INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

THE LATIMER HOUSE PRINCIPLES AND THEIR ROLE IN STRENGTHENING THE RULE OF LAW: A COMPARATIVE STUDY WITH INDIA

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ABSTRACT

The year 2018 marks two decades since the inception of the Latimer House 'process,' which began with the creation of the Latimer House Guidelines for the Commonwealth on Good Practice Governing Relations between the Executive, Parliament, and the Judiciary. These guidelines have since evolved into the Commonwealth Principles (Latimer House) on the Relationship between the Three Branches of Government, a framework that has been formally acknowledged by Commonwealth Heads of Government on multiple occasions.

This article undertakes an evaluation of the Latimer House process's impact over the past twenty years, contextualized by the Commonwealth's evolving dedication to good governance and the rule of law. The analysis is structured as follows: Part 1 will examine the Commonwealth's role in fostering good governance and the rule of law. Part 2 will then delve into and critically assess the Latimer House process itself. Subsequently, Part 3 will review the practical development of the Commonwealth Principles. Part 4 will address specific implementation challenges pertaining to the judiciary. Finally, Part 5 will contemplate the future trajectory of the Commonwealth Principles, concluding with Part 6, which offers an overall summary and conclusion.

KEYWORDS: LATIMER HOUSE, COMMONWEALTH PRINCIPLES, PARLIAMENT, JUDICIARY, GOVERNANCE

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INTRODUCTION

In 2018, the Latimer House 'process' reached its twentieth anniversary. This initiative began with the creation of the Latimer House Guidelines for the Commonwealth on Good Practice Governing Relations between the Executive, Parliament, and the Judiciary. Subsequently, these guidelines evolved into the Commonwealth Principles (Latimer House) on the Relationship between the Three Branches of Government. As will be detailed, these principles have been formally acknowledged by Commonwealth Heads of Government on multiple occasions.

This analysis will examine the Latimer House process's impact over the past two decades, considering the Commonwealth's evolving dedication to good governance and the rule of law. Part 1 will explore the Commonwealth's role in fostering good governance and the rule of law. Part 2 will then delve into and assess the Latimer House process itself. Following this, Part 3 will review the practical development of the Commonwealth Principles. Part 4 will address specific implementation challenges related to the judiciary. Finally, Part 5 will contemplate the future trajectory of the Commonwealth Principles, with Part 6 offering a conclusion and overall summary.

THE COMMONWEALTH, GOOD GOVERNANCE AND THE RULE OF LAW

The Commonwealth is a voluntary union comprising fifty-three independent and sovereign nations. Unlike organizations formed by binding treaties, such as the United Nations, its structure is unique. Consensus has always been fundamental to the Commonwealth's association, and its scope and complexity have evolved significantly since 1950.

In 1949, the eight governments then comprising what was initially known as the ‗British Commonwealth of Nations' adopted the Declaration of London, recognized by Sir William Dale as the foundational document of the modern Commonwealth.[1] The Declaration's primary focus was the innovative arrangement allowing India to remain a member of the Commonwealth (no longer exclusively British) after it became a republic. This was achieved by accepting the British King as a symbol of the free association of its independent member nations and as Head of the Commonwealth. The guiding principles of this re-branded association were outlined in very

[1] Sir William Dale, *The Modern Commonwealth* 39 (Butterworths 1983).

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general terms: members stated they remained ‗united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress'.

From 1949 until 1969, regular meetings of Commonwealth ―Prime Ministers‖ (28 heads of government by 1969) produced longer and longer statements called communiqués. These statements discussed issues that were important to all members, such as the Rhodesia (now Zimbabwe) crisis, the Middle East, trade, aid, and development. These communiqués didn't include a general statement of principles, but it was clear that the Commonwealth shared ideas like democratic governance, working together internationally, settling disputes peacefully, and promoting economic development. In particular, the 1964 communiqué mentioned race relations and the need for each country to create a society that offers equal opportunities and avoids discrimination based on race, color, or religion.[2]

In 1971, at their meeting in Singapore, Commonwealth Heads of Government (this new name replaced ―Prime Ministers‖ because some members now had executive presidents) took an important step by adopting a Declaration of Commonwealth Principles. This included a clear commitment to democratic political processes:

> ―We believe in the liberty of the individual, in equal rights for all citizens regardless of race, color, creed or political belief, and in their inalienable right to participate by means of free and democratic political processes in framing the society in which they live. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.‖[3]

In 1977 and 1979, there were two important declarations that focused on tackling apartheid in sports and removing racism and racial bias. However, in 1991, the Heads of Government came together and created the Harare Commonwealth Declaration. This was a more detailed explanation of the basic principles first mentioned in Singapore. The declaration committed the Commonwealth to protecting and promoting important political values, such as:

[2] *Meeting of Commonwealth Prime Ministers*, Final Communiqué, in *The Commonwealth at the Summit* 83 (Commonwealth Secretariat 1987).
[3] *Ibid.* at 156–57.

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1. Democracy, democratic systems and institutions that match the needs of each country, the rule of law, an independent judiciary, and fair and honest government.
2. Basic human rights, including equal rights and opportunities for everyone, no matter their race, skin color, religion, or political beliefs.[4]

The Heads of Government also promised to work towards equality for women, so that they could fully enjoy their rights.

These ideas about the rule of law, democratic systems, human rights, and gender equality inspired the future Latimer House process. The Harare Declaration had no rules about making sure countries followed it or monitored compliance. But at a meeting in Auckland in 1995, the Heads of Government agreed to the Millbrook Action Programme, which created the Commonwealth Ministerial Action Group (CMAG)[5]. CMAG's job was to handle serious and ongoing violations of the Harare Declaration, especially in cases where a democratically elected government was overthrown. CMAG's role included suggesting steps to restore democracy and the rule of law, and as a last resort, it could recommend suspending a country from the Commonwealth. Some might think that because the Commonwealth is a voluntary group of nations, it may not have strong power to convince countries to follow its principles.

Indeed, some countries that were suspended have considered or threatened to join other international groups, like Nigeria joining the Francophonie after being suspended from the Commonwealth in 1995. However, except for Zimbabwe and the Maldives, which left the Commonwealth when threatened, the strong connections between member countries have helped ensure compliance with Commonwealth requests regarding restoring democratic processes in places like The Gambia, Nigeria, Pakistan, the Fiji Islands, and the Solomon Islands.

THE LATIMER HOUSE PROCESS

The Harare Declaration asked the Commonwealth Parliamentary Association and other non-government groups to help achieve the goals of the Declaration. In 1996, during a meeting of

[4] Commonwealth Statement on Apartheid in Sport (The Gleneagles Agreement) (1977); Meeting of Commonwealth Prime Ministers, Final Communiqué, in The Commonwealth at the Summit 198 (Commonwealth Secretariat 1987); Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice (1979); Meeting of Commonwealth Prime Ministers, Final Communiqué, in The Commonwealth at the Summit 217 (Commonwealth Secretariat 1987); Harare Commonwealth Declaration, vol. 2, at 82.

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[5] Harare Commonwealth Declaration, vol. 2, at 156.

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Commonwealth Law Ministers, it was acknowledged that judges and lawyers are important in a healthy democracy[6]. With this background, four Commonwealth groups — the Commonwealth Parliamentary Association (CPA), Commonwealth Magistrates' and Judges' Association (CMJA), Commonwealth Lawyers Association (CLA), and Commonwealth Legal Education Association (CLEA) — came together in 1998 for a Joint Colloquium at Latimer House, a country house in Buckinghamshire, UK. They were supported by the Commonwealth Secretariat, the Commonwealth Foundation, and the British Foreign and Commonwealth Office.

The Colloquium brought together over fifty senior participants from twenty-three countries. These included lawmakers, some who were ministers, judges, legal professionals, and academics. They worked together to create the Commonwealth Model on 'Parliamentary Supremacy and Judicial Independence'. The goal was to promote dialogue on good governance and to develop detailed rules on how the government, parliament, and courts should work with each other to support good governance, the rule of law, and human rights. The result was the Latimer House Guidelines, which were adopted by agreement. These guidelines were meant to be a practical guide for good practice rather than just another statement of principles, which the Commonwealth had often made. Twenty years later, the guidelines are still relevant. They were created by the four partner organizations, not by the governments of the Commonwealth.

The preamble of the guidelines repeated the main values from the Harare Declaration, including the idea that each branch of government the executive, parliament, and judiciary — should work within its own area and not take over the role of the others[7]. This reflects the principle of separation of powers, which was now part of the Commonwealth's core values.

The guidelines cover many areas including the relationship between parliament and the judiciary, the independence of judges and lawmakers, the role of women in parliament, ethical standards for judges and lawmakers, ways to hold everyone accountable, how laws are made, and the role of groups outside the government and parliament. They also address tough issues like removing members of parliament for changing parties, ensuring there are enough women in parliament, and how judges are chosen, disciplined, and removed.

[6] Communiqué of the Meeting of Commonwealth Law Ministers (1996).

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[7] The Commonwealth (Latimer House) Principles, Commonwealth Magistrates' & Judges' Ass'n et al.,

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The guidelines gained a lot of attention across the Commonwealth, marking the start of the 'Latimer House process', which is still ongoing. This process was supported by the four partner organizations using two approaches: the 'red channel', which involved government and official institutions, and the 'green channel', which involved non-governmental groups. These two approaches were connected because the guidelines needed government support to be implemented effectively, but the organizations also needed the freedom to make sure the government followed them. The Commonwealth legal community became aware of the guidelines through events where lawyers, legal educators, and parliamentarians were invited, and the guidelines started to be mentioned in court decisions. [8]

Great progress was achieved through the 'red channel'. Starting in 1999, representatives from the partner organizations were invited to take part in a long process of discussion at the level of Commonwealth officials and ministers. This led to the creation of a Joint Working Party made up of ministers and representatives from the four partner organizations. As a result, the Guidelines were improved into the Commonwealth (Latimer House) Principles on the accountability of and relationship between the three branches of government (The Commonwealth Principles). These principles were officially adopted by the Commonwealth Heads of Government during their meeting in Abuja, Nigeria, in December 2003.

> …[E]ndorsed the recommendation of their Law Ministers on Commonwealth Principles on the accountability of and relationship between the three branches of government. They acknowledged that judicial independence and delivery of efficient justice services were important for maintaining the balance of power between the Executive, Legislature and Judiciary[9].

At their next meeting in Malta in 2005, Heads of Government:

> …[N]oted that the Commonwealth (Latimer House) Principles … 2003, which recognized the importance of a balance of power between the Executive, Legislature and

[8] *Starrs v. Procurator Fiscal (Linlithgow)* [2000] 1 L.R.C. 718, 737, 765 (Scot.); *Tu'ifua v. Pub. Serv. Tribunal* [2014] 5 L.R.C. 588, ¶ 15 (Tonga).
[9] *Abuja Communiqué*, Para. 8, in *The Commonwealth at the Summit*, vol. 3, at 131 (Commonwealth Secretariat 1997).

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> Judiciary, constitute an integral part of the Commonwealth's fundamental political values as set out in the Harare Declaration'(emphasis added)[10].

This was affirmed at the Commonwealth Heads of Government meeting in London in 2018.

THE COMMONWEALTH PRINCIPLES: STATUS AND ENFORCEMENT

What had started as a set of guidelines created at an informal meeting of lawyers, legal experts, politicians, and judicial officials had now developed into a set of principles. This happened through a process of consultation where these unofficial partners were fully involved. These principles are now accepted by all Commonwealth member states as an essential part of their core political values. As Richard Bourne, a well-known expert on Commonwealth issues, has noted:

> At the Abuja CHOGM, leaders not only approved [the Commonwealth Principles] but, in an unprecedented move, attached them to the 1991 Commonwealth Harare Declaration. This was a spectacular example of the impact of the Commonwealth associations on intergovernmental policy, even though practice in countries as varied as Pakistan and Uganda has failed to live up to it[11].

Bourne has identified several important aspects of the Latimer House process that are relevant to all lawyers working in the field of public law, both within their own countries and internationally. These elements include the role of Commonwealth associations in shaping the fundamental values of the Commonwealth, the legal status of these principles, and the challenges related to ensuring compliance with them.

i. The role of Commonwealth associations in shaping the intergovernmental organization's fundamental values

Looking at the Latimer House process, it appears that the Commonwealth has developed a system where organizations independent of government can actively contribute to the creation of principles that governments may later support.

[10] *Malta Communiqué*, Para. 8; *Abuja Communiqué*, supra note 10, at 172.
[11] Richard Bourne, *The Commonwealth and Civil Society*, in *The Contemporary Commonwealth: An Assessment 1965–2009* 128 (James Mayall ed., Routledge 2010).

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While it is not new to acknowledge the influence of civil society on international policy-making, as seen in environmental issues, the development of the Commonwealth Principles stands out as a significant example of collaboration between ministers and their officials, along with the Commonwealth Secretariat, and the partner organizations. This cooperation helps to overcome the usual distrust that ministers and officials may have towards 'civil society' groups, which are sometimes seen as trying to interfere in decision-making processes that are meant to be the exclusive domain of elected governments.

ii. The legal status of the Commonwealth Principles

The reference in the Malta Communiqué to the Principles as part of the Commonwealth‘s fundamental political values raises a question: does this mean that the Harare Declaration and other instruments from the CHOGMs are simply statements of political intent with no legal or normative effect ?

The legal importance of Commonwealth Declarations was examined around thirty-five years ago by Sir William Dale in his significant work, ―The Modern Commonwealth‖[12]. As mentioned earlier, Commonwealth member states are not bound by agreements that are legally binding under international law, so they are not registered under Article 102 of the UN Charter. However, Dale concluded that:

> Commonwealth Declarations come from an organized body, the Heads of Government Meeting, which is the principal organ of the Commonwealth Association. The Heads of Government can ensure, subject to their domestic constitutions that the commitments made in the Declarations are carried out. Additionally, these instruments may also contribute to the development of customary international law as evidence of state practice[13].

This issue has been further examined in light of developments since 1983 by one of the authors, who argues that at the very least, Commonwealth Declarations fit well within the concept of ―soft law‖. Non-binding legal instruments can involve commitments made in good faith, which are expected to have normative importance in shaping the behavior of states[14]. Commonwealth

[12] Dale, supra note 1, at 48–51.
[13] Ibid.
[14] Peter Slinn, _The Commonwealth and the Law‘ in Mayal, op cit, pp 32–34.

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Declarations on human rights, the rule of law, gender equality, and good governance—particularly those reflected in the Commonwealth (Latimer House) Principles—therefore help in the development of international law and processes where:

> Both textually and in practice, the international legal system is moving towards a clearly defined democratic entitlement, with national governance validated by international standards and instruments, and with systematic monitoring of compliance[15].

This approach is supported by the inclusion of the Commonwealth (Latimer House) Principles as an integral part of the ―Affirmation of Commonwealth Values and Principles‖ adopted by the Heads of Government in Trinidad and Tobago in 2009. As we will see, the Principles are also included in the Commonwealth Charter of 2013[16].

iii. Monitoring of Compliance

―Systematic monitoring of compliance‖ has been a challenge when it comes to the Commonwealth (Latimer House) Principles. The original 1998 Guidelines suggested that:

> If these Guidelines are adopted, an effective monitoring procedure, which might include a Standing Committee, should be created under which all Commonwealth jurisdictions accept an obligation to report on their compliance with these Guidelines. These reports should form a regular part of the meetings of Law Ministers and Heads of Government[17].

While the CMJA, CLA, and CLEA have tried to establish their own monitoring mechanism, and other Commonwealth-accredited organizations have called for some form of evaluation of the implementation of Commonwealth fundamental values[18], funding has been difficult to secure for such an endeavor. The Principles, as they emerged at Abuja, from the process of refinement, contain no reference to such procedures, merely stating that the objective is:

[15] Thomas M. Franck, *Fairness in International Law and Institutions* 139 (Oxford Univ. Press 1995), as quoted in Slinn, supra note 15.
[16] Available at http://thecommonwealth.org/our-charter
[17] Guideline IX, ―Measures for Implementation and Monitoring Compliance,‖ Secretariat Text, at 23
[18] Kwadwo Afari-Gyan, Asma Jahangir & Tim Sheehy, *Democracy in the Commonwealth: A Report on Democracy 18 Years After the Harare Declaration* (Electoral Reform Int‘l Servs. & Commonwealth Policy Studies Unit 2009).

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> To provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments, and judiciaries of the Commonwealth's fundamental values.

In 2005, a forum of representatives from all eighteen African Commonwealth countries, organized by the Commonwealth Secretariat, led to the production of a Plan of Action for Africa, known as the Nairobi Plan of Action for Africa, on the implementation of the Principles. This was adopted in revised form for the Commonwealth as a whole at a colloquium held in Edinburgh in 2008. These plans of action urged governments to establish mechanisms to monitor and evaluate their implementation in their respective jurisdictions. While the Nairobi Plan of Action for Africa was endorsed by governments, this was not the case with the Edinburgh Plan of Action, and no mechanism for evaluating the implementation was established.

However, the question of the implementation of the Principles has remained on the agenda of Commonwealth Law Ministers. In 2011, Commonwealth Law Ministers adopted recommendations from a Rule of Law Expert Group to encourage Heads of Government to give better effect to them. In yet another report commissioned by Heads of Government, an Eminent Persons Group (EPG) considered ways to strengthen the core values of the Commonwealth. The EPG recommended the appointment of a Commonwealth Commissioner for Democracy, Rule of Law, and Human Rights and the adoption of a Charter for the Commonwealth, encapsulating in a single document the principles embodied in the Singapore and subsequent declarations and statements. The Commissioner proposal faced resistance from governments and the then Secretary General, who were unwilling to accept any independent monitoring mechanism.

However, the Charter proposal did find support. After many amendments to the original draft, which was appended to the EPG report by Michael Kirby, a distinguished former Australian High Court judge, the Charter was adopted in 2012 and formally signed in March by the Head of the Commonwealth. However, this Charter is not a legally binding instrument for member states. It is a declaration by —We the people of the Commonwealth‖ of the core values and principles of the organization, including those of Latimer House. Not surprisingly, there are no references to any monitoring or enforcement mechanisms, and the Charter appears to be aspirational rather than prescriptive.

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It might seem that a major step was taken to ensure the implementation of the Commonwealth's fundamental values at the Auckland CHOGM in 1995, with the establishment of the Commonwealth Ministerial Action Group (CMAG), which was a rotating group of nine ministers of foreign affairs, forming a governmental peer review mechanism. As mentioned earlier, CMAG has been of limited effectiveness, except in cases of a complete breakdown of constitutional governance. However, in 2011, CMAG, as a watchdog protecting Commonwealth fundamental values, shifted from only considering military or coup-led attacks against democracy to dealing with ―serious or persistent violations of Commonwealth fundamental political values that do not involve an unconstitutional overthrow of a democratically elected government‖. CMAG realized that the Commonwealth had added important ideas to the Harare Declaration, such as the Commonwealth (Latimer House) Principles. This meant that CMAG now had the authority to point out when a government was breaking these Principles, especially if they were seriously and repeatedly violating the basic values of the Commonwealth[19].

One example of the challenges CMAG might face is the case of the Maldives. In September 2016, the Maldives government was given six months to fix issues like the imprisonment and prosecution of political leaders, interference with the courts, and weakening of democratic systems. The Maldives government responded by leaving the Commonwealth, saying they were treated unfairly by CMAG. They accused the Commonwealth and the Secretariat of trying to increase their influence in international politics by promoting democracy. The Commonwealth Secretary General could only express her sadness and disappointment[20].

SPECIFIC PROBLEMS OF IMPLEMENTATION: THE CASE OF THE JUDICIARY

Besides the cases referred to CMAG, there is ongoing evidence of breaches of Commonwealth values in countries that have not experienced military rule and that appear to have democratic systems based on the rule of law. These issues are usually addressed by the Latimer House Group, which operates outside of government through the ―green channel‖. The independence of the judiciary is a key example of this.

[19] Commonwealth Ministerial Action Group, *Strengthening the Role of the Commonwealth Ministerial Action Group (CMAG): Report Adopted by the Commonwealth Heads of Government Meeting 2011* (Commonwealth Secretariat 2011).
[20] Michael Safi, ―Maldives Quits Commonwealth over Alleged Rights Abuses,‖ *The Guardian* (online ed. Oct. 13, 2016).

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In several instances, the independence and safety of judges and members of parliament have been threatened. For example, in Pakistan, a military takeover forced judges to take a new oath or face being fired. The Supreme Court of Pakistan, when challenged on this military take-over, strongly defended judicial independence. However, it ruled that the previous government had been so corrupt, mismanaged, and misused the independence of the judiciary and the rule of law that the military intervention was justified under the doctrine of necessity. After the return of civilian rule and the reinstatement of the judges, the Supreme Court overturned its earlier decision and declared the military take-over unlawful[21]. In 2018, Pakistan's political situation remained unstable, but the peaceful election of the opposition leader as Prime Minister could signal a shift from the usual chaos and violence in Pakistani politics[22].

In some countries, like Australia, the judiciary is kept separate from the other branches of government, and judges are not involved in political activities. In other countries following the Westminster model, controls against abuse of power may be less effective than in places where the Constitution is supreme and all government actions must follow it. A fair, honest, and impartial judiciary is essential for upholding the rule of law, building public trust, and delivering justice. However, in many Commonwealth countries, despite good intentions in their constitutions that ensure equality of opportunity, appointments based on merit, and the removal of past discrimination, appointments are still influenced by the Executive.

The Principles require all Commonwealth countries to have a system where:

a) Judges should be appointed based on clear guidelines and through a known process that ensures: fairness for all eligible candidates, appointments based on merit, and proper attention to achieving gender equity and removing historical discrimination.
b) Arrangements for job security and fair pay should be in place.
c) Enough resources should be available for the judicial system to work well without restrictions that could harm judicial independence.

[21] *Khan v Musharaf* [2008] 4 LRC 157; *Sindh High Court Bar Association v Pakistan* [2010] 2 LRC 319.
[22] Interim Report of the Commonwealth Observer Group on the Pakistan General Election, July 2018 (Commonwealth Secretariat 2018)

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d) Any interaction between the government and the judiciary should not affect the independence of the judiciary.

Most Commonwealth constitutions have clear procedures for removing judges. However, these mainly apply to higher court judges. Some countries have ignored the constitutional or parliamentary processes. Magistrates and lower court judges may not have the same level of job security and can often be removed by a simple decision from the Attorney General, as happened in The Gambia under the Jammeh regime. This issue was highlighted at the 2018 Triennial Conference of the CMJA, which passed the Brisbane Declaration on the Independence and Integrity of Judicial Officers of the Lower Courts.

Even the perception that job security might be lacking could require changes in the system of appointing judges. This was shown in Scotland after the judgment in Starrs v Procurator Fiscal (Linlithgow), where it was argued that the temporary sheriffs' appointment system questioned their independence. Because of this, the sheriffs' appointment system was changed completely, and there are no longer any temporary sheriffs in Scotland. In other cases where judicial officers are not protected by the Constitution, the same rights under Article 10 of the Universal Declaration of Human Rights should apply to them.

It is understood that parliaments are mainly responsible for making laws. In some countries that are part of the Commonwealth, the courts have been criticized for being too active, especially when it comes to human rights. Since 1988, judges have started to use rules from international agreements when they are unsure about how to apply local laws. This is happening more because the world is becoming more connected through globalization. Still, judges are aware that parliaments have the main role in making laws and that they must follow the Constitution and the law. In many cases, a country might have signed or agreed to an international agreement but not actually made those rules part of their own laws. Article II of the Commonwealth Principles says:

- The relationship between parliament and the courts should be based on respect for parliament's main role in making laws, and the courts' role in interpreting and applying the law.
- The courts and parliaments should work together in a helpful and supportive way to promote the rule of law.

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As one of the three main parts of a democracy, the courts need enough resources. In some places, funding for the courts has been cut, either through lower salaries, poor maintenance of court buildings, or less money for projects that help people gets justice. This is done sometimes to influence judges who may not be supporting the government. It is important to provide the courts with enough and lasting money so they can do their job properly. Although a country‘s economy might be weak, parliaments, which are in charge of making budgets, must make sure the courts have the resources they need to work without unfair limits[23].

TOWARDS IMPLEMENTING THE COMMONWEALTH PRINCIPLES

A number of Commonwealth countries are already working on implementing the Commonwealth Principles. In the United Kingdom, where the separation of the judiciary from the legislative and executive branches is a strong constitutional tradition, major reforms in 2005 removed some disagreements with the principles from the Latimer House Guidelines. For example, the Lord Chancellor is now just a government minister and not necessarily a lawyer, having lost both legislative and judicial roles. The Judicial Committee of the House of Lords was replaced by a Supreme Court, which is now a separate institution from Parliament. Also, the old way of appointing judges was replaced with a new system that includes a Judicial Appointments Commission[24]. Now, the UK is officially following the Commonwealth Principles. In Australia, the legislature did an audit to check how well the Principles were being followed in the Australian Capital Territory. Unfortunately, this example hasn‘t been followed in other places[25].

The Commonwealth Principles are now an important part of the shared values of the Commonwealth. However, because Commonwealth governments have not accepted any formal way to monitor these Principles, like the Rule of Law Commissioner suggested by the EPG high-level review, and because the CMAG didn‘t do its full job, the four supporting organizations have taken on the task of making sure member states follow the Principles. They have created tools to help with best practices, such as the Benchbooks for Legislatures by the Commonwealth Parliamentary Association and the Guide for the Magistrate in the Commonwealth by the CMJA

[23] Commonwealth Principles art. IV(c).
[24] David McClean, ―Judicial Reform in the United Kingdom,‖ 16(1) *Commonwealth Judicial Journal* 25 (2005).
[25] ACT Legislative Assembly, *Report of the ACT Legislature 2009*

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in 2017. They have also provided training for politicians, lawyers, and judges, and shared regular reports with meetings of Commonwealth law ministers and officials. In addition, the CLA, CLEA, and CMJA have made public statements about breaches of the Principles. These statements, in the form of press releases, have been issued on several occasions, including the impeachment of the Chief Justice of Sri Lanka, the forced removal of a Magistrate from Nauru, the removal of three judges in Zambia, threats of impeachment in Botswana, the arrest of lawyers and judges in Cameroon, threats against the judiciary in Kenya, and threats to the positions of Chief Justices in Lesotho and the Seychelles. The impact of these statements is hard to measure. However, they may have helped restore the impeached Chief Justice of Sri Lanka after a change in government in 2015, although she soon resigned. In the case of the Seychelles, a report from a fact-finding mission by the Southern African Chief Justices Forum used the Principles and Guidelines to discuss judicial accountability and the security of judges' positions[26].

The Commonwealth Principles and the importance of an independent media

The Principles are closely linked to the Guidelines and deal with important issues for a modern democracy, such as the role of an independent media that can hold the government accountable and the role of other independent bodies that watch over and check the actions of the government. Article IX says:

a. Ways to help make the public sector accountable include creating bodies and systems that watch over the government. These help build public trust in the government's work. Independent bodies like Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-Corruption Commissions, Information Commissioners, and similar oversight groups play a key role in raising public awareness of good governance and the rule of law. Governments are encouraged to create or improve these oversight bodies according to their own needs. A free, responsible, objective, and impartial media is important for promoting government transparency and accountability. This media must be protected by law to allow it to report and comment on public matters freely.

[26] Southern African Chief Justices Forum, *Report on the Fact-Finding Mission to the Republic of Seychelles* (June 2018)

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These bodies mentioned in Article IX are important for keeping public confidence and awareness about the rule of law. They are also the first line of defense against corruption, which is a top priority for Commonwealth countries seeking to develop economically. It is well known that economic development depends on a strong, effective, and transparent legal system. Foreign investment will not come without these structures in place. The Principles urge the promotion of a ―zero-tolerance‖ approach to corruption, which is essential for good governance.

In 2018, an ad hoc working group, led by the Commonwealth Journalists Association and including representatives from the CLA, CLEA, and CPA, adopted the ―Commonwealth Principles on Freedom of Expression and the Role of the Media in Good Governance[27]‖. This was a deliberate effort to follow the development of the Commonwealth (Latimer House) Principles. The people behind these principles hope that they will also become part of the Commonwealth's fundamental values as accepted by the Heads of Government.

A COMPARATIVE STUDY OF INDIA AND THE COMMONWEALTH FRAMEWORK

The Commonwealth Latimer House Principles establish a framework that defines executive legislative and judicial powers in government institutions while maintaining constitutional equality and judicial independence and government accountability throughout all member countries. The principles exist as nonbinding regulations yet they demonstrate a collective dedication to maintaining legal order through power distribution between different government branches. The Commonwealth member country of India demonstrates through its constitutional practices that it implements all of these principles because it functions as the world largest constitutional democracy. The Indian legal system demonstrates through its court decisions that it has achieved strong alignment with most of the Latimer House Principles which it does not formally recognize as part of its constitutional framework.

The Indian Constitution establishes a parliamentary government system which maintains flexible boundaries between its executive legislative and judicial branches. The Indian government system operates through checks and balances because it permits government bodies to share power yet constitutional boundaries control their operational authority. The Supreme Court of

[27] Commonwealth Principles on Freedom of Expression and the Role of the Media in Good Governance, intro. at 3 (Commonwealth Secretariat)

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India has confirmed multiple times that judicial review empowers the judiciary to preserve constitutional authority through its review power.

The Supreme Court established in Kesavananda Bharati v State of Kerala (1973) that Parliament possesses restricted amending authority which prevents it from changing the Constitution's basic structure. The basic structure of the Constitution includes judicial independence as one of its essential elements. The doctrine prevents any government branch from controlling the constitutional system which operates according to Latimer House rules that require each branch to stay within its designated authority while honoring other branches.

The Supreme Court invalidated constitutional amendments in Indira Nehru Gandhi v Raj Narain (1975) that sought to protect Prime Minister Election proceedings from court examination. The Court established that India‘s constitutional identity includes three fundamental elements which are democracy, rule of law and judicial review. The cases show that India created an effective judicial system which prevents executive and legislative abuses of power according to Latimer House principles.

Judicial Independence and Institutional Safeguards

The Latimer House framework needs judicial independence as a fundamental requirement. The Indian constitution establishes judicial independence through its rules that define how judges get appointed and how their tenure ends and how they get removed and how their financial protection works. The President appoints Supreme Court and High Court judges although the collegium system developed through judicial decisions controls actual appointment procedures because senior judges handle appointment recommendations.

The Supreme Court decision in Supreme Court Advocates-on-Record Association v Union of India 1993 established the collegium system which strengthened judicial independence because it limited executive authority to make judicial appointments. The Court established judicial independence as a constitutional essential which requires protection from excessive executive authority.

People have discussed the relationship between judicial independence and accountability throughout history. The National Judicial Appointments Commission (NJAC) attempted to replace the collegium system but the Supreme Court declared it unconstitutional in Supreme

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Court Advocates-on-Record Association v Union of India 2015. The Court declared that NJAC violated judicial independence which constitutes part of the fundamental structure. This judgment demonstrates a strong judicial will to preserve judicial independence although it creates doubts about how judicial appointments will be conducted in a transparent and democratically legitimate manner.

The Latimer House analysis shows that India meets all requirements for judicial independence but its system for appointing judges operates under judicial control according to Commonwealth standards which require balanced appointment procedures that involve executive and legislative and judicial branches working together.

Executive Influence and Constitutional Tensions

Indian constitutional safeguards provide strong protections against executive power to interfere with judicial functions yet people have raised concerns about this issue throughout Indian history. The post-independence period showed clear conflicts between the judiciary and executive branches especially when courts needed to review constitutional amendments. The Supreme Court first used an executive-friendly method to decide judicial appointments in S.P. Gupta v Union of India (1981) which gave government authorities more power to choose judges. The development of the collegium system brought an institutional transformation which resulted in judicial independence growing more powerful than before.

The emergency period (1975–1977) under Prime Minister Indira Gandhi serves as a crucial historical case that demonstrates executive power at its peak when people believed that judicial independence had lost its strength. The Supreme Court's decision in ADM Jabalpur v Shivkant Shukla (1976) which allowed authorities to suspend fundamental rights during the emergency led to a major decline in judicial protection for civil liberties. The Court declared fundamental rights and constitutional liberties to be supreme through its decision in K.S. Puttaswamy v Union of India (2017) which overruled the earlier decision.

The Indian system has experienced executive power control throughout its history but contains constitutional mechanisms that protect judicial independence from executive power. The system of democratic response operates according to Latimer House basic rules but uses domestic judicial development instead of international laws to achieve its objective.

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Judicial Activism and the Role of Courts

Judicial activism emerges as a crucial aspect for comparison with other elements. Indian courts have played an expansive role in governance through Public Interest Litigation (PIL), beginning with cases such as S.P. Gupta v Union of India (1981) and Bandhua Mukti Morcha v Union of India (1984), where the Supreme Court expanded access to justice for marginalized groups. The judicial branch has received both positive and negative evaluations for its active judicial role.

Judicial activism generates multiple challenges from a Latimer House viewpoint. The system enhances responsibility and protects rights but creates conflicts between judicial and executive powers. Critics argue that excessive judicial intervention risks undermining democratic decision-making, while supporters view it as necessary in contexts of executive inefficiency or legislative inaction.

The Supreme Court established corruption investigation standards in high offices through its decision in Vineet Narain v Union of India (1997). The Court decided in Olga Tellis v Bombay Municipal Corporation (1985) that people have the right to earn a living because it forms a part of their basic human rights. The judiciary demonstrates active governance participation through these cases which sometimes lead it to take on responsibilities beyond its normal judicial functions.

Accountability and Judicial Transparency

The Latimer House framework requires judges to maintain their independence while they handle their official duties. The question of how to hold judges accountable in India continues to generate public discussion. The Constitution enables impeachment procedures through Article 124(4), yet these procedures face considerable political obstacles which make successful implementation highly unlikely. The impeachment proceedings against Justice V. Ramaswami in the early 1990s demonstrated how difficult it proved to hold top judges responsible for their actions.

The Right to Information Act and similar initiatives to improve transparency have created tensions between judicial independence and public demand for transparency. The Supreme Court determined in Central Public Information Officer v Subhash Chandra Agarwal (2019) that the Chief Justice of India Office must comply with RTI requirements which enables citizens to

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access official documents while protecting judicial independence. The process shows a constitutional dialogue which mirrors Latimer House's approach to ethical standards and accountability systems.

Comparative Evaluation with Latimer House Principles

India shows major alignment with the Latimer House framework through essential dimensions of its operations:

The constitution provides strong protection for judicial independence which the law establishes as a fundamental right. The system maintains a separation between executive and judicial authority through its flexible operational system. The system establishes both rule of law principles and constitutional supremacy as fundamental legal concepts. The system allows courts to conduct extensive and thorough judicial reviews.

The system exhibits essential differences through two major points of distinction:

- The process of selecting judges needs to achieve institutional equilibrium which Latimer House framework requires.
- The system needs better mechanisms to ensure accountability of public officials.
- Judicial activism occasionally extends beyond established institutional boundaries.
- The relationship between executive and judicial branches experiences intermittent conflicts.

CONCLUSION

The Commonwealth (Latimer House) Principles call for judiciaries and parliaments to ―fulfill their respective but critical roles,‖ otherwise it can seriously affect the fair administration of justice. The Edinburgh Plan of Action noted that ―each new generation of government officers, parliamentarians, lawyers, judicial officers and members of civil society has to be aware of the importance of, and balance between, the independence and accountability of the judiciary, parliament and the executive[28]‖. Most problems in the Commonwealth arise from a lack of understanding of the roles of each institution in the governance process. The Edinburgh Plan of

[28] Edinburgh Plan of Action for the Development, Promotion and Implementation of the Commonwealth (Latimer House) Principles, note 4 at 40 (2008).

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Action also called for more regular awareness training for newly appointed or elected parliamentarians, judicial officers, and public servants on basic constitutional principles and the main roles of each pillar of democracy in the constitutional process.

In 2013, the Commonwealth Secretariat asked the CLA, CLEA, CMJA, and CPA to develop a ―Latimer House Toolkit‖ to improve communication between the three pillars of democracy without compromising their independence. Published in 2015, the four associations are still waiting in 2018 to help the Commonwealth Secretariat implement this toolkit to promote better respect between the three branches of government so that ―each Commonwealth country's Parliaments, Executives, and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity, and accountability.‖ In this, the Associations find comfort in paragraph 13 of the CHOGM communiqué of April 2018:

> Heads reaffirmed their commitment to the Commonwealth (Latimer House) Principles on the Accountability and the Relationship between the Three Branches of Government (2003) as an integral part of the Commonwealth's fundamental political values. Heads requested the Commonwealth Secretariat work in partnership with other Commonwealth organizations in promoting dialogue between the three branches of government, including through the full application of the Latimer House Toolkit, which provides a practical guide to enhancing the separation of powers[29].

Thus, the Latimer House process, twenty years on, is in Bourne's words, ―a spectacular example of the impact of Commonwealth associations on intergovernmental policy[30]‖. The Principles must be seen as a commitment to the core Commonwealth values and as a standard by which the performance of all Commonwealth countries should be judged.

[29] Commonwealth Secretariat, *The Toolkit: A Comprehensive Set of Guidance in a Number of Volumes, with Illustrative Case Law from the Law Reports of the Commonwealth, LexisNexis, 1985 to Date* (2015)
[30] Bourne, supra note 12.

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