

Legality of Law Reporters after the 1989 Amendment to the Law Reports Act, 1875

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Abstract

The decisions of superior courts are binding upon the lower judiciary, where the superior courts have enunciated a new principle of law, decided a question of law, and the decision is based upon a principle of law. The lower courts and executive authorities are bound by the constitution and law to follow the dictum laid down by the superior courts, and no one can ignore the decisions of these courts. When superior courts decide any matter, the same is reported in Law Journals, which are published under the authority of law. But presently many decisions are reported without being approved for reporting by the courts and in violation of the Law Reports Amendment 1989. This violation of law has also prompted mushroom growth of law journals. Firstly, this article attempts to find the brief history of law reporting in Pakistan, from its start. Secondly, it traces the reasons for the adoption of the Law Reports Act 1875. Thirdly, it will trace the status, legality, and authority of head notes prepared by law journals and their usability by different fora. Moreover, the Law Reports Act, of 1875 is also examined in the light of the *Qanun-e-Shahadat* Order 1984. Finally, the mushroom growth of law journals and the quality of law reporting are discussed. At the end of this paper, ways for controlling the unregulated growth of law journals are analyzed and measures to improve their quality are proposed.

Keywords: Law Reports, reported judgment, unreported judgment, headnotes, Precedent

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Early Stages of Law Reports

In India, Mr. Dorin felt the necessity of law reporting and establishing the authority of precedent in 1813. After analyzing the issues in Indian Courts, he suggested that for the *Sadar Diwani Adalat* and *Sadar Nizamat Adalat* cases' plan be adopted for "publishing reports of cases,"² At that time the practice of courts in India was unsettled, and their jurisdiction was ill-defined. Where a native question was involved a reference to the law officers was made. Speaking about such situations, Sir William Jones perceived as under:-

I could not with my conscience concur in a decision, merely on the written opinion of native lawyers...they could have the remotest interest in misleading the Court;... would it be very difficult for them to mislead us; for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book, from which it was selected, it might be differently explained, or introduced only for the purpose of being exploded.³

Referring to the Pandits, Sir Francis Macnaghten says "Native lawyers, may not be deserving of the blame which is imputed to them; but there are instances of their partiality and tergiversation, which cannot be palliated or denied; nothing but an ascertainment of the law can prove a corrective of this evil..."⁴ No doubt, however, that the native law officers were learned and respectable, but for suspicion of corruption such knowledge of texts was inadequate for

² *Selection of Papers from the Records at the East-India House relating to the Revenue, Police, and Civil and Criminal Justice, under the Company's Government in India*. Vol. II (London: E.Cox and Son, 1820), 20.

³ Letter from Sir W. Jones, dated March 19th, 1788, *The Works of Sir William Jones*, Vol. III (London: G.G. and J. Robinson, 1799), 74; <https://archive.org/details/dli.bengal.10689.22945/page/n5/mode/2up> (accessed: 10th December, 2023).

⁴ Sir Francis Workman Macnaghten, *Considerations on the Hindoo Law*, (Serampore: The Mission Press, 1824), xi-xii; <https://archive.org/details/dli.csl.8892/page/n9/mode/2up> (accessed: 15th December 2023).

the purpose of arriving at a just conclusion.⁵ It is maybe, for this reason, Mr. Morley said, it is “too much to expect from an Indian education, that the law-officers should possess and exercise the discrimination and impartiality which belong more nearly to the province of a Judge.”⁶ These issues can be obviated by the publication of decisions of courts.⁷

Hindu and Islamic law both recognize the practice of abiding by precedent.⁸ Morley considers that *Fatwas* in Islamic Law are precedent and are authoritative in Courts of Justice, but this is not true, as the *fatwa* is not the decision of court and this has no binding force. In present-day Pakistan, this can be considered equal to the opinion of the Council of Islamic Ideology.⁹ In this backdrop law reporting in India started which is being discussed in the next part.

Company’s Government and Law Reporting

These reports can be placed under different headings such as Reports of the Privy Council, Supreme Court, High Courts, *Sadar Diwani Adalat* and *Sadar Nizamat Adalat*.

In India, the Privy Council was the highest court of appeal, established on 14th August 1833 and its verdicts were binding on all subordinate courts in India. The Privy Council declared that courts in India are not free to dispute the law laid down by it.¹⁰ Many people compiled its decisions; Jerome William Knapp was the first person who compiled its decisions in three volumes (1829-36). However, Moore published them separately under the title of “Indian Cases.” There is also a valuable collection of printed cases in Indian Appeals which were collected by Mr. Lawford, but this

⁵ This observation is not true for Muslims. See, Imran Ahsan Khan Nyazee, *Islamic Legal Maxims* (Islamabad: Shari’ah Academy International Islamic University, 2019), 208.

⁶ William H. Morley, *Administration of Justice in British India* (London: G. Norman, 1858), 332; <https://archive.org/details/in.ernet.dli.2015.44104/page/n341/mode/2up?view=theater> (accessed: 15th December, 2023).

⁷ *Ibid.*, 333.

⁸ *Ibid.*

⁹ Article 229 and 230 of the Constitution of Pakistan, 1973.

¹⁰ *Mata Prasad v. Nageshwar Sahaya*, 52 I A 398.

collection was never printed.¹¹ Knapp and E.F. Moore also published Privy Council's decisions. Besides, Moore¹² published a series of reports of the Privy Council from 1862 to 1873, which are known as Moore's P.C. F.F.¹³ He also published a series called Moore's Indian Appeals (MIA) which only contains Privy Council judgments on appeals from India. After lapse of considerable time, in this series, the reports of the cases are beneficial for the legal fraternity. Therefore, it is important to note that Privy Council's all cases from 1829 to 1873 are contained in volumes 12 to 20 of the English Reports.¹⁴

In India, law reporting started with the establishment of Supreme Court of Judicature at Fort William in Calcutta, in 1774 by the Regulating Act of 1773. Initially, no organized law reporting system was in place because the business of law reporting was irregular, unorganized, and un-systematical. This was a private enterprise and the Government was not involved in reporting of decisions. Mostly, practicing lawyers, judges and officials of the courts prepared these early reports. In the words of Bijay Kisor Acharyya:-

The Judges of the old Supreme Court made no special effort to secure good reporting. Almost from the earliest institution of the Supreme Courts the decisions of those were left to the unassisted efforts of private reporters. Reports were no doubt published; some of them good, some of an inferior quality; and there were periods for which no reports at all existed, and during which many valuable decisions passed altogether unreported.¹⁵

¹¹ Morley, *Administration of Justice in British India*, 335.

¹² Practicing Barrister in India.

¹³ <https://www.legalserviceindia.com/legal/article-8222-history-of-law-reporting-in-india-and-its-significance.html> (accessed: 4th January, 2024).

¹⁴ Ibid.

¹⁵ Bijay Kisor Acharyya, *Codification in British India* (Calcutta: S.K. Banerji & Sons, 1914), 162;
<https://archive.org/details/codificationinbr00achaiala/page/162/mode/2up?view=theater> (accessed: 14th December, 2023).

In 1824, Sir Francis Macnaghten¹⁶ after compiling certain cases, related to Hindu law, under the name of “*Considerations on the Hindoo Law*”¹⁷ published them. Perhaps, this was the first law reporting in India. Thereafter, Sir William Macnaghten also compiled a few cases related to Islamic law and printed them in 1825 by the name of “*Principles and Precedents of Moohummudan Law*.”¹⁸

Many people published Calcutta Supreme Court’s decisions. In 1831, Mr. Bengell published a single volume of Reports of cases that are “fully and ably reported.”¹⁹ In 1834, Mr. Smoult published the “Collection of Orders on the Plea Side of the Supreme Court at Calcutta” from 1774 to 1813.²⁰ In 1841, Mr. Morton published a collection of decisions from 1774 to 1841. Thus, it can be said that Mr. Morton’s reports are the earliest on the subject which covers more than six decades. It is said to be a work of great authority and utility²¹ because this compilation is based upon the notes of the judges of the said court. In the year 1845, Mr. Fulton published one volume of reports from 1842 to 1844.²² Mr. Montriou in 1850, also published a single volume of Reports containing the decisions of the year 1846. In the subsequent year, George Taylor compiled the Reports of cases decided from January 1847 to December 1848.²³ Sir Edward Hyde East,²⁴ also prepared a collection of cases which was published in *extenso* in 1850 by Mr. Morley in the second volume of Digest of Indian Cases.²⁵ Notes of the case contained in

¹⁶ A Former Judge of the Supreme Court of Calcutta.

¹⁷ Sir Francis Workman Macnaghten, *Considerations on the Hindoo Law* (Serampore: Mission Press, 1824).

¹⁸ William Hay Macnaghten, *Principles and Precedents of Moohummudan Law* (Calcutta: Samuel Smith and Co. Hurkaru Press, 1825); <https://archive.org/details/in.ernet.dli.2015.514167> (accessed: 18th December, 2023).

¹⁹ Morley, *Administration of Justice in British India*, 336.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*, 337.

²³ Morley, *Administration of Justice in British India*, 337.

²⁴ Chief Justice of Calcutta Supreme Court.

²⁵ Morley, *Administration of Justice in British India*, 335; M.P. Jain, “Law Reporting in India” *Journal of the Indian Law Institute*, 24 (1982): 560-574.

“the Rules and Orders of the Supreme Court at Calcutta” were published in different editions from 1829 to 1834.²⁶

On the other hand, Bombay and Madras Supreme Courts cases were only compiled in one collection. Sir Erskine Perry²⁷ in 1853, published a collection titled “Cases Illustrative of Oriental Life, and the Application of English law to India” decided by the Supreme Court at Bombay.²⁸ Whereas, in 1816, cases of Madras Supreme Court were published by Chief Justice Sir Thomas Strange, covering the period from 1798 to 1816.²⁹

With passage of time, being out of print, the aforementioned reports became difficult to procure. On the one hand, decisions contained in these reports were frequently referred by the lawyers in courts, on the other hand, citation to these reports became very difficult. Therefore, an attempt was made to reprint the old reports under the title of Indian Decisions (also known as Old Series). This Old Series was edited by T. A. Venkaswamy Row and its first volume contains a verbatim reprint of Supreme Court of Calcutta’s cases (from 1774 to 1846) and was published in 1911 and its second volume contains cases from 1847 to 1859; its third volume contains cases from 1851 to 1860. Hence, it can be said that the cases of the Calcutta Supreme Court are found in first three volumes of the Indian Decisions (Old Series). But, both of the Perry’s Collections of Cases of the Supreme Court at Bombay have been reprinted in the fourth volume and the Strange’s Collection of Cases of the Madras Supreme Court have been reprinted in the fifth volume.³⁰

In addition to the Supreme Court of the Company’s courts, other courts were adjudicating the cases of people such as *Sadar Adalats*. The *Sadar Adalats* were company’s highest courts in the Mofussil

²⁶ Morley, *Administration of Justice in British India*, 336.

²⁷ Chief Justice at Supreme Court of Bombay.

²⁸ Sir Erskine Perry, *Cases Illustrative of Oriental Life, and the Application of English law to India Decided in H. M. Supreme Court at Bombay* (London: S. Sweet Publisher, 1853); <https://archive.org/details/cu31924024954483/page/n3/mode/2up> (accessed: 19th December, 2023).

²⁹ *Ibid.*, 337.

³⁰ Jain, “Law Reporting in India” 564.

judicial system. Sir William Hay Macnaghten,³¹ was the first person who published “Reports of cases decided in the Courts of the East-India Company.” This series has seven volumes covering the period from 1791 to 1849. Due to demand of these reports, 2nd edition of first two volumes appeared in 1827, and these Reports continued in the same format. Those contained in the first volume were chiefly prepared by Mr. Dorin.³² The 2nd, 3rd, and part of 4th volume, were also published by Sir William Macnaghten; the later portion of 4th volume was prepared by Mr. C. Udney.³³ Whereas, the cases contained in 5th volume were reported by Mr. J. Sutherland and the cases in 6th and 7th volumes have no reporter’s name affixed, but they were approved by the Court... Later on, these Reports were called “Select Reports,” and were published “as approved by the Court.”³⁴

Reports of summary cases (from 1841 to 1846) determined in the *Sadar Diwani Adalat* of Calcutta were appended to the seventh volume of these reports. In 1845, “a selection of Reports of Summary Cases” was published separately, containing selected decisions from 1834 to 1841 which continued till the end of 1848, and were published as the first volume of “Reports of Summary Cases.” Realizing its utility, in 1849, an Index to these Select Reports of Regular Cases, and the first volume of the Select Reports of Summary Cases was published.³⁵ Later on, a reprint of the Reports of Summary Cases determined in the *Sadar Diwani Adalat* of Calcutta, (comprising reports from 1834 to 1852), was prepared by Mr. Carrau, and published in 1853.³⁶

Alphabetically arranged decisions (from 1834 to 1855) of the *Sadar Diwani Adalat* of Bengal were published at Calcutta.³⁷ In respect of these Reports, it can be said that these are the oldest official series of law reports in India, which are reprinted in Indian Decisions (Old Series) from volume VI and onwards. Whereas, Reports of cases,

³¹ Register of the *Sadar Diwai Adalat* at Calcutta.

³² Afterwards a Judge of the said Court.

³³ William Hay Macnaghten’s successor in Register’s office.

³⁴ Morley, *Administration of Justice in British India*, 338.

³⁵ *Ibid.*, 339.

³⁶ *Ibid.*

³⁷ *Ibid.*

mainly in summary appeals adjudicated in the *Sadar Diwani Adalat* at Calcutta, were published by Mr. Sevestre,³⁸ in year 1842.³⁹

Later on, the Judicial Language Act, of 1843,⁴⁰ made it mandatory for the *Sadar Courts*, Judges of *Zillah* and City Courts, and Judges of the Subordinate or Assistant Judges of *Zillahs* courts to write decisions in English language. The decisions of the *Sadar Diwani Adalat* at Calcutta in conformity with the Judicial Language Act, of 1843 were published monthly. This collection commenced in 1845, the decisions of each year being published in a separate volume. For the first time, for the volume of 1850 marginal abstracts of the decisions were added.⁴¹ The publication of decisions of *Sadar Courts* at Agra and Madras commenced in 1840 and 1849 respectively.⁴² The decisions of *Zillah Courts* of the Lower Provinces and North-Western Provinces were printed monthly; they began in January 1848. But, the decisions of *Zillah*, subordinate, and Assistant Courts of the Madras Presidency, begun publishing monthly in 1851.⁴³

However, the reports of cases decided by the Courts of the East-India Company at Madras were not in large number and a single volume was published in 1843 with the title “Decrees in Appeal Suits determined in the Court of Sudder Adawlut.” This volume contains select decrees from the period 1805 to 1826.⁴⁴ Another collection of decrees in appeal suits determined in the *Sadar Adalat* at Madras, from No. 11 of 1820 to No. 24, of 1847, was published at Madras in 1853.⁴⁵

The first collection of the decisions of the *Sadar Diwani Adalat* at Bombay are the Reports of Mr. Borradaile⁴⁶ published in 1825 in two volumes. While, Reports of Selected Cases (from 1820 to 1840)

³⁸ One of the Pleaders of the Court.

³⁹ Morley, *Administration of Justice in British India*, 339-40.

⁴⁰ Judicial Language Act, 1843 (Act XII of 1843).

⁴¹ Morley, *Administration of Justice in British India*, 340.

⁴² *Ibid.*

⁴³ *Ibid.*, 342.

⁴⁴ *Ibid.*.

⁴⁵ *Ibid.*, 343.

⁴⁶ Judges of the Bombay Court.

appeared in the year 1843.⁴⁷ Mr. Bellasis published the decisions from 1840 to 1848 in 1850 and claimed that these were more authoritative as precedents, being the decisions of the full court. Another collection was prepared by Mr. Babington. In 1855, Mr. Morris, also published reports of cases decided in 1854.⁴⁸

As compared to civil judicature, the reports on criminal law are fewer. The first collection reported sentences awarded by the *Nizamat Adalat* of Calcutta. The first two volumes of this collection were edited by Sir William Macnaghten, and the other three volumes have no reporter's name.⁴⁹ A monthly series of the decisions of *Nizamat Adalat* at Calcutta commenced⁵⁰ in January 1851, and in the same year, an identical issue of reports of criminal cases determined in the *Sadar Faujdari Adalat* also started at Madras. A valuable collection of reports of cases determined in the *Sadar Faujdari Adalat* at Bombay were edited by Mr. Bellasis⁵¹ which contains decisions from 1827 to 1846; and the same were published in 1849.⁵²

In 1852, *Nizamat Adalat* of North-Western Provinces commenced publication of the decisions of 1851. In 1855, Mr. Morris published a collection of cases decided by the *Sadar Faujdari Adalat* of Bombay; the cases containing those of 1854.⁵³ Actually, a substantial part of these reported cases was almost inaccessible. Considering this aspect Mr. Morley prepared an Analytical Digest of all the reported cases and in 1852, he published "the first volume of a New Series comprising the decisions of all the Courts to the end of 1850."⁵⁴

⁴⁷ Morley, *Administration of Justice in British India*, 343.

⁴⁸ *Ibid.*, 343-44.

⁴⁹ *Ibid.*, 344.

⁵⁰ *Ibid.*

⁵¹ Deputy Register of the Court.

⁵² Morley, *The Administration of Justice in British India*, 344.

⁵³ Morley, *Administration of Justice in British India*, 344.

⁵⁴ *Ibid.*, 345.

Law Reporting After 1861

The Indian High Courts Act, 1861⁵⁵ provided for establishment of the High Courts in different provinces. This Act abolished Supreme Courts at Calcutta, Madras, and Bombay; and also abolished *Sadar Diwani* and *Faujdari Adalats* at Calcutta, Madras and Bombay. Law reporting was not consistent or systematic till 1861. Thus, in 1862, regular legal reporting started with the establishment of the High Courts in the Presidency Towns. Since then, semi-official and private law reports have been published on a regular and systemic basis.

The decisions of the High Court got recognition. The Madras High Court published its decisions in eight volumes (for the period 1862-75).⁵⁶ In a similar way, the Bombay High Court published its decisions in twelve volumes (covering the period from 1862-75). Calcutta High Court also published edited cases in fifteen volumes in Bengal Law Reports (covering the period from 1868-76).⁵⁷ Other High Courts also published their edited cases. Along with these official reports, some private publishers also started law reports, such as Weekly Reporter, Indian Jurist at Calcutta High Court (covering the period 1861-1868), Madras Jurist at Madras, two volumes of Hyde E. Reports of the Calcutta High Court for 1862-63, three volumes of “Kinealy and Henderson Reports of the Calcutta High Court of 1881-1883.”⁵⁸

Law Reporting Acts 1875

When the High Courts were established in different provinces, large number of private reports containing the decisions of High Courts were published. This practice created unnecessary complexity and uncalled-for competition resulting in various problems. Some of the cases reported were of good quality containing law points, but majority of the cases reported contained no new law point but repetition. Mushroom growth of such publications began to exploit

⁵⁵ An Act for establishing High Courts of Judicature in India, 1861 (24 & 25 Vict. c. 104). In main text, short title of the Act is used.

⁵⁶ Jain, “Law Reporting in India” 566.

⁵⁷ Ibid.

⁵⁸ Ibid.

the legal practitioners.⁵⁹ Therefore, it was deemed necessary to reduce the number of law reports and improve their quality. The actual position is depicted in the remarks of Jain:

In many cases really no new point was decided but merely a question of fact between two or more parties. In other instances, points of law were decided or remarked upon incidentally or hastily and in such a manner as not to express the careful and deliberate opinions of the court. In almost every case, the length of the report was out of all proportion to its importance which unnecessarily increased the bulk of the report, and which cost unnecessary money and labour to public.⁶⁰

Sir James Fitzjames Stephen, and Sir Hobhouse Law Member were not happy with trend of law reporting. They wrote to the Government explaining the situation of law reporting. Consequently, the Law Reports Act, 1875, being the first law⁶¹ on the subject was passed by the Governor General of India in Council. The object of this law was to “diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority.” Thus, it can be said that the era of authentic law reporting started with the enforcement of this Act⁶² as before this enactment, the law reporting business was carried out mainly by private individuals.

This Act authorized publication of cases decided by the High Courts. After the promulgation of this Act in 1875, it became very important to have an official series of reports. Hence, official series of Indian Law Reports began. Consequently, each High Court had a series of Indian Law Reports (ILR) to its name. Thus, a case decided by the Bombay High Court may be found reported in the

⁵⁹ <https://www.legalserviceindia.com/legal/article-1701-history-of-law-reporting-in-india-an-overview.html> (accessed: 4th January, 2024).

⁶⁰ Jain, “Law Reporting in India” 567.

⁶¹ Earlier this Act was passed by the Competent Authority, however, it was felt necessary to repeal and re-enact this Act, which was done in the shape of present Act. *See* Extra Supplement to the Gazette of India, July 31, 1875, page 5.

⁶² This Act came into force on 1st January, 1876. *See* Notification No.22-D/11/75, Gazette of India, 1875, part I, page 589.

I.L.R. Bombay; a case of the Calcutta High Court, in the I.L.R. Calcutta, and so on for every High Court. The dates of commencement of the series, High Court-wise, are as follows: Bombay, Calcutta, Madras and Allahabad - 1876; Lahore - 1920; Patna - 1922; Lucknow - 1926; Nagpur – 1936 and Sindh Chief Court – 1939.

Under the Indian High Courts Act, 1861, High Courts were established in India and also Councils for Law Reporting for High Courts were established. In the words of Acharyya:-

After the establishment of the High Court of Calcutta, a Special Reporter was sanctioned for the Appellate side of the High Court, who was salaried by the Government, but it was not long before that arrangement broke down, and after various attempts to meet the desired object, the establishment of the Council of Law Reporting in Calcutta was encouraged. Still the Bengal Council for Law reporting themselves admitted that the result was not what they aimed at. Then the present Indian Law Reports Act was passed.⁶³

This practice continued till the independence of Pakistan in August 1947.

Law reporting in Pakistan after independence

After the independence, the Government of Pakistan adopted⁶⁴ the pre-partition laws. Hence, the Law Reporting Act, 1875 was adopted by operation of law.⁶⁵ However, in 1949 law reporting started in Pakistan. Today, there are many law journals for each High Court, Federal Shariat Court and also for the Supreme Court of Pakistan.

⁶³ Bijay Kisor Acharyya, *Codification in British India* (Calcutta: S.K. Banerji & Sons, 1914), 162-163;
<https://archive.org/details/codificationinbr00achaiala/page/162/mode/2up>
(accessed: 12th December, 2023).

⁶⁴ Section 18 (3) of the Indian Independence Act, 1947.

⁶⁵ The Pakistan (Adaptation of Existing Laws) Order, 1947 and the Adaptation of Central Acts and Ordinances Order, 1949.

Details of such law reports and journals, published in Pakistan,⁶⁶ is given below.

S.No	Name of Law Reports/Journals	Starting year of publication	Publisher
i	All Pakistan Legal Decisions (PLD)	1949	P.L.D
ii	Appeal Cases (AC)	1980	N.L.R
iii	Civil Law Cases (CLC)	1979	P.L.D
iv	Civil Law Judgments (CLJ)	1981	N.L.R
v	Civil Law Reports	2000	K.L.R
vi	Corporate Law Decisions (CLD)	2002	P.L.D
vii	Criminal Law Judgments (Cr.LJ)	1981	N.L.R
viii	Gilgit-Baltistan Law Reports (GBLR)	2010	P.L.D
ix	Karachi Law Reports	1982	Karachi Law Reports
x	Key Law Reports (KLR)	1982	K.L.R
xi	Khyber Pakhtunkhwa Law Journal (KPLJ)	2023	Khyber Pakhtunkhwa Bar Council
xii	Law Notes (LN)	1966	K.L.R
xiii	Monthly Law Digest (MLD)	1984 (Vol. I & II were published together)	P.L.D
xiv	National Law Reporter (NLR)	1978	N.L.R.
xv	Pakistan Company & Tax Law Reports (PCTLR)	1996	K.L.R
xvi	Pakistan Criminal Law Journal (PCr.LJ)	1968	P.L.D
xvii	Pakistan Current Criminal Rulings (P.Cr.R)	1999	K.L.R
xviii	Pakistan Labour Cases (PLC)	1960	P.L.D
xix	Pakistan Law Journal (PLJ)	1973	Punjab Bar Council
xx	Pakistan Supreme Court Cases (Civil) (PSC)	1982	K.L.R
xxi	Pakistan Supreme Court Cases (Criminal) PSC (CrL)	1992	K.L.R
xxii	Pakistan Tax and Corporate Laws (PTCL)	1983	Tariq Najib Corporation, Lahore
xxiii	Pakistan Tax Decisions (PTD)	1959	P.L.D
xxiv	Peshawar Law Reports (PLR)	1994	K.L.R

⁶⁶ Effort has been made to list all the law journals published in Pakistan, however, this list may be not complete.

xxv	Sales Tax Reporter (STR)	2003	K.L.R
xxvi	Shariat Decisions (SD)	1984	N.L.R
xxvii	Shariat Law Reports (SLR)	2000	K.L.R
xxviii	Sindh Balochistan Law Reports (SBLR)	2001	United Law Agency, Karachi
xxix	Sindh Law Decisions (SLD)	2017	The Sindh Judicial Academy
xxx	Sindh Law Journal (SLJ)	2005	K.L.R
xxxi	Supreme Court Judgments (SCJ)	1980	N.L.R
xxxii	Supreme Court Monthly Review (SCMR)	1968	P.L.D
xxxiii	Supreme Court Recorder (AJ&K), (SCR)	1992	Supreme Court of Azad Jammu and Kashmir
xxxiv	Taxation (Tax)	1959	P.L.D
xxxv	Tribunal Decisions (TD)	1980	N.L.R
xxxvi	Unclassified Cases (UC)	1980	N.L.R
xxxvii	Unreported Cases (UC)	1980	N.L.R
xxxviii	West Civil Law Reports (CLR)	2001	K.L.R
xxxix	Yearly Law Reporter (YLR)	1999	P.L.D

These law reports also add headnotes for facility of readers. However, this facility has resulted in another anomaly which will be discussed in the next part.

Judgments and their head-notes

A headnote, is a brief summary of a certain point of law that is added, by the editor of law reports, to the text of a court decision to help readers in locating a discussion of a legal point in an opinion. They appear at the beginning of the published opinion. In 1906, in respect of headnotes United States Supreme Court held that they have no legal standing and do not set precedent.⁶⁷ Similar view was taken by the Indian Supreme Court.⁶⁸

Similarly, Pakistani courts held that the head-notes are not part of decision. In *Nadir Manzoor case*, the court held that “it is established principle of law that neither the head-note of a specific

⁶⁷ *United States v. Detroit Timber Company*, 200 U.S. 321 (1906).

⁶⁸ *Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation*, AIR 2009 SC 6262.

provision of law covers the said provision nor even the head-note of a judgment prepared by the law reporter would change the basic spirit of the said judgment passed on its own legal and factual plane.”⁶⁹ Earlier, the Sindh High Court has also held that “it is neither safe nor desirable to cite a dictum merely by reference to head-notes.”⁷⁰

The Supreme Court of Pakistan held that headnotes “may or may not be correct...”⁷¹ The Lahore High Court passed an order⁷² by merely reproducing the headnotes of the law reports, which was challenged before the SC and the SC after endorsing the earlier decisions held as under:

....The headnotes...are not a part of that judgment but are the notes prepared by the editors of the law-reports, headnotes are at times misleading and contrary to the text of the judgment. Headnotes by the editors of the law-reports cannot be taken as verbatim extracts of the judgment and relied upon as conclusive guide to the text of the judgment reported, hence they should not be cited as such. Therefore, it is neither safe nor desirable to cite a dictum by reference to the headnotes. . .⁷³

Despite the fact that, headnotes are not part of the judgment, unfortunately, many people heavily rely on these head-notes which on some times are misleading because these are not works of courts, instead, these are conceived and prepared by reporters and editors of law reports in summarized manner and are only meant for convenience of legal professionals and readers of law reports. Therefore, reliance on headnotes should be avoided and text of the judgments must be referred.

⁶⁹ *Nadir Manzoor Duggal v. Additional District Judge*, 2007 CLC 1720.

⁷⁰ *Mst. Farhat Nasreen v. Muhammad Hussain*, PLD 1997 Karachi 204.

⁷¹ *Mir Salah-ud-din v. Qazi Zaheer-ud-din*, PLD 1988 SC 221.

⁷² Order dated 31.05.2013 passed in W.P.No.11657/2013.

⁷³ *Province of Punjab v. Hafiz Muhammad Ahmad*, 2021 SCMR 1492. Later on, AJ&K SC also followed this view in *Muhammad Shakeel Khan v. Azad Jammu & Kashmir Govt.*, Civil Appeal No. 214 of 2020, decided on 08.09.2022.

Demand for Amendment of Law Reports Act

After the enactment of the Law Reports Act, 1875, a plethora of law reports emerged. Most of these reports were published by private enterprises for profitable purposes. Indeed, the result was that the quantity of case law reported was not good, because cases were reported regardless of their valuable addition in the field of law. Due to the large number of such reports, the same cases were reported in several series.⁷⁴ The system of law-reporting in undivided India was neither effective nor expedient. The system of law reporting was inconvenient and expensive for the legal fraternity as well as for the litigants. However, the Law Reporting Act failed to address these issue. Somehow, a monopoly on law reporting was created, which was opposed by many influential persons. One of the critics of this was the Lt. Governor of Bengal who opposed this move in 1875 in the following words:

If you put into the hands of any one authority the power of deciding which of these decisions should be treated as authoritative, and which are to be rejected and snuffed out, you give that authority an enormous power over the superior Courts of the country; you make him, in fact, Judge over the Judges.⁷⁵

In 1927, a non-official bill was moved in the Central Legislative Assembly proposing a ban on citation of non-official reports in the courts but the same could not become law as it was opposed by eminent lawyers of the day.⁷⁶ After many years, it was demanded by the Law and Justice Commission of Pakistan, to amend this law. In the Commission's meeting held on 8th December 1983, one of the members of the commission invited the attention of the Commission

⁷⁴ This is still true for law reporting in Pakistan. After more than a century, no improvement is being made in law reporting. Had this issue been tackled the outcome would have been different today.

⁷⁵ *Abstract of the Proceedings of the Council of the Governor-General of India assembled for the purpose of making Laws and Regulations, 1874*, Vol. XIII (Calcutta: Office of the Superintendent of Government Printing, 1875), 80.

⁷⁶ Jain, "Law Reporting in India" 572.

to the Law Reports of the Courts that “have either been altered or forged or promiscuously published due to lack of proper control and supervision on the publication of these reports.”⁷⁷ Then, the said member proposed that the Commission “may take over the supervision of the publication of the Law Reports in order to ensure their authenticity.”⁷⁸ Therefore, the Commission recommended the amendment of the Law Reports Act, of 1875 giving authority to the Law and Justice Commission of Pakistan to scrutinize and ban any publication⁷⁹. However, this proposal could not get favour of the Parliament.

In 1989, Pakistan Bar Council (PBC) proposed amendment of this Act. When the amendment bill was presented in the house the same was passed by the National Assembly⁸⁰ on 5th October, 1989 and by the Senate on 5th December, 1989,⁸¹ respectively. The statement of Objects and Reasons of the bill was as under:-

The mushroom growth of law reports and law journals in the country and the indiscriminate selection for reporting of cases which are not decisions of the first impression or do not decide new questions of law is defeating the very object for which they are published. The existing law on the subject, namely, the Law Reports Act, 1875, has no provision to control such publications. The bill seeks to amend the said law to provide for their control.⁸²

In 1989, the Law Reports Act of 1875 was amended and new sections 5 to 8 were added. Added section 5 of the Act provides for mandatory certification at the end of judgment or order by the court

⁷⁷ <http://www.commonlii.org/pk/other/PKLJC/reports/08.html> (accessed: 30th December, 2023).

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ For the proceedings of National Assembly, see the National Assembly of Pakistan Debates, Official Report, Thursday, the 5th October 1989, Volumes IV, pages 1263-1264.

⁸¹ For the proceedings of Senate of Pakistan, see the *Senate of Pakistan Debates*, 1989, pages 193-208.

⁸² The Gazette of Pakistan, Extra, July 3, 1989, Part III, page 711.

or tribunal specifying whether the judgment or order approved for reporting is based upon or enunciates a principle of law, decides a question of law of first impression or distinguishes, overrules or explain a previous decision. A specific slip is provided in the Schedule to the Act.

As per 1989 amendment in the Law Reports Act, no one is authorized to publish or print the judgment or order of the court⁸³ in violation of section 5. If someone contravenes the provisions of this Act, he will be punished,⁸⁴ by the Sessions Court on complaint of court or by person nominated by it.⁸⁵ It appears that the courts are using blue slip in line with the above Act, to mark judgments approved for reporting, as is mentioned by the Supreme Court of Pakistan in a case,⁸⁶ with reference to determination of exact date of signing the judgement. However it is important to strikeout irrelevant part in the blue slip while approving for reporting, for purpose of clarity of law reporters.

It is very astonishing that even, not approved for reporting judgments are also reported by law journals.⁸⁷ This Act is not being followed in letter and spirit. Had this Act been implemented properly then the result would have been improvement of law journals. Since the enactment of amendments in the Law Reports Act, instead of decreasing law journals, they are increasing day by day which is alarming for the legal fraternity.

If a proper survey is conducted in respect of Law Journals, it will reveal that many cases reported in such journals are in violation of Law Reports Act, 1875. In some cases, simply the SC has either

⁸³ Section 6 Ibid.

⁸⁴ Section 7 Ibid.

⁸⁵ Section 8 Ibid.

⁸⁶ *Commissioner Inland Revenue v. Sui Northern Area Gas Pipeline Limited*, PLD 2023 SC 241

⁸⁷ *Pakistan Bar Council v. Federal Government*, 2018 SCMR 1891 and *Pakistan Bar Council v. Federal Government*, 2019 SCMR 389. Both judgments are available on Supreme Court website, but at the end of these judgments not approved for reporting is mentioned. This is an example, there are various decisions of the courts which are not approved for reporting but the same are reported in law journals.

passed short order,⁸⁸ remanded the case,⁸⁹ granted leave⁹⁰ or refused it,⁹¹ or passed certain directions⁹² which are reported without adhering to the requirement of law. Some case where the SC had asked parties to approach appropriate forum,⁹³ granted bail⁹⁴ or refused it⁹⁵ have also been reported without adhering to the mandatory provisos of Law Reports Act. Interestingly, in some reported cases, the text of the direction of the Supreme Court is on

⁸⁸ *Parvez Musharraf v. Nadeem Ahmed*, 2014 SCMR 665; *Bankers Pakistan Ltd v. M/s Bentonite Pakistan Ltd*, 2015 SCMR 54; *Postal Life Insurance v. Muhammad Anwar*, 2018 SCMR 52; *BISE Multan v. Muhammad Sajid*, 2019 SCMR 233; *DIG of Police v. Muhammad Irfan*, 2020 SCMR 828; *Qaisar Khan v. Government of KP*, 2021 SCMR 67 and *Zainab v. State*, 2021 SCMR 799.

⁸⁹ *D.G. Customs Valuation, Karachi v. M/s Trade International Lahore*, 2014 SCMR 15; *Sher Bahadur v. Fayyaz*, 2015 SCMR 955; *Jan Muhammad v. Member (Colony)*, 2017 SCMR 93; *Abdullah Jan v. State*, 2019 SCMR 1079; *Zafar Ali v. Khurshed Ali*, 2020 SCMR 291 and *Sui Southern Gas Company Limited v. Imdad Ali Pathan*, 2020 SCMR 1259.

⁹⁰ *Rustam v. Aurangzeb*, 2014 SCMR 146; *Federation of Pakistan v. M/s Delta Innovations Ltd.*, 2015 SCMR 1239; *Habib Bank Limited v. Haider Ladhu Jaffer*, 2017 SCMR 466; *Waris v. State*, 2020 SCMR 2044; *Zeeshan v. Muhammad Ayub*, 2021 SCMR 142; *Rukhsana v. Rehmanullah*, 2021 SCMR 1544; and *Muhammad Imran v. Sajan Panhwar*, 2021 SCMR 1883.

⁹¹ *Asad I.A. Khan v. Federation of Pakistan*, 2014 SCMR 320; *Anjum Chemical Storage v. M/s Chenab Limited*, 2016 SCMR 177; *Sultan Mehmood v. Kaleem Ullah*, 2017 SCMR 91; *Asghar Hussain v. Muhammad Owais*, 2018 SCMR 1720; *Nazeer Khan v. State*, 2019 SCMR 1308; *Mir Muhammad v. NAB*, 2020 SCMR 168; and *Ibrar Ullah v. State*, 2021 SCMR 128.

⁹² *Azhar Iqbal v. Abid Hussain*, 2015 SCMR 1795; *Inayat Bibi v. Rehana Kausar*, 2016 SCMR 2082; *Qazi Faez Isa v. President of Pakistan*, 2019 SCMR 1875; 2020 SCMR 121; *Naimatullah Khan v. Federation of Pakistan*, 2020 SCMR 153, 513, 622, 1474, 1488, 1499 and 1510; *Akhtar Ali v. Taj Mahal*, 2021 SCMR 806; and *Samira Mahamadi v. Federation of Pakistan*, 2021 SCMR 1080.

⁹³ *Munawar Hussain v. Chairman Appeal Committee (II) Punjab Bar Council*, 2014 SCMR 664 and *Fateh Bibi v. Khizar Hayat*, 2015 SCMR 907.

⁹⁴ *Muhammad Ramzan v. State*, 2016 SCMR 2046; *Nasar v. State*, 2017 SCMR 130; *Muhammad Ishaque v. State*, 2018 SCMR 1746; *Muhammad Arshad v. State*, 2019 SCMR 572; *Jawed Hanif Khan v. NAB*, 2020 SCMR 185; *Sajid v. Samin ur Rehman*, 2021 SCMR 138 and *Nasir Shafique v. State*, 2021 SCMR 2092.

⁹⁵ *Sohail Waqas v. State*, 2017 SCMR 325; *Alamgir Khan v. State*, 2019 SCMR 1457; *Ghani Khan v. State*, 2020 SCMR 594; *Ghazan Khan v. Ameer Shuma*, 2021 SCMR 1157; and *Waqas ur Rehman v. State*, 2021 SCMR 1899.

few pages whereas the pages containing the title of the case are more than the substantive text.⁹⁶

The doctrine of precedent, requires that the law reports should be accurate and free from errors. What really requires consideration is the quality of law reports. It is obvious that a law report can serve its true purpose if it reports only cases which “introduce or appear to introduce a new principle or new rule; or which materially modify an existing principle or rule; or which settle or tend to settle a question on which the law is doubtful; or which for any other reasons are peculiarly instructive.”⁹⁷ Thus, it requires that this Act be amended so the cases meeting with the requirements of Constitution of Pakistan, 1973 and Law Reports Act, be published.

***Qanun-e-Shahadat* Order, Unofficial Foreign Reports and Unreported Cases**

Article 52 of the *Qanun-e-Shahdat*, Order 1984 provides that when any court in Pakistan has “to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contained any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such ruling, is relevant.” Obviously, this Article will permit unofficial reports of foreign rulings to be quoted in Pakistani courts where the court has to form an opinion in respect of a question of foreign law. It would, certainly, be curious if while permitting foreign unofficial reports to be quoted, the courts were compelled to refuse to look at unofficial Pakistani reports.

Courts in Pakistan have always permitted the citing of cases decided in Australia, Britain, Canada, India, and the United States of America. Even, the Pakistani law journals have published

⁹⁶ *Naimatullah Khan v. Federation of Pakistan*, 2021 SCMR 1849 (this case contains 16 title pages, 4 pages head notes and advocates names and the order is on 3 ½ pages).

⁹⁷ Lord Justice Lindley, “The History of the Law Reports,” *Law Quarterly Review*, 1 (1885) 137-149 at 143.

Australia,⁹⁸ South Africa, United States of America, Canada, New Zealand and United Kingdom's decisions.⁹⁹ These decisions can be considered merely persuasive in Pakistan. If we are allowing the assistance of these unreported foreign cases (without considering formal reports) would it be appropriate to prevent Pakistani courts from having the benefit of the decisions of Pakistani High Courts, only because they do not happen to be reported?

Section 3 of the Law Reports Act, 1875 without taking away the authority of unpublished decision, gave authenticity to the official reports. It does not provide a higher authority to the published decision of a High Court. A High Court decision is authoritative by itself and not because it is reported. Mere reporting of a ruling in law journals does not in any way give any greater sanctity than it had before a court. A certified copy has same sanctity as published report. Whatever the decision of superior courts, the lower courts in Pakistan are bound to treat the certified copy of such decisions in the same way as reported judgments.¹⁰⁰ In fact a High Court decision if reported does not add to its authority, it only confirms its authenticity.¹⁰¹ It is possible that many of the decided cases having significant points of law decided, remain unreported. The mere fact that such decisions are not reported does not undermine their authority in any way. These unreported cases are also cited in the courts. It has been held by one Indian High Court¹⁰² that the Law Reports Act "ensures that the Judges who have no access to the decisions themselves shall be provided with their accurate copies." Interestingly, it may be mentioned here that this Act does not apply

⁹⁸ High Court of Australia in the Australian court hierarchy is the final court of appeal.

⁹⁹ *Vestergaard frandsen v. Bestnet Europe Limited*, 2014 SCMR 381; *Anthony Douglas Elonis v. United States*, 2015 SCMR 1192; *Xolile David Kham v. Electoral Commission of South Africa*, 2016 SCMR 563; *Questions referred to the Court of Disputed Returns*, 2017 SCMR 493; *Canadian Broadcasting Corporation v. Her Majesty the Queen*, 2018 SCMR 924; *New Zealand Law Society v. John Llewellyn Stanley*, 2020 SCMR 1972; *Beadica 231 CC v. Trustees for the Time Being of the Oregon Trust*, 2020 SCMR 1722; and *City of Toronto v. Attorney General of Ontario*, 2021 SCMR 2019.

¹⁰⁰ Article 87, 88, 90, 96 and 101 of the *Qanun-e-Shahadat* Order, 1984 deals with the certified copies.

¹⁰¹ Jain, "Law Reporting in India" 568.

¹⁰² *Tarok Prasad v. Shanti Late*, (1975) 2 ALR 501.

to the decisions of the Supreme Court of Pakistan, though Article 52 of the *Qanun-e-Shahdat* applies to them as it applies to other judicial decisions of superior courts.

The Indian Courts held that the decision of the High Court is binding not the report of the publisher.¹⁰³ Similar, view was adopted by the Pakistani courts. The West Pakistan High Court held as under:

..the fact remains that findings of this Court published in other Law Reports are at the very least expressions of judicial opinion which are entitled to respect, and any Subordinate Court which chooses to disregard such an expression or opinion merely because it is published in the authorised Law Reports is treading on dangerous ground.¹⁰⁴

In another case, Lahore High Court in respect of unreported judgments held that “this Court is under no legal obligation to take the same into consideration in view of provisions of section 3 of Law Reports Act, 1875 as amended by Act II of 1990.”¹⁰⁵ The Court further held that no Court is bound to “receive or treat a report of any case which is not published under the authority of a Provincial Government, as binding on it.... that section 3 is applicable only in respect of the reports of the cases of this Court and not of Hon’ble Supreme Court.”¹⁰⁶ In view of above judicial interpretations this Act may create legal anomalies; as a single bench of a High Court may ignore the ruling of division bench, if later is not reported. These anomalies point towards a need of material amendment or repeal of the Law Reports Act. Earlier, the Law Commission of India also recommended repeal of Law Reports Act.¹⁰⁷

In a recent development, the LHC held that the downloaded copy of judgment or order of the High Court from its official website “cannot be allowed to be made part of the judicial record” and it is

¹⁰³ *Vinayak Shamrao v. Moreshwar*, AIR 1944 Nagpur 44 and *State v. Ramji Vithal Chaudhari*, AIR 1958 Bombay, 381.

¹⁰⁴ *Haji Faiz Muhammad v. Sayed Riaz Hussain*, PLD 1957 (W. P.) Lahore 689.

¹⁰⁵ *Ijaz Ahmad v. the Government of Punjab*, 1990 PLC (C.S.) 697.

¹⁰⁶ *Ibid.*

¹⁰⁷ Law Commission of India, *Reform of Judicial Administration, XIVth Report* (New Delhi: Ministry of Law, 1958), 645.

the discretion of the court to accept it or reject it.¹⁰⁸ In the same case the Court held that “if such copies are produced in court at the time of arguments, it is for the concerned court to consider the relevance and admissibility of the same.”

Under the Constitution of Pakistan, at the moment the decision is pronounced by the superior courts, it becomes binding upon the lower courts. The fact whether the judgment is reported or unreported would not impact its binding nature. If the decision of superior courts is published after few months, it does not alter its sanctity. Stating differently, even, if the certified copy of the judgment of the superior court is produced, the lower courts are under obligation to follow it being binding upon them under the Constitution of Pakistan.

Conclusion and Recommendations

Law Journals in Pakistan are prompt in publication but this speed of publication is one of the reason for scarifying the accuracy of judgment. Therefore, after the pronouncement of judgment, a certain time period must elapse before publication of the judgment, as in United States of America. Demerits of private law reports are more than their merits. The focus of the private publishers remains mostly on commercial elements than on the quality of reporting. Moreover, competition in law reporting is not very healthy and the principles on which a selection of judgments for reporting should be based is also missing. Unfortunately, the decisions reported in these collections are repetition of similar cases and decisions. This repetition is obvious in cases reported in such law journals in Pakistan. It appears that due care in publication of law reports is not taken.

In Pakistan, at present, there are many law reports which make it very difficult for the legal practitioner to obtain all such reports. Therefore, there must be an authentic and authorized law report from which the legal fraternity can made reference. The law reports can be improved by taking measures by the government by prescribing the essentials of a good law report. As the decisions of

¹⁰⁸ *Akeel Ahmad v. Chairman, PPSC*, PLD 2024 Lahore 228.

the superior courts in Pakistan are the expositions of the law *ex non scripto*, thus, it is the duty of the State to publish them. However, it appears, that the State has for various reasons been unable to discharge this duty. It is, therefore, clear that if law reports are to be efficient and quickly published, the task should be given to an independent body of Government. The government may establish Law Reporting Institution at Federal Level, and this Institution should also impart training for law reporting. Whatever mechanism is devised by the government for law reporting, this may be dealt by an institution established for publication of reportable decision. Individual Judge should not decide, whether the judgment be reported or not? This task can be assigned to the Law and Justice Commission of Pakistan.

The existing law on Law Reports is silent if approved for reporting judgment is not reported then what will be the consequences? Who will be responsible? In which law journal the judgment will be reported? How much time will be consumed for reporting of a judgment? What is the time limit for reporting? Which institute is responsible for monitoring the law reporting? Moreover, there is no system for indexing of judgments of superior courts. The Federal Government should take steps for the preparation and publication of indexes of all judgments of superior courts whether reported or not. Thereafter, such indexes should be made available online and in printed form to the public at a moderate cost. Hence, legal fraternity and private individual will be able to get copies of all judgments which they can trace through this indexing system. Likewise, there is no system in Pakistan which provides that what is still good law, whether it has been overturned, questioned, reaffirmed, followed, or cited by other cases. Therefore, a system like USA' Shepard's Compilation of citation to cases be established which provides authentic data about the cases.