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The Efficacy of Doctrine of Precedent: Analysing of the Common and Civil Law Countries with Reference to India

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Abstract

The famous jurist Salmond, explained precedent as ounce of gold in tons of unnecessary material in a Judgement. He opined; the legislations are coins ready to be used in a realm. Precedents are creative interstitial (filling up gap in legislation and declaring guidelines in absence of legislations) law making by the Judges, which are flesh and blood in a statutory skeleton. Precedents are primary source of law, in the common law countries like India.[3] However in Civil law countries, as for example in continental Europe, precedents are not as strong as in common law countries. In Civil law countries, as for example in France, there are exhaustive codes, like French Criminal Procedure Code. Judges in Civil law Countries most of the time need not to be creative as in common law countries. The main sources of law in Civil law countries, as for example in France, are legislations, edicts of Courts and Juristic opinion. The edicts of Court, rarely has values of precedent. Though Higher Courts' jurisprudence needs to be followed by the lower Courts. In common law countries, it is a pain to identify the precedent/ obiter dicta in a voluminous Judgment. In Civil law Countries, there is no such pain, as judges are hardly expected to interpret. They are expected only, to apply the law to a fact. A comparative analysis of doctrine of precedent, in Common law Countries and Civil law countries, are worthy of analysis, as it will help us to iron out creases in our legal systems, and we can incorporate the beneficial qualities from the Civil legal system.

Key Words: - Constitution, Doctrine of Precedent, law making by judges, Civil and Common law system.

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I. Introduction

Law is not a static collection of laws, but an organic collection of principles endowed with the capacity for development. The justice is constantly clothing the standard that he believes should exist inside the robes of legal system. Not only should we not declare that the legal system's creative era is over, but the conceptions of the legal system did not fully fall from the sky. Exaggerated positivism ignores the fact that laws change over time not just via reasoning but also through the gradual extraction of fresh data from social interactions and the shaping of norms to fit modern expectations.

In the larger canvas of the common law system as developed by the Courts of Records in United Kingdom, the "Doctrine of Precedent" has to be understood. Truly speaking, the "Doctrine of Precedent" is the soul of common law system. The whole gamut of common law system is practically centred around the Ratio-Decidendis of judgments delivered by Courts of Record of competent jurisdictions which have to be theoretically followed by the lower courts or lower Benches of the same court, basically to maintain four Cs i.e. certainty of the law, continuity of the law, clarity of the law and most importantly consistency of the law.

The two widely recognized and accepted legal traditions are namely the Common law and the Civil law. Common law tradition originated in England during the middle ages, was applied in British colonies around the world, the civil law tradition was originated in Europe and was applied in the colonies of the European imperial powers. India being colonized by British observed common law.

The difference between the two systems is sometimes attributed to the judicial system being more case-oriented and, thus, more judge-oriented, allowing for a more flexible, workable solution to the specific issues raised in court. It's possible to write the legislation from scratch. Depending on the side, the legal system, which controls judicial authority, is usually a codified collection of large abstract concepts. In reality, both of these perspectives are extreme, with the former exaggerating the range of the discretion that judges of statute-law courts may use and the latter doing the same for judges of civil courts.

Common laws are uncodified, signifying that Common law is not comprised of an inclusive compilation of legal rules and statutes. The common relies on some legislative decisions; it is mainly based on judicial precedence, i.e. the judicial

decisions which were made in similar cases. Theses precedence is maintained by year by year through Court records, journals and reports in the forms of collections of case law. The applications of precedent in the decision of each case are determined by presiding judges of the case.[4]

Whether one regards a system of judge-made rules or as a system sense that it is a body of traditional ideas received experts, the process of legal development is similar. It is, as Lord Goff stated in his "Maccabean Lecture", a movement from the identification of specific heads of recovery to the identification and closer definition of the limits to a generalized right of recovery; a search for principle.

Lord Goft saw it as a mosaic that is kaleidoscopic in the sense that it is in a constant state of change in minute particulars. By contrast civilian systems are essentially codified legislative systems and owe their inspiration to the principles of the Nepoleonic codes. In such systems judicial decisions are not primary sources of law but only a gloss on the law in the legislative code.[5]

Professor Atiah viewed, a lawyer today would say that the common law is by definition what the judges say it is (either by declaring or by making, emphasis is of the researcher); Parliament may command the judges to change the rules they apply, even retrospectively, but Parliament cannot make the common law different from what the judges say it is any more than it can alter a historical fact. But these are rather deep waters of constitutional theory.[6]

Common law is an adversarial system in which a dispute among two parties is conducted before a judge who serves as moderation, and a jury of ordinary citizens renders a judgement based on the facts in this case. Following that, the presiding judge determines the appropriate sentence or penalty based on the jury's verdict.

[4]The Common Law and Civil Law Traditions, https:// www.law, Berkeley, eds. Library/ robbins/CommonLawCivilLawTraditions.html, (last visited on March 24, 2015).

[5]Jack Beatson, "Has the Common Law a Future?" 56(2) CAMBRIDGE LAW JOURNAL 291-314 (1997).

[6]P.S. Atiya, *Common Law and Statute Law*, 48(1) MLR 1-28(1985).

II. Historical Background

English common law evolved during the middle Ages as kings changed and centralized power. Following the Norman Conquest in 1066, medieval rulers started to consolidate rules in their hands, culminating in the formation of royal power and justice systems. The arrest warrants or royal orders system had begun to give a specific remedy for a specific injustice.

The writs system gradually became much codified. As a consequence, courts might lawfully utilize writs that rely on this procedure to achieve justice. Furthermore, the necessity for appealing to the court had to be submitted to the king, which led to the creation of a new type of court, the Court of Equity, also known as the Court of the Council of Ministers owing to its role as the court of the King's Chancellor. In order to reach a fair decision, these tribunals were given the authority to apply principles of justice derived from a range of sources, including Roman and Natural law, rather than only common law.

Today, the fundamental source of law differentiates civil law from common law. Judicial review and common law share contrasting views on judicial review. Judges of common law serve as the system's authority, capable of establishing new legal ideas as well as rejecting redundant legal conceptions. In the civil law system, judges are viewed as individuals who execute the law, with no ability to create (or destroy) legal conceptions.

III. Features of Common Law and Civil Law System

A system of common rule is less restrictive than a system of civil law. As a result, a state may want to codify citizen rights through laws particular to the construction initiative under consideration. For instance, it may want to prevent the provider from shutting off of the water or energy supply to non-paying customers or to compel the disclosure of records pertaining to the deal under a right to information legislation. Additionally, there may be legal obligations to include equal bargaining clauses into the agreement when one party has a much better collective bargaining power than another.

Civil law nations are often those that were previously holdings or former colonies of the French, Dutch, German, Spanish, or Portuguese, which comprise a substantial section of Central and South America. The majority of countries in Eastern and Central Europe, as well as East Asia, follow a civil law framework.

Civil law is a written legal structure. It derives from Roman law. Generally, a constitutional amendment based on particular rules (e.g., civil rules, codes covering corporation, administrative law, tax law, and constitution) enshrines fundamental rights and obligations; administrative statute, on the other hand, is typically less codified, and administrative court justices behaving more like legal system courts. Only parliamentary provisions of the act are regarded to be universally binding. In civil, criminal, and economic courts, there is limited opportunity for judge-made legislation, although judges generally adhere to earlier judicial judgments; constitution and administration courts have the authority to invalidate rules and regulations, and its rulings are binding on all parties.

IV. Doctrine of Precedent in Indian Legal System

The Indian constitutional process is a general legislation structure that includes components from civil law, socialist legality, and religion law systems. It establishes rights, regulates obligations, and enforcing those obligations. Court decisions have a role in the development of laws, while human legislation is intended to address all possibilities in the Indian Law.

A legal system encompasses a set of legal principles and norms to protect and promote a secure living to its subjects in the society. It recognises right, prescribes duties of people and provides the ways and means of enforcing the same. With independence and adoption of the Indian Constitution, there was a move to a significant new legal landscape and a whole range of new perspectives generated by the constitutional context which led to a radical reorientation at the level of the Supreme Court in regard to Court's continuing obligation to follow the common-law in India introduced the common law into this country. Although common law systems to make extensive use of statutes, judicial cases are regarded as the most important source of law, which gives judges an active role in developing rules. For example, the elements needed to prove the crime of murder or desertion are contained in case law rather than defined by statute. To ensure consistency, Indian courts abide by precedents set by higher courts examining the same issue. Parallel civil law system, by contrast, codes and statutes are designed to cover all eventualities has made its place in Indian Legal system. Indian legal system is basically a common law system, it contains elements of the other three systems (the civil law, the socialist legality, religious systems of law) as well.

Great Britain has a unitary unwritten Constitution in which Parliament is supreme and sovereign so that no law passed by Parliament can be declared *ultra vires* by a court of law. In this respect, the written federal Constitutions of the United States, Canada, Australia and India all differ from the British Constitution. But the doctrine of *ultra vires*, though not applicable to laws enacted by the British Parliament, was applied by English Courts to subordinate bodies constituted by Statute or Charter, and by the Privy Council in considering the validity of laws passed by the Colonies. In fact, one reason for the fact that the Supreme court of the United States finally took this power to itself was the Colonial practice. The Colonial courts and on appeal the Privy Council of England had the power to declare legislative acts void if it conflicts with colonial charters. The colonists consequently acquired the habit of seeing colonial laws occasionally declared void by the courts.[7] The enactment of a Bill of Rights in the Constitution itself no doubt indicates that the constitution look upon those rights as important and as rights which cannot be abrogated by ordinary process of legislation. In the first place, the very terminology of a Bill of Rights bespeaks its English origin, for the English Bill of Rights, 1689, declares the basic freedoms which Englishmen claimed for themselves. The Rights so declared have been enjoyed for centuries, and only a cataclysm can sweep them away. Secondly, apart from procedural advantage conferred by Article 32 for the enforcement of fundamental rights, a fundamental right is not different from any other right conferred by the Constitution, nor is it necessarily more important than another right which is not described.

The framers of the Constitution may be fairly taken to have kept in view the available experience in regard to the operation of precedent in British Indian Courts. But the framers had also written into our fundamental rights with the guarantee of judicial enforcement annexed thereto. As a healthy exercise in constitutional reform, this was bold and imaginative innovation which constituted a break with the common-law tradition, with significant broadening in the functioning of judicial review. A radical equation had been imported into the legal landscape and this could not but compel readjustment in the ideological disposition of the Indian judiciary to the English doctrine of precedent. This apart,

[7]Willis Constitutional Law 75, quoted by H.M.SEERVAI, CONSTITUTIONAL LAW OF INDIA-A CRITICAL COMMENTARY 160, Vol-1,(Universal Law Public Company Private Ltd., Fourth Edn.).

the theory of limited Government, although not alien to our way of legal thinking, acquired an extended thrust in the setting of the Indian Constitution. The doctrine of ultra vires was not new to the judges trained in common law, but judicial review of legislation entailed an obligation to enforce constitutional limitations against the political branches of Government.[8]

Britain has a unitary undeclared constitutional, but English Courts applied the concept of ultra-vires to subordinate authorities formed by Statue or Charters. In the event of a disagreement, both Colonial courts and the English Privy Council had the power to pronounce legislative actions invalid.

The English Bill of Rights, 1689, states the fundamental liberties which England claimed. It is the language of the Bill of Rights that defines its English origin. Despite the procedural benefit of protection of these rights, a fundamental human right is not necessarily more essential than other constitutionally bestowed rights.

We have avoided the other extreme, namely, that of 'judicial supremacy', which may be a logical outcome of an over-emphasis on judicial review, as the American experience demonstrates. Judicial powers of the State exercisable by the Courts under the Constitution as sentinels of Rule of Law is a basic feature of the Constitution.[9]Unfortunately, much British Indian legislation denied the enjoyment of civil and political rights to the Indian citizens. The letters of the law, therefore, went against the spirit of the law. Therefore, from the earlier American example, the Constitution of India was made the supreme law of the land in 1950. The Constitution is based on the ideals of justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation. The rule of law was, therefore, placed on a footing higher than ordinary legislation. Constituent power is, thus, superior to ordinary legislative power.

Thus, unlike the British Parliament which is a sovereign body, the powers and functions of the Indian Parliament and the state legislatures are subject to limitations laid down in the Constitution. In England, the sovereignty of

[8]A. Lakshminath, Judicial Process Precedent In India 21, (Eastern Book Company, third Edn. 2009).

[9]Dr.Durga Das Basu, Introduction To The Constitution Of India 213 (LexisNexis, India, 22nd Edn., 2015).

Parliament has meant, "*the supremacy of the existing law so long as Parliament was fit to leave it unaltered*."[10] It is well known that Parliament identified itself with the cause of the supremacy of the law and did not alter by statute the basic principle that the individual enjoys all the liberties unless restrictions on them are placed by the statutes.

The Constitution of India established the "Supreme Court" under Article 124. Articles 32 and 226 embody judicial review and the power of the Court of Justice to declare an unlawful legislation in violation of the First Amendment. Sections 32 and 226 have not introduced new principles, but have provided the Supreme Court and Higher Court with the authority to publish English letters of habeas corpus, mandamus, certiorari, prohibition and quo warranto. This authority was transferred to the U.S. with the English colonists, granting various authorities in the U.S. the ability to grant these letters.

Finally, Article 142 states that "there is a ruling or order to be enforced all across the Indian union that may be needed to exercise full justice in any case or issue" by the Supreme Court. Article 142, especially the phrase “complete justice”, has given the judiciary a virtual license to intervene in any matter whatsoever. In addition to these textual enablers, the Court has over the years created its own powers in a number of domains.

Judicial review in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not do anything which is inconsistent with the Constitution. In a federal system like ours, independence of judiciary is an essential feature so that the Centre and States may equally respect its decisions with respect to matters affecting them. Article 13(2) expressly prohibits the State from making any law which takes away or abridges the fundamental rights enshrined in the Constitution; and any law made in contravention of this provision shall, to the extent of inconsistency, be void. The inclusion of this provision appears to be due to abundant caution, because even in the absence of such a provision, the courts would still have the power to examine the constitutionality

[10] SIR WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 187, (Great Britain, Methuen & Company, 1903).

of a law on grounds of infringement of fundamental rights.[11] This is so because the judges are bound by oath to uphold the Constitution, and the courts can be approached for the enforcement of the fundamental rights. One of the unique features of the Constitution is that a person has a fundamental right to approach the Supreme Court. Moreover, wide, original and appellate jurisdiction has been given to the Supreme Court and the High Courts to adjudicate on the constitutionality of any disputed matter.

The power of formal amendment has been conferred upon Parliament by Art. 368 of the Constitution and the scope of resorting to the Judiciary to introduce changes has been reduced by making the process of amendment easier than in the U.S.A., the working of Indian Constitution has opened the avenue for judicial review in nearly the same way as in the U.S.A.

Power of judicial review in our Constitution is not confined to determining the validity of the laws made by the Parliament and State Legislatures, it also extends to examining the validity of the constitutional amendments on the ground that an amendment violates the basic structure or features of the Constitution.[12] In *Indira Nehru Gandhi v. Raj Narain*,[13] the court had observed that the basic structure limitation applied only to constitutional amendments and not [14]ordinary laws. In *Indra Sawhney v. Union of India*,[15] a smaller Bench of the court has held that it applies to ordinary law also. But again in *Kuldip Nayar v. Union of India*[16] and *Ashoka Kumar Thakur v. Union of India,*[17] the Constitution Benches of the court have reiterated Indira Nehru Gandhi position. More than once the Supreme Court has held that the judicial independence and judicial review are basic features of the Constitution, which cannot be taken away even by an amendment of the Constitution.

[11] A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
[12]Keshavananda Bharati v. State of Kerela, AIR 1973 SC 1461.
[13] AIR 1975 SC 2299.
[14] https://www.gktoday.in/gk/nehru-report.
[15] AIR 2000 SC 498.
[16] (2006) 7 SCC 1, 67.
[17] (2008) 6 SCC 1.

In 1928, the Motilal Nehru Committee said that "our primary concern should be to ensure that our basic rights are protected in a way that prevents their infringement."

Judicial review is a necessary concomitant of 'fundamental rights', for, it is meaningless to enshrine individual rights in written Constitution as 'fundamental rights' if they are not enforceable, in Courts of law, against any organ of the State, legislative or executive. Once this choice is made, one cannot help to be sorry for the litigation that ensues. Each year the Supreme Court invalidates a dozen of statutes and a like number of administrative acts on the ground of violation of the fundamental rights.[18]Today the constitutional position of Judicial Review is dictated by the need to prevent the abuse of power by the executive as well as to protect individual rights.

Even after the making of the Constitution and enactment of relevant statutes, the ecology of the Constitution and the statutes, is formed by "that part of common law which has been received in India as rules of 'justice, equity and good conscience' as suited to the genius of this country".[19] This much of common law is in force in India as recognised by Art. 372 (1) of the Constitution. A nine-judge Bench of the Supreme Court had this to say about the common law in India: It is well-known that the common law of England was applied as such in the original sides of the High Courts of Calcutta, Bombay and Madras, and that in the mofussil courts the principles embodied in the common law were invoked in appropriate cases on the ground of justice, equity and good conscience.[20] The Bench speaking through *Subba Rao, C. J.*, further observed:

> It has been held by this court that the said expression 'law in force' includes not only enactments of the Indian legislatures but also the common law of the land which was being administered by the Courts in India.

[18]Dr.Durga Das Basu, Introduction To The Constitution Of India 42, (LexisNexis, India, 22nd Edn., 2015).

[19] Bar Council of Delhi v. Bar Council of India AIR 1975 Del. 200 at 202.

[20] Superintendent & Legal Remembrances, State of West Bengal v. Corporation of Calcutta (1967) 2 SCR 170.

In *M.C. Mehta v. Union of India*[21], Justice Bhagwati observed: "We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."

The development of the absolute liability rule in the *M.C. Mehta*[22] case and the Supreme Court's direction on Multi National Corporation Liability, recognition of Government liability by employees of government, principles on legality of State, evolution of guidelines of sexual harassment, grant of interim compensation to a rape victim, and award of damages for violation of human rights under writ jurisdiction including a recent Rs. 60 crore exemplary damages in the Upahaar Theatre fire tragedy case by the Supreme Court are significant changes in the law of India, which affords a preliminary answer the credential of common law system in India.

Since the closing years of last century, a version of judicial review has acquired the nick-name of judicial activism. In judicial activism judges participate in law-making policies, i.e. not only they uphold or invalidate laws in terms of constitutional provisions, but also exercise their policy preferences in doing so. With the widening jurisdiction of the courts, especially through the instrument public interest litigation, the issue of judicial activism has become a matter of national concern. It requires an amicable solution through scholarly exercises and broader consensus on constitutional values between the judiciary, on the one hand, and legislature and the executive, on the other.

The Indian Constitution strikes a balance between the U.S. constitution of Courts Supremacy and the English principle of Parliaments Supremacy by vesting the Judges with the authority to exercise discretion if it exceeds the Legislature's competence or violates a basic freedom. However, the Supreme Court found the term 'due process' in Art. 21 and the bulk of the Convention is amendable by a specific democratic majority of the Union Government.

[21]AIR 1988 SC 1037.
[22] *Ibid.*

The urge for judicial intervention has arisen from the very tendency of the Legislature to make frequent amendments to the Constitution, which were perishing the vitals of the Constitution. Hence, asserted the Court that it could set aside even an Act to amend the Constitution, not only on (i) a procedural ground, viz., that the procedure laid down in Art. 368 has not been complied by the relevant Bill, but on (ii) the substantive ground, viz., that the amending Act has violated one or other of the basic features of the Constitution.[23]

Conversely, it has come to be held that if the Legislature is not prompt enough to implement the provisions of the Constitution, the Court has the duty to make the changes necessary to adopt the demands of a progressive society.[24] At this length, the Court has propounded two doctrines-

(a) The Court is the exclusive and final interpreter of all provisions of the Constitution.

(b) The Court has the duty to make the ideals enshrined in the Constitution a reality,[25] and to meet the needs of social change in a welfare society.

V. Parliament's Creation of Statutory Laws and the Judiciary's Operation

The Indian government has complied with UN principles on social responsibility and environmental law, as well as international trade rules. Personal Indian law is complex, with each faith following its own set of rules. Goa has an unified civil code under which all faiths get legal principles covering weddings, separation or divorce. There are 1,248 statutes in force as of January 2017.

The majority of areas of law in India have been written, but there are a number of laws enacted that incorporate liability provisions. These include the Public Liability Insurance Act, the Environment Protection Act, the Consumer Protection Act, the Human Rights Protection Act, the Preconception Prenatal Diagnostic Techniques Regulations and Prevention of Misuse Act, and the Disaster Management Act. The Bhopal Gas Leak catastrophe ushered in a new jurisprudence, including environmental responsibility, toxic liability,

[23]Bommai v. U.O.I., AIR 1994 SC 1918 (para 30).
[24]State of Karnataka v. Appa, (1995) 4 SCC 469.
[25]Ravichandran v. Bhattacharjee, (1995) 5 SCC 457.

governmental culpability, MNC liability, congenital liability, and tighter absolute liability. Indian Court Decisions provide a stark difference in this regard.

In *Tika Ram and Others v. State of Uttar Pradesh and Others*[26], the Court stated that the Legislature has the ability to amend a statute to eliminate flaws and examine it in a manner that balances with the legislation specified by the Court. This exercise of legislative authority is not an infringement on the Court's judicial jurisdiction, but rather a legitimate measure taken by the component authorities to suitably change the statute and legitimize the conduct considered unconstitutional.

Legislative purpose has diminished as has the belief that laws should be read in such a way that they do not alter common law. Many pieces of legislation, such as the Public Liability Insurance Act of 1992, have a defined objective. They are intended to make common law more applicable. Courts frequently favour these modifications. It would be pointless if they did not have a goal in mind.

The public has recently rediscovered many of the fundamental ideas of the common law, such as the rights of due process and the freedom to judicial independence. These rights have withstood the test of time and laws are still enforced in accordance with their guidelines. An interpretation of this approach would argue that a law cannot deny people access to the service, showing the complementary and supplemental nature of Common and Civil Law in an Indian mixed legal system.

VI. Consonance of Common Law and Civil Law

The profession of judges in mixed jurisdictions has been greatly augmented by training in the common law. This is due to the abundance of legal literature, better case collections, and more effective legal information retrieval. In a mixed jurisdiction, civil law has certain benefits, such as the ability to overrule bad precedents and save futures from becoming the slave of yesterday and the tyrant of tomorrow. A statute also attracts a large body of existing law, as both statute and common law are often used in different ways. The Consumer Protection Act and the Indian Contracts Act may each become relevant in their own rights if and

[26] 2009 (8) SC J 37.

when legislation, such as the common law principles they modify, bring them under the jurisdiction of an Act that creates civil liability.

The Act may also establish crimes, and all of the principles that govern criminal law apply. This silence in this regard results in the new legislation becoming part of a large source of rules, even if no words appear in the act itself. Legislation encroaches only in the most unexpected places, such as the existence of a corporation, public institution, or married woman.

VII. Legislative- Judiciary Partnership

The law is a vast network of interconnected regulations, with the activities of the National Assembly and the courts interdependent. Acts that have chosen intentionally open-textured wording may lead to distortion of justice. For example, the Workmen's Compensation Acts formula describes a mixture of legislation and adjudication. The Acts' operation demonstrates an established judicial-legislative relationship, with the first step taken when the law was drafted and modifications put in place over time. Strategic planning governed by standards and post-hoc reasoning.

The Workmen's Compensation Acts, The Environment Protection Act, 1986, and the Consumer Protection Act, 1986 give judges broad discretionary powers to settle disputes. These powers include property division, inheritance, paternity, custody, and guardianship law. Courts use reasoned explanations, searching of rules, and categorization of facts.

The most important details in this text are that the legal system is difficult to leave due to the principles of the legal system becoming so involved with the rules of the legislation that it can be difficult to relinquish one's grasp on the legislation. Communities which live under a written constitution, such as the United States, Australia or Canada, have a different attitude, as they live under the domination of a statute of the most general and sweeping character, far more powerful in its effect upon the life of the citizen than the codifications under which Continental States have lived for many years. The experience of interpreting a Constitution has not had any notable impact on the common law approach to ordinary statute law in these countries. This is due to the fact that English judges have often tended to interpret statutes, and the problem is super-national and determined by trends of legal thought and public policy. Social policy interpretation is an important corrective, as social legislation grows in quantity and quality, but not all

legislation is dictated by an easily definable social purpose. Most of all, statutes leave choice of different social purposes, and their content and direction change with succeeding generations and conditions.

VIII. Conclusion

The Indian court is often recognised as an authoritative interpreter of different constitutional provisions in order to promote social justice. It integrates two main concepts: the parliamentary sovereignty of the United Kingdom and conventions supported by a written constitution and the division of powers and judicial oversight. Fundamental law, in the context of the written U.S. Constitution, was derived from the liberal ideology of the architects of the Constitution of India. India has a lasting mark on her constitution, which was created using elements between the Britain and America systems.

The Indian political system is a conceptual puzzle based on both parliament and federation characteristics that emphasises the previously unchallenged socio-political component of nation-states imbued with British traditions and American ideals. Reasonableness is a distinguishing characteristic of the common law and it is nothing more than an external aspect or chance, instead of a structure or fundamental component of the law. The Constitution of India was drafted in 1948-49 and confirmed the uncodified British House of Commons' rights, but only as a temporary measure. Since then, many of the principles have been settled by Supreme Court legal judgments and the consensus of precedents lay down by the Presiding Officers of the Houses of the Union and State Legislatures. It is not conducive to a smooth working of the Parliamentary system in developing country to have a war between the Courts and the Legislatures.

The predominance of statute law in the legal life of modern communities is insufficiently appreciated in the common law system. Indian Judges are guided by the same principle as in the creative development of precedent in the interpretation of predominantly technical acts.