

## Dr Muhammad Zubair Abbasi

### The Quran as the Source of Rights: Inheritance Rights of Childless Widows under Shia Personal Law in Pakistan

In South Asia (India, Pakistan, and Bangladesh), a childless widow of Shia husband is at a great disadvantage. She does not get her Qur'anically prescribed inheritance share of one fourth in the immovable estate of her deceased husband under the Twelver Shia school (*Ithna Asharia fiqh*). During the colonial period (circa 1757 to 1947), the colonial British courts endorsed this rule in their judgments by relying upon fiqh books. After independence, Pakistani courts continued to follow this rule until 2017 when Justice Lodhi of the Lahore High Court questioned the validity of this rule because of its manifest contradiction of the relevant Qur'anic verses. The Supreme Court of Pakistan had earlier endorsed this rule in its judgments in 1972 and 2016. Justice Lodhi declared this rule as violative of the verses of the Quran and recommended legislation for the protection of the inheritance rights of the childless widows under Shia personal law. In 2021, the parliament amended the Muslim Family Laws Ordinance 1961 to provide childless widows the right of inheritance in the immovable property under Twelver Shia school (*Ithna Asharia fiqh*). While the new law recognises the inheritance right of a childless widow of a Shia husband in immovable property, it also provides for arbitration by a "juris-consult, religious scholar or doctor of Shia school of thought well versed with Shariah having international repute". This shows that while the judiciary and legislature directly relied upon the Qur'anic verses to extend women's inheritance rights, still the lawmakers recognise the interpretative authority of jurists (*fuqaha*). This paper evaluates the new law in the historical context of the transplantation of common law in South Asia and engages with the debates about interpretative authority over the sources of Islamic law (*fiqh*).



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Muhammad Zubair Abbasi completed DPhil in Law at Oxford University. He has worked as a Research Fellow at Oxford University and Senior Research Fellow at Max Planck Foundation for International Peace and Rule of Law, Heidelberg. He is Associate Editor of Yearbook of Middle Eastern and Islamic Law and Editor for the Harvard Law School's SHARIA source. His teaching and research focuses on comparative law, jurisprudence, family law, commercial law, trusts law, and Islamic law and human rights in contemporary world.