

**Contemporary Issues  
in**

# **Islamic Law**

**Abdul Haseeb Ansari**



**Serials**

# CONTEMPORARY ISSUES IN ISLAMIC LAW

*Abdul Haseeb Ansari*



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## **Judicial Precedents: An Expository Study of Civil Judicial System and Shari 'Ah Court System**

*Abdul Haseeb Ansari*

### **Introduction**

In the common law system, judicial precedents have very high value. Based on the doctrine of *stare decisis*, decisions of higher courts are considered to be binding on lower courts. Initially, it was so rigidly applied that in the British legal system even House of Lords could not change its own decisions. Later on in order to do away with this hardship, the doctrine of prospective overruling was developed and practices. The position more or less is the same in other jurisdictions based on common law system, like India, Malaysia and Pakistan. The development of judge-made law in England got impetus from the change of a deep-rooted perception of the British courts that judges simply interpret the law; they do not make it. This was followed in other countries also. This is why in Malaysia judges like Justice Harun Hashim and jurists like Prof Ahmad Ibrahim emphasized on developing common law that is appropriate for the country, instead of following the British common law. This seems to have achieved considerable success.

In the traditional *shari'ah*, the concept of judicial decisions of higher courts to be binding on lower courts was not acceptable; all cases had to be decided on the basis of their own merits and previous decisions were considered merely as a source of guidance for future