33]

Members of the High Court and Federal Court are appointed by the Governor-General in Council predicated on a decision made within the Commonwealth Cabinet on a recommendation by the Commonwealth Attorney-General. The Attorney-General is required to consult with the State attorneys-general, but the nature and extent of this consultation is not transparent, and there have been calls for reform.

Most individuals appointed to the High Court have held prior judicial office in either the Federal Court or a State supreme court; infrequently individuals are appointed from the practising bar in one of the States, but this has become increasingly recherche. Relatively few appointees have had political vocations.[34]

As noted earlier, the High Court has general appellate jurisdiction and additionally has primary jurisdiction in several kinds of matters.[35]

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[31] See N. Aroney, *The High Court of Australie : A Federal Supreme Court in a Common Law Federation*, p. 2

[32] See N. Aroney, , Op. Cit p. 2

[33] See N. Aroney, , Op. Cit p. 2

[34] See N. Aroney, , Op. Cit p. 2

[35] See N. Aroney, , Op. Cit p. 3

The law directly confers on the High Court primary jurisdiction in "all matters arising under any treaty, affecting consuls or other representatives of other countries, in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party, between States, or between denizens of different States, or between a State and a denizen of another State, or in which a writ of mandamus or enjoinment or an injunction is sought against an officer of the Commonwealth.[36]

The federal Parliament has the power to confer on the High Court primary jurisdiction in "any matter:arising under this Constitution, or involving its interpretation, arising under any laws made by the Parliament, of Admiralty and maritime jurisdiction and relating to the same subject-matter claimed under the laws of different States. [37]

The jurisdiction of the High Court includes judicial review of all statutes passed by the Commonwealth, State and Territory legislatures, and all regulations and executive actions by the Commonwealth, State and Territory regimes, and their respective departments and agencies.

It additionally extends to the review of all decisions of Federal, State and Territory courts and tribunals and all measures of local regimes. Commonwealth and State statutes must comply with the Commonwealth Constitution because the legislative powers of their respective Parliaments are conferred or perpetuated 'subject to' the Constitution. Territory laws must additionally comply with applicable provisions Constitution, but there is some doubt about the particular provisions of the Constitution that apply within the Territories. Regulations and executive actions undertaken by Commonwealth, State and Territory regimes must comply with the Constitution and all applicable statutes. If a Commonwealth, State or Territory statute is found to be constitutionally invalid the courts may declare it to be void and will reluct to enforce it.[38]

An individual will have standing to challenge a law that regulates conduct in which that person has allegedly engaged, the extent to which a person will have standing beyond that is obscure. It is compulsory for a plaintiff to show an adequate "material" or "special" interest in the matter, and thus an interest more preponderant than that of a mundane member of the public, but what precisely this amounts to has been perplexed, rather than demystified, by recent High Court cases, partly because the parties have often conceded the issue of standing.

However, the Commonwealth and State attorneys-general have standing to challenge the constitutional validity of legislation or executive action of each other, and individuals who lack standing are able to seek the fiat of an attorney-general to bring the action in the attorney-general's denomination.[39]

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[36] See N. Aroney, , Op. Cit p. 4
[37] See N. Aroney, , Op. Cit p. 4
[38] See N. Aroney, , Op. Cit p. 4
[39] See N. Aroney, , Op. Cit p. 5

The High Court controls its workload by insisting that appeals from State supreme courts and the Federal Court be aurally perceived only by special leave, and by remitting matters commenced in its pristine jurisdiction to Federal or State courts when congruous. When a case involving constitutional issues comes afore a court, the court must satiate itself that notice of the case has been given to the Commonwealth, State, and Territory attorneys-general to enable them to consider intervention in the proceedings or seek abstraction of the cause into the High Court. It is prevalent for attorneys-general to intervene in constitutional cases, especially those involving questions about the distribution of potency between the Commonwealth and the States. [40]

The Court has only infrequently granted leave to persons and representative groups to appear as amici curiae. At the least, they must demonstrate that their licit intrigues are liable to be substantially affected by a decision in a case and that the Court would not receive submissions pertinent to the matters in issue without their intervention.

The legislative and executive powers of the Commonwealth and the States are subject to the Constitution. Laws and executive actions that contravene the Constitution are liable to be held unlawful by the courts. States become vigilant of court decisions that affect them through the requisite that State attorneys-general be notified by courts when a constitutional issue comes afore them. [41]

Published court decisions are made publically accessible.

Parties alleging a breach of the Constitution may seek several remedies. Three such remedies explicitly recognised by the Constitution are the prevalent law writs of mandamus, enjoinment, and injunction. These "constitutional writs" elongate to compelling public officials to perform public obligations (mandamus) and restraining public officials, especially lower courts or tribunals, from usurping or exceeding jurisdiction (preclusion). The courts can additionally issue orders quashing decisions of lower courts or tribunals (certiorari), averting the usurpation of an office (quo warranto), and requiring the liberation of an unlawfully confined person (habeas corpus). [42]

In integration, where the aforementioned remedies are not available or inadequate, the courts can issue authoritative declarations as to the licit rights of parties and the true State of the law, including the invalidity of legislation, ie, that the law is ultra vires the Constitution. Albeit a wide range of remedies is thus available, the High Court has discretion whether to grant a remedy in any particular case. Nonetheless, in most constitutional cases, declaratory or other orders are yarely issued once a finding of invalidity has been made, and it is recherche for deserving cases to be without a remedy.[43]

[40] See N. Aroney, , Op. Cit p. 5
[41] See N. Aroney, , Op. Cit p. 5
[42] See N. Aroney, , Op. Cit p. 5
[43] See N. Aroney, , Op. Cit p. 5

It is generally accepted that the courts and, in particular, the High Court of Australia, have ultimate competence to determine the scope of puissance possessed by the sundry institutions of regime in the federation. When the High Court decides such is consequential, albeit there may be reprehension and dissension, the categorical finding and its licit implicative insinuations are widely adhered to by the other institutions and authoritatively mandates of regime. Political bellwethers in the States have, however, not infrequently expressed grave concern about the centralisation of puissance resulting from High Court decisions. This has, at times, engendered heated discrepancy between the two orders of regime. Such discordances often affect the tone and conduct of intergovernmental negotiations concerning the regulation of matters customarily within State potency.[44]

They additionally engender incentives for State regimes to pool their political resources against the Commonwealth, such as through the Council for the Australian Federation, a body composed to forfend the States in the federal system.

The Australian judicial system is profoundly shaped by federalism. The High Court of Australia sits at the top of an integrated court system consisting of federal and State court hierarchies. But despite the exhaustively federal character of the Commonwealth Constitution, there is no requisite that the composition of the High Court must be representative of the States.[45]

The High Court has both a general appellate jurisdiction and a primart jurisdiction to auricularly discern, among other is paramount, constitutional disputes. All State and federal legislation and executive power are subject to the Constitution and Commonwealth and State attorneys-generals have standing to challenge executive and legislative action on constitutional grounds. The High Court's interpretation of the Constitution has inclined to be vigorously unitarist which has been a consequential factor in incrementing the legislative and financial powers of the Commonwealth.[46]

While a broad interpretation of the Commonwealth's legislative and financial powers seems firmly entrenched, the States are still fundamental to the Constitution and there are some designations of a renewed interest within the High Court in preserving the federal characteristics of Australia's constitutional order.

4. Conclusion

The 3 supreme (high) courts presented in the articles have both original and common features.

[44] See N. Aroney, , Op. Cit p. 5
[45] See N. Aroney, , Op. Cit p. 5
[46] See N. Aroney, , Op. Cit p. 5

The courts perform a two main functions, deciding disputes and laying down rules of law for future cases.

The habit or custom of courts to follow precedent, and that the real objection to changing an established rule lies, not in the court's lack of power, but in considerations of justice and expediency.

The changimg of a rule may operate retroactively and annul transactions entered into or impair the obligations of contracts or deprive persons of rights acquired and interests vested under the established rule. It can introduce uncertainty as respects future transactions, especially in those instances where the over-ruling decision needs to be followed up by others holding similarly.

The acknowledged power to change law brings with it the danger of judges substituting for the wisdom of the past their individual judgment of justice and expediency, and of being controlled by improper influences and motives in making their decisions.

Courts must understand all the facts in performing, in an adequate and intelligent way, their legislative function.

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