
The Role of Precedent in the Legal System of Pakistan

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Abstract

This paper is an evaluation of the role of judicial precedent in the legal system of Pakistan, with references to the position of a country that follows the tradition of common law. The paper discusses the origins of the doctrine of precedents, its role, and its purpose in giving the law certainty, consistency, and justice. The study explores the working of precedent in Pakistan's judiciary with unique references to its role in the decision-making process and its functioning in the courts of the country. The paper focuses on the place of precedent in the evolution of the law, especially in areas of the law that are the subject of limited legislation. Nonetheless, the paper also highlights some difficulties regarding Pakistan's legal operation that hinder the process of following precedents. This is judicial activism, where sometimes courts are out of bounds and deal with the issues using their methods. The other problem is that it is much harder for the higher courts to follow the lower courts' precedents equally. Furthermore, the merger of Islamic law and common law gives rise to difficulty in interpreting precedents that appear contrary to Shariah. The paper concludes with an analysis of the main developments in the reforms and judicial responses to the challenges under consideration, emphasizing an approach that safeguards the dichotomy of the two legal systems while directing them toward respect for the principles of the rule of law and justice.

Introduction

Pakistan's legal system can be described as a combination of many overseas legal systems but has the British legal system as the foundation, with an Islamic legal system and indigenous laws mixed. This condition determines how and why the doctrine of stare decisis plays a particular role in the country's judicial system¹. Stare decisis, or the concept where the decision given by a court is followed to enable courts to make similar decisions in similar legal cases, is important in judicial systems. The doctrine of precedent is one of the most relevant legal tools in Pakistan required to interpret statutes and shape the growth

¹ Syed Zaffar Hassan Naqvi and Sadaqut Ali, 'Describing the Scope, Process and Grounds of Review in the Legal Framework of Pakistan' (2023) 2 Pakistan JL Analysis & Wisdom 844.

of case law². Indian legal system has its roots in the British era, and the British introduced the standard law system here in the subcontinent. After gaining independence in 1947, Pakistan continued with this legal structure but made some modifications that were most appropriate to the culture of the Islamic world³. A legacy of this is a judiciary based upon common law principles, which simultaneously apply Islamic law to uphold a unique legal system. Reflecting on the court's brief history in its overview, the Supreme Court reveals that "The jurisprudence of Pakistan has its origin in the medieval period and even earlier"⁴. Pakistan's judiciary structure is pyramidal, with the Supreme Court at the top while provincial High Courts and lower courts at the lower level. These matters have been determined by the superior courts and, in essence, support the stare decisis principle⁵. It serves the purpose of standard setting, which aims at enforcing legal rules made by the higher courts, thereby enhancing legal certitude. Among all of them, the Supreme Court's decisions bear the most importance as they often entail precedents that dictate the action of the legislative or the executive branch of the government⁶.

Despite these, there is a tension between the Sharia law and the common law in the context of applying precedents. In contrast, common law puts much importance on the case and legal precedents that have been established; at some point, they conflict with each other, or the Islamic law system requires some integration⁷. This is why the judiciary sits to work through such considerations to ensure that traditions are assimilated judiciously while paying key attention to the precedence of these constitutional responsibilities and religious teachings. This balance is essential given that 'the Indian legal system has been through different ages, such as the Hindu age, the Muslim age, the British colonialism period and the independent India age'⁸. Thus, over the years, Pakistan has witnessed some rough legal times that have posed difficulties in giving precedence to precedents. Various matters have fueled debates, such as judicial activism, which entails the deviation of courts from earlier decisions, the inconsistency of precedents, and the argument on the legitimacy of the military courts. For instance, the government changes that enabled the parliament to

² Khurram Baig and others, 'An Analysis of the Legal System: A Comparative Study in the Context of Pakistan and the UK' (2024) 13 Bulletin of Business and Economics (BBE) <<https://bbejournal.com/BBE/article/view/713>> accessed 23 March 2025.

³ Muhammad Saad Saleem, Aqsa Tasgheer and Tehreem Fatima, 'Investigating Judicial Activism in Pakistan: Analyzing Significant Precedents in the Promotion of Environmental Sustainability' (2023) 3 Journal of Religious and Social Studies 1.

⁴ Muhammad Ishfaq and others, 'Navigating Legal Pluralism: A Comparative Analysis of Islamic Law and Secular Legal Systems in Pakistan' (2024) 1 International Journal of Social Welfare and Family Law 01.

⁵ Muhammad Saad Saleem, Aqsa Tasgheer and Tehreem Fatima, 'Exploring Judicial Activism in Pakistan: A Review of Key Precedents in Advancing Environmental Sustainability' (2023) 3 Journal of Religious and Social Studies-JRSS 1.

⁶ Rasool Buksh Mirjat, 'Minority Rights with Reference to Judicial Precedents in Pakistan' (2023) 10 European journal of economics, law and politics 1.

⁷ Muhammad Munir, 'The Role of Shari 'a in the Legal System of Pakistan' [2022] Available at SSRN 4010134 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4010134> accessed 23 March 2025.

⁸ Zulfiqar Hussain and others, 'Exploring the Evolution of Public Interest Litigation in Pakistan: From Origins to Present-Day Challenges through Critical Legal Theory.' (2024) 7 International Journal of Social Science Archives (IJSSA) <<https://search.ebscohost.com/login.aspx?direct=true&profile=ehost&scope=site&authtype=crawler&jrnl=27078892&AN=180913847&h=VL%2FmOnx3uPl6Vo%2FOObLONhP7RpPuBU%2BOrJQsUPD2K3kl0jE2Y%2BmZaU%2FDV5yfopXs9i%2BbIoKUMd8TVhzzfNtsGQ%3D%3D&crl=c>> accessed 23 March 2025.

appoint the chief justice are seen as a threat to the independence of the judiciary and politicization of this organ⁹. Furthermore, international organizations objected to the impunity of military courts to try civilians, thus, the argument of legal culture and modern politics¹⁰.

Definition and Types of Precedent

The concept of Stare Decisis is the legal maxim of the common law system, where past court decisions direct future decisions. By providing rules from previous cases, the principle of stare decisis can ensure consistency, stability, and predictability of the law¹¹. The principle requires the courts to respect earlier decisions except for certain important grounds. Therefore, the first type of precedent is a binding precedent that higher courts of law make. These rulings are binding on lower law courts and thus must be observed and implemented. This maintains order and stability in society because the lower courts must abide by the legal precedents set by superior courts in the stringently distinguished legal systems¹². For instance, decisions made by the appellate or supreme courting systems are authoritative to those of the trial courting systems of equivalent jurisdiction in the courts. Stare decisis means that a decision made in a previous similar case is considered correct and, like cases, should similarly be decided as such¹³. On the other hand, persuasive precedent includes decisions by courts of similar or inferior jurisdiction or even other courts of differing jurisdiction, as they do not dictate the court's decision-making, but the court may act on them. Thus, persuasive authorities are persuasive simply because of the reasoning and similarity to the facts of the present case or the court that has rendered the given decision¹⁴. It is libel when reference is made to precedent as a precedential tool in handling new cases or even where the law remains inconclusive. For instance, the Supreme Court could consider decisions from other states or the subordinate courts in as much as the rationale of such decision will be cogent as regards the circumstances of the matter in dispute¹⁵. In other words, while binding precedents ensure that current laws adhere to the set standards, persuasive precedents break the rigid chain that comes with the former while still respecting previous decisions.

Hierarchy of Courts and Precedent in Pakistan

The structure of courts in Pakistan and the rule of law specify the key elements that define cases with regard to legal precedents. Therefore, it is important to understand this structure so as to understand how legal decisions are implemented and adhered to in the country's

⁹ Farah Amir and others, 'Analyzing Practical Application of Writ Jurisdiction and Its Legal Implications in Pakistan' (2024) 4 *Current Trends in Law and Society* 163.

¹⁰ Amr Ibn Munir, 'The Rule of Law in Pakistan: A Myth or Reality?' (2024) 10 *Review of Human Rights* 10.

¹¹ Christopher J Baldacci, 'The Common Law of Interpretation' (2022) 108 *Virginia Law Review* 1243.

¹² Sebastian Lewis, 'On the Nature of Stare Decisis' [2022] *Philosophical Foundations of Precedent* (Oxford UP, Forthcoming) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4059625> accessed 23 March 2025.

¹³ Nina Varsava, 'Stare Decisis and Intersystemic Adjudication' (2021) 97 *Notre Dame L. Rev.* 1207.

¹⁴ Bogdan Lesiv, 'Justice Holmes's Response to Legal Formalism in Context: A View on the Cornerstone of a Realistic Approach to the Common Law' [2024] *Italian Review of Legal History* 1.

¹⁵ Timothy Endicott, Hafsteinn Dan Kristjánsson and Sebastian Lewis, *Philosophical Foundations of Precedent* (Oxford University Press 2023) <<https://books.google.com/books?hl=en&lr=&id=sF-1EAAAQBAJ&oi=fnd&pg=PP1&dq=The+concept+of+Stare+Decisis+is+the+legal+maxim+of+the+common+law+system,+2022&ots=gWe4aJslgY&sig=RCOE6w70FFU4QSicH5A0PYqJa6o>> accessed 23 March 2025.

judiciary system. Some courts include the Supreme Court, the High Court, and the lower courts¹⁶.

Supreme Court of Pakistan

The Supreme Court forms the apex of the judicial hierarchy in the context of the judicial system of Pakistan. It is considered the court of last instance and is crucial in interpreting the constitution and laws of the country. According to the provisions under the Constitution of Pakistan, especially under Article 189 and the provision of Article 4, all decisions made by the Supreme Court are authoritative to other courts in the country¹⁷. As such, no other lower court, among them the High Courts, can ignore or interfere with the orders of the Supreme Court. Due to such precedents, the laws are carefully followed similarly across the country to prevent deviation. In addition, no other court of law can overturn a decision passed on a constitutional issue, making the Supreme Court's decisions on such matters final, definite, and unanimous¹⁸.

High Courts

The High Court of a province in Pakistan is the court of higher authority of each province of Pakistan and has substantial power in its respective territory. They will try to exercise the judicial work at the provincial level and will hear appeals from the lower courts. Therefore, article 201 of the constitution clearly states that decisions made by the High Courts are authoritative to all the other courts under their authority¹⁹. This implies that any decision a High Court has made must be implemented by any lower court within that particular province or region. However, where a decision of a High Court goes against the provisions of the decision of a Supreme Court, then the decision of the former is overruled by the latter since the Supreme Court is the final court of appeal in the country²⁰. Besides the appellate jurisdiction, the High Courts in Pakistan have jurisdiction over original matters in specific situations, particularly where constitutional problems or questions of law are involved. As such, they take part in developing a body of case law that helps the lower courts within their association²¹.

Lower Courts

Regarding the subordinate judiciary of Pakistan, the District Court and Magistrate Court have a program governing the domain of civil, criminal, and family law. These courts need

¹⁶ Khairat Oluwakemi Akanbi, 'Views on the Echoing Influence of the Common Law on the Nigerian Legal System' (2022) 3 IJOLACLE 25.

¹⁷ Alessandro Ferrero and Veronica Scotti, 'Justice and the Law Systems' in Alessandro Ferrero and Veronica Scotti, *Forensic Metrology* (Springer International Publishing 2022) <https://link.springer.com/10.1007/978-3-031-14619-0_1> accessed 23 March 2025.

¹⁸ Nicoletta Bersier, 'Considers the Origins of the Common Law' (2022) 139 *Common Law–Civil Law: The Great Divide?* 51.

¹⁹ Julie Ward, 'Equity's Path to Justice: The Judicial Method in Equity and the Common Law' (2022) 36 *Commercial Law Quarterly: The Journal of the Commercial Law Association of Australia* 9.

²⁰ Nicoletta Bersier, 'The Civil Law as the Foundation of the Common Law: Roscoe Pound Considers the Origins of the Common Law' in Nicoletta Bersier, Christoph Bezemek and Frederick Schauer (eds), *Common Law – Civil Law*, vol 139 (Springer International Publishing 2022) <https://link.springer.com/10.1007/978-3-030-87718-7_5> accessed 23 March 2025.

²¹ Michael Foran, 'The Cornerstone of Our Law: Equality, Consistency and Judicial Review' (2022) 81 *The Cambridge Law Journal* 249.

to pay much respect to the Supreme Court case laws and the High Courts of their appellate jurisdictions²². As federal courts, subordinate courts are bound by the precedents set by the Supreme Court and High Courts. However, they have restricted control in applying these decided cases in other cases, which may be the subject matter of the above-mentioned courts²³. For the cases that have not been provided in the legal precedents, lower courts seek to determine how the principles have been understood and conducted by the higher courts and apply the same to the case²⁴. The principle of Stare Decisie, according to which the consecutive decisions must be in harmony with the previous ones, is also valid in the Judicial Support of Pakistan. Lower courts need to follow this doctrine so that there can be legal certainty and balance in the legal systems of any country. Although the lower courts cannot deviate much from precedents, they may, in certain exceptional cases, refer that matter to the High Court or Supreme Court, where it involves a new point of law or any other question of law that might be beyond the court's comprehension²⁵.

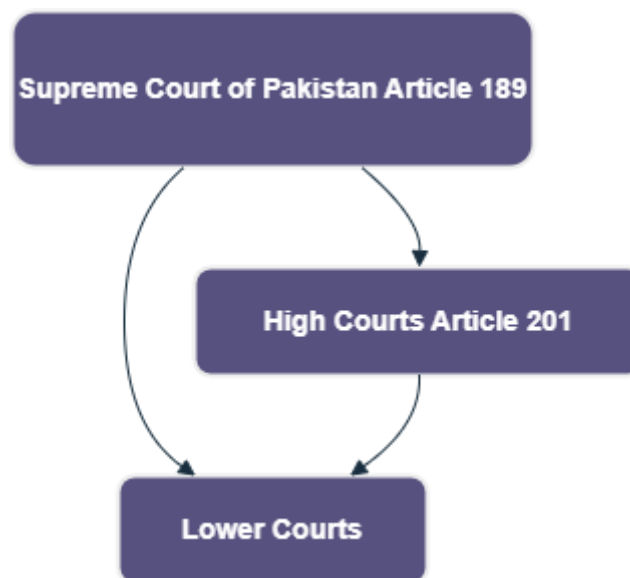


Figure 1: Hierarchy of Courts and Precedent in Pakistan

This way, the Pakistan hierarchy of the courts provides for the tally system, whereas the precedents are obeyed. All lower courts are governed and controlled by the Supreme Court decisions since it is the last court of appeal and has great authority. The standard law system that prevails in most states with high courts means such decisions are binding on the lower courts within the jurisdiction. This system of a pole puts the application of law in an orderly manner and checks the unpredictable and uncontrollable law. Since the courts in Pakistan operate under specific legal precedents and principles, they only serve the more significant cause of law as they ensure that justice is well served.

²² Yasser Kureshi, *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan* (Cambridge University Press 2022) <https://books.google.com/books?hl=en&lr=&id=8-WBEAAQBAJ&oi=fnd&pg=PR8&dq=.+Hierarchy+of+Courts+and+Precedent+in+Pakistan:+2022&ots=2w47M0lvuM&sig=nCgWCvla_6DpNGnjV5Jnhj0maog> accessed 23 March 2025.

²³ Naqvi and Ali (n 1).

²⁴ Syed Murad Ali Shah and others, 'Effect of Power Unification and Simultaneous Interpretation by Superior Courts: A Critical Analysis' [2024] JL & Soc. Pol'y 62.

²⁵ Muhammad Asif, Hina Fazal and Muhammad Siddique Akbar, 'Legitimacy of the Courts: Evidence from a Survey in Punjab, Pakistan' [2024] International Journal of Comparative and Applied Criminal Justice 1.

Importance of Precedent in Pakistan

Pakistan has a legal system in which case law is imperative for the legal structures in operation. It provides stability and procedural patterns, and the law evolves by interpreting the statutes and developing the law where the statute has not covered the issue²⁶.

Uniformity and Consistency: Common law entails the uniform application of the law as required by precedents since lower courts are bound to adopt decisions made in upper courts. This is important for legal security and non-ad hoc decision-making that may confuse business people²⁷. According to the principle of stare decisis, judgments of the higher courts, like the Supreme Court of Pakistan, are authoritative and will be compelled by the one formed upon them. This hierarchical structure eliminates the prospects of people in a given legal system, giving different meanings to the laws applying to them, and thus, it ensures equal protection of the law²⁸.

Role of Precedent in Legal Reasoning: The reference mentioned above specifies that the Framework of Legal Reasoning and Judgment establishes a framework the judge can use to make legal decisions. Being a civil law system, Croatian legal practice relies on the stimuli provided by the legislator to resolve concerns or handle new legal issues. This use of precedents also helps in the provision of legal rationale that is consistent and rooted in precedent decisions²⁹. They are to distinguish those situations where factual or legal variations permit deviation from precedent to maintain a system based on previous rationale and change with experience.

Development of the Law: Precedent also plays this part in developing the law because it develops gradually. In cases where legislation does not give explicit provisions or offer legal provisions at all, judicial precedents fill voids, develop and update common laws, and deal with pitfalls. It is hereby revealed that the process of legal change by reference to cases creates legal dynamism that allows the legal system to evolve in answer to the change in society, technological innovation, and the interpretation of justice. Judicial decisions, therefore, do not only solve disputes of specific parties, but they also define the status of the law in the country and its further development.

²⁶ Adnan Rafiq, 'Changing Course: Understanding Judicial Independence in Pakistan' (PhD Thesis, University of Oxford 2022) <<https://ora.ox.ac.uk/objects/uuid:ac9cf5cb-b1d1-4374-88fe-48b56c109a04>> accessed 23 March 2025.

²⁷ Baig and others (n 2).

²⁸ Hassan A Niazi, 'Playing for Keeps: Pakistan's Experience with Constitutional Hardball in 2022' (2022) 13 PLR 75.

²⁹ Gohar Masood Qureshi, Anum Shahid and Faiza Chaudhary, 'Analyzing the Writ Jurisdiction of High Courts: A Case Study from Pakistan' (2023) 3 Current Trends in Law and Society 44.

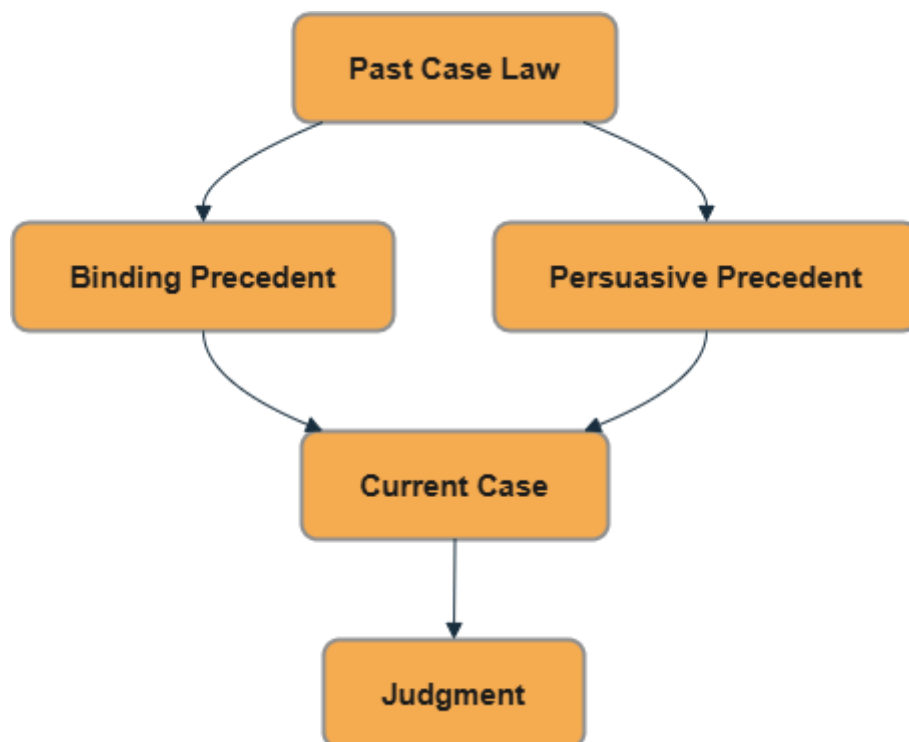


Figure 2: process of legal precedent

The figure explains the process of legal precedent. This explains how present cases come up as the binding and persuasive precedents of past cases and end up with a decision of the court. To sum up, precedent is an essential part of the Pakistani legal system that helps to achieve consistency of decisions, simplify the work of a judge by giving guidelines for analyzing the case, and support the development of law naturally where there is no strict legal regulation.

Challenges in the Application of Precedent

It is important to see the application of precedent in Pakistan's legal system because of its importance in fair and sustainable policies. However, the problem is that this database has specific challenges. One of the significant topics concerning precedent is judicial activism, specifically in the Supreme Court. In the past, it has been observed that the court has overstepped its interpretative activities by construing laws and constitutional provisions only according to the set precedents. The consequence of such thinking is that sometimes there are departures from conventional rules, which may breed the principle of consistency and reliability. While judicial activism may effectively handle new social or political issues, it alters the flow of cases in the legal hierarchy and confuses subsequent cases³⁰. Another problem is referring many legal matters with binding precedents to lower courts: inconsistent interpretation of the precedents by the lower courts. Due to the hierarchical structure of the legal system, the courts of lower instances often ignore or misinterpret higher courts' precedents. This is usually due to inadequate knowledge of the law, lack of practice, or poor understanding of how precedents can be used. This is because there is

³⁰ Sayyeda Fatima, 'Role of Appellate Forums in Competition Cases of Pakistan: Challenges and Way Forward' (2023) 46 World Competition <<https://kluwerlawonline.com/journalarticle/World+Competition/46.3/WOCO2023018>> accessed 23 March 2025.

generally instability in the legal exercise as appeals are often made to clear such cases³¹. That is why different courts across various legal provisions with different possibilities of interpretation create legal chaos and an additional burden for the higher court to resolve such disputes. The use of precedent is also affected by Pakistan's dual legal system, which consists of Islamic and standard law systems. In some cases, there is what can be described as a clash between a case decided by a common-law court and a ruling based on Shariah. This is always an issue because different award systems emanate from the contracts, and the courts are often faced with harmonizing them. This may give rise to differences in decisions, especially in situations where Shariah laws permit one thing only the everyday law regime prohibits³². It is not easy to navigate legal systems when one legal system is in place, and another is in the wings; hence, there is a need to put in much effort to harmonize the two. The principle of obligation of precedent is actively imported for the efficiency of a legal system to ensure the rule of law in Pakistan with teamwork, judicial activism, random descent by the lower courts, and the dual legal framework, making it a challenging framework³³. These recurrent legal challenges call for constant legal updating and appropriate conduct of the courts to promote the practice of precedent that enhances law efficiency in the delivery of justice.

Judicial Responses and Reforms

To overcome these difficulties, the courts in Pakistan have taken considerable steps towards developing the doctrine of precedence and enhancing its use in the country.

Emphasizing Precedent in Judicial Training: Among these measures, great attention is paid to the organization of the judicial training process, which deals with the issues of the study and implementation of the precedents. Any new judge or judicial officer is taught to appreciate and know how to properly utilize legal precedents and be guided by the fact that stare decisis is highly valued in Anglo-American legal systems. This training helped the judge to arm them with adequate knowledge of the strict legal matters required to determine complex and contentious issues in compliance with the set legal precedence and benchmark in the delivery of judgment³⁴.

Comprehensive Law Reports: Besides easing access to case law, the judiciary has also provided for publishing comprehensive law reports. Such reports come in handy for legal practitioners to enable them to access judgments delivered by higher courts. This is so since past rulings are easily accessed, enabling lawyers and judges to quickly identify past rulings that may be relevant to a particular case in preparation for the case. This initiative cuts short the likelihood of missing out on important decisions and assists in establishing hardcore consistency in the legal world³⁵.

Reiterating the Binding Nature of Superior Court Decisions: On this score, in important decisions, the judiciary has sought to remind the provinces of the binding nature of any judgment by superior courts, particularly the Supreme Court. Thus, to enforce this principle

³¹ Reyhan Hameed Arain, 'Challenges to Commercial Arbitration of Pakistan: Judicial Intervention and Bad Faith of Parties' (2025) 3 *The Critical Review of Social Sciences Studies* 3186.

³² Wasiq B Aqeel and others, 'Prospects and Barriers of Witness Protection Laws in Pakistan' (2024) 5 *Human Nature Journal of Social Sciences* 91.

³³ Nouman Rasool and Muzamal Rasool, 'Challenges for Expert Evidence in the Justice System of Pakistan' (2022) 8 *Journal of Forensic Science and Medicine* 62.

³⁴ Abdul Qayyum Gondal, Matloob Ahmad and Hafiz Muhammad Adnan Hamid, 'Reimagining Justice: Modern Legal Reforms for Pakistan in the 21st Century' (2024) 8 *Al-Aijaz Research Journal of Islamic Studies & Humanities* 31.

³⁵ Noman Ali Shah and Faisal Awais, 'Critical Analysis of Partiality of Judges and Its Impact on Legal Landscape of Pakistan' (2024) 5 *Annals of Human and Social Sciences* 41.

in high-profile cases, the judiciary also requires junior courts to follow the precedents set by superior courts. This approach strengthens the concept of stare decisis in the legal framework and ensures that the judgments cannot be unstructured or uncertain, even in unpredictable scenarios³⁶. Therefore, the judiciary of Pakistan has well understood the significance of precedent in terms of the legal system and has introduced several sets up for this purpose. By enhancing judicial education, expanding access to case law, and ensuring compliance with the precedents provided by the higher-ranking courts, the judiciary strengthens the role of the rule of law and stability in the legal system.

Conclusion

Thus, precedent is a cornerstone of the legal system of Pakistan and can be relied on to bring certainty and stability to the resolution of legal questions. Thus, it plays an important role in reviewing and controlling the work of the Court to provide legal certainty and public trust in the judicial system where similar cases are addressed consistently. However, certain factors hinder the concept and application of precedent in Pakistan, and three of these problems include judicial activism, unequal application of precedent by the lower courts, and integration of common law with the Shariah. In order to challenge the set objectives, the judiciary has initiated certain measures, such as training judges, providing legal materials, and restating the supremacy of superior court orders. These measures are obvious in the sense that they will prevent inconsistent decisions that are likely to plague the system of precedent without them. However, there is no reason to disregard the principle of legal realism, which acknowledges the common law developed by the higher instances of the legal authority with the legal and social realities. However, adopting the standard law system in parallel with the Shariah is always a challenging balance that needs the consideration of case precedents where the two systems differ. Therefore, if the judiciary concentrates more on judicial education, the practice of 'stare decisis' with respect to the superior court's hierarchical structure, and the proper blending of both systems, the usage of precedents in Pakistan's legal system would further be cemented. This will help realize the principles of the rule of law by providing justice to those who deserve it without bias.

³⁶ Shaukat Hayat Khan and Muhammad Zubair, 'Constitutionalism And Judicial Activism: Transforming Authority In Pakistan' (2023) 11 Russian Law Journal 659.