

In the name of Allah, the all Beneficent, the all Merciful

SHĪ'A WILLS LAW

Syed Ali Raza Naqvi



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TRANSLITERATION

The following system of transliteration has been followed in this book. Sometimes, however, non-Arab names have been given according to the non-Arabic pronunciation.

ā as 'a' in 'far'	ch	=	چ
aw as 'ow' in 'owl'	kh	=	خ
ay as 'a' in 'fate'	dh	=	ذ
ī as 'e' in 'me'	sh	=	ش
ō as 'o' in 'more'	'	=	ع
ū as 'oo' in 'moon'	gh	=	غ
	q	=	ق
	'	=	ء

PREFACE

The present book on *Shī'a Law of Wills* is the fourth and last of the series on the Shī'a Personal Laws, the other three books being on *Shī'a Marriage Law*, *Shī'a Divorce Law* and *Shī'a Inheritance Law*. Together they form part of the research project on Shī'a Personal Law, originally assigned to the author in 1964 by the Board of Governors of the Islamic Research Institute (now a part of the International Islamic University, Islamabad), on the recommendation of the Institute's erstwhile Director, the late Dr Fazlur Rahman. It has taken the author about forty-five years to complete these books.

The Board directed the author to confine this project to the Personal Law of the Shī'a Ithnā 'Asharītes only, to the exclusion of those relating to the other divisions of Shī'as, without adding his own comments. Hence, as explained in a footnote at the beginning of the work, the author has accordingly confined this work to Shī'a Ithnā 'Asharī law only.

In his review of the two manuscripts, *Shī'a Marriage Law* and *Shī'a Divorce Law*, Dr. S. Husain M. Jafri, ex-Director, Pakistan Study Centre, University of Karachi, and formerly Professor of Islamic Jurisprudence at the American University of Beirut and the Malaysian University of Kuala Lumpur, and author of *Origins and Early Development of Shi'a Islam*, writes:

“I have carefully read the two manuscripts prepared by Dr. Ali Raza Naqvi: (1) Shia Marriage Law and (2) Shia Divorce Law. Both the works give evidence of sound scholarship, originality, and scientific research methodology.

“The author has used almost all the standard and original sources on Shia [Personal] Law from the classical

to the modern period. He has consulted the four basic sources of the Shi'a legal system, namely, *Uṣūl al-Kāfi*¹ of Muḥammad b. Ya'qūb al-Kulaynī (d. 381/991),² *Man Lā Yaḥḍuruh al-Faqīh* of Shaykh al-Ṣadūq (d. 381/1015),³ and *al-Istibṣār* and *Tabdhīb al-Aḥkām* of Muḥammad b. al-Ḥasan al-Ṭūsī (d. 460/1068). However, *al-Muqni'* of Shaykh al-Mufid⁴ and *Shara'iyeh al-Islām* of 'Allamā Ḥilli, the two most important classified works of the classical and medieval period respectively, have been used by the author as the basis in dealing with every given problem related to marriage and divorce laws. Then the author has made full use of the collections of *Fatāwā*, entitled *Tawḍīḥ al-Masā'il*, of the great Shi'a Mujtahids of the following periods, such as Āyatullāh Burūjirdī, Muḥsin al-Ḥakīm, Shāhrūdī, Milānī, Ispahānī, Mar'ashī, Kho'i, Gulpā'igānī, etc. In many cases, I have checked the reference and compared the translations of the original text and found that they are faithful and correct.

“The author has successfully employed scientific research methodology. In every problem, the author first gives its definition drawn from the original sources. He then cites verses from the Qur'an in support of the definition of the problem as given in the sources. This is followed by the opinions of Shi'a jurists, as given in various source books under each problem. Then he has given the English translation of the relevant *Aḥādīth* quoted by different jurists in support of their opinions. In case there are differences of opinion among the jurists, Dr. Naqvi has recorded all the views, along with the traditions on which the opinions have been based. In case there is some

¹ Here the learned reviewer obviously means '*Furū'* al-Kāfi'.

² He died in (d. 329/941), and this is apparently a typing error.

³ Al-Ṣadūq (d. 381/991), obviously another typing error.

⁴ In fact, it is *al-Mabsūṭ* of Shaykh Ṭūsī.

apparent contradiction in the traditions cited, its explanation has been given from *Istibṣār* of Shaykh Ṭūsī, a work that deals exclusively with this subject.

“Since the gate of *Ijtihād* has always remained open in Shī‘a Fiqh, the Shī‘a follow the rulings of the leading living Mujtahid of the period who is called the A‘lam al-‘Ulamā or Āyatullāh al-Uẓmā. The author has extensively used the works or *Fatāwā* of the great Mujtahids (*Marja‘ al-Taqlīd*)¹ of every period, down to Āyatullāh al-Kho‘ī, who is recognized as the *Marja‘*² at present.³ In this way, both the works of Dr Naqvi serve as a compendia on marriage and divorce laws of the Ja‘farī Fiqh. He has collected all the opinions on every problem of the subjects and comprehensively collated all the material on questions of marriage and divorce in one place in a systematic manner.

“The schools of Fiqh predominantly followed in Pakistan are the Ḥanafī School of Fiqh, named after Imām Abū Ḥanīfa, and the Ja‘farī School, named after Imām Ja‘far al-Ṣādiq. It seems quite a number of works on Ḥanafī Fiqh, pertaining to the laws of marriage and divorce, are available in English and Urdu for the use of civil and Sharī‘a Courts. There is, however, no work in English or Urdu representing the Ja‘farī School of Fiqh.⁴ Questions

¹ *Marja‘ al-Taqlīd*.

² *Marja‘*.

³ The *Marja‘* recognized at present is Āyatullāh Saiyid ‘Alī al-Ḥusainī al-Ṣistānī.

⁴ It may be pointed out that there have so far been only two basic books available in English in the Indo-Pak sub-continent on Shī‘a Personal Laws, namely, *A Digest of Moohummadan Law – Part Two*—a summarized and incomplete translation of *Sharā‘i‘ al-Islām* by Neil B. E. Baillie, abounding in errors, some of which have been pointed out in the present work under the relevant cases, and *Mohammedan Law* by the late Syed Amir Ali in which the Shī‘a point of view has been given by the learned writer from a single source, namely, *Jāmi‘ al-Shattāt*, of Mīrzā Abū‘l Qāsim Gilānī Qummī, the latter book being in the form of questions and answers in Persian.

pertaining to marriage and divorce often arise and the courts have to deal with them. Dr. Naqvi's works will, therefore, serve as comprehensive, reliable, authentic, and easily accessible reference books and will provide all the necessary information to those interested in these subjects".

Similar views have been expressed by another learned reviewer of the two manuscripts, Professor Ḥujjatul Islām Ṭālib Jawharī, a well-known Shī'a scholar, in his review of the two books.

In the light of the suggestions given by Dr. Jafri, the two manuscripts were thoroughly revised, and a brief history of Shī'a Jurisprudence and a complete glossary of the legal terms used in the text and a complete index provided.

As is apparent from the bibliography, the author has consulted about one hundred and fifty books on Islamic jurisprudence and Ḥadīth, etc., in Arabic and Persian. He has taken great pains in translating the matter contained in these source books, none of which has so far been rendered into English, except *Sharā'i' al-Islām* and *Jāmi' al-Shattāt*, to which reference has already been made above. Besides, the classification and indexing of the Ḥadīth collections by Shī'a authors did not exist at the time of the preparation of the two works: *Shī'a Marriage Law* and *Shī'a Divorce Law*. It is a matter of great satisfaction that, by the Grace of God, it is only very recently that the index of some of the basic Ḥadīth collections by Shī'a authors has been prepared in the form of cassettes by some Iranian organizations, which will certainly go a long way in facilitating the work of research scholars in this field.

The author is grateful to the authorities of the Islamic Research Institute, International Islamic University, Islamabad, especially the late Dr. Zafar Ishaque Ansari, former Director-General of the Institute, and particularly his successor Dr. Khalid

Masud, for the favour of according permission and arranging the printing and publication of the first of the three books, all of which were initially written by the author during his service in the Institute, and revised after his retirement from the Institute. The author also extends his thanks to Dr S. Husain M. Jafri and Hujjatul Islam Ṭālib Jawhari, the learned reviewers of the books on *Shī'a Marriage Law* and *Shī'a Divorce Law*, and Professor Syed Sajjad Rizvi of the Punjab Textbook Board, Lahore, for the technical editing of the two books. Thanks are also due to Ms Sabiha Askari of the Oxford University Press for the final editing of the Manuscript of Shia Marriage Law. He is also indebted to Brig. Afzal Iqbal for facilitating the typing of the book, and Messrs Amjad Mahmood, Anwarul Hasan, Nisar Ahmad Bajwa, Tahir, Mukhtar, Tufail and Naib Risaldar (Personal Assistant) Nazeer Ahmad for contributing to the typing, forming and indexing of the earlier three books Mr. Shakeel Wahid in providing useful cooperation through his assistant Mr. Shahid in the final touches in those books, the authorities and workers of the Islamic International University Press and Izhar Sons, Lahore, and all his friends and colleagues who, in one way or the other, have lent their assistance during the preparation, printing, and publication of the earlier three and the present books.

The author is specially grateful to Hujjatul Islam wa'l Muslemeen Mortaza Saheb Fosool and Mohammad Hasan Akhtari and other authorities of the Ahl al-Bait (A.S.) World Assembly, and the authorities of the Al-Mustafa International University of Qum, Islamic Republic of Iran, for providing necessary financial help and facilities for the publication of these books, and their provision to the academic centres and libraries of the world and sponsoring the printing and publication of the Second Edition of the three books.

He is also grateful to the Akbar Foundation, Karachi, Pakistan for their generous financial support for the printing and publication of the books on Shia Personal Laws.

His sincere thanks are also due to the authors and publishers of *Succession in the Muslim Family* by N.J. Coulson, Professor of Oriental Laws, University of London, Cambridge University Press 1971, and *The Islamic Law of Inheritance* by Hamid Khan, Oxford University Press 2007, and other books which have been freely consulted by him in his works on Shia Personal Laws, particularly in the present book on Shia Law of Wills.

The author offers his special thanks and prayers to his three sons, Mr. Salman Naqvi, Brig. Imran Naqvi and specially Mr. Adnan Naqvi, a Computer System Engineer, for arranging all possible facilities and technical assistance throughout the process of the preparation of the manuscripts of these works in Canada and Pakistan without which, to be honest, these books could not see the light of the day.

Last but not the least, he expresses his special gratitude to his dear wife, Najma Naqvi who, besides her duties as a successful and popular Associate Professor of English at Islamabad College for Girls, Islamabad, most devotedly looked after the children and relieved him to concentrate solely on the arduous and demanding exercise of a scholar sailing in two boats of study and research on Shia jurisprudence and Persian language and literature. In addition to the official duty of replying to the queries relating to Shia law and ideology, raised by the members of the Council of Islamic Ideology, Parliament and the official and private quarters, he had to accomplish the research and publication of books on Shia Personal Laws which kept him busy all day and night for the last over forty- five years of his life.

In the end, the author offers most humbly his thanks to the Almighty Allah for enabling him to accomplish the preparation and publication of his colossal project on Shi'a Personal Laws.

Islamabad/Calgary
Dr. Syed Ali Raza Naqvi