SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Shahid Waheed
Justice Naeem Akhter Afghan
Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim
Justice Miangul Hassan Aurangzeb

C.P.L.A.No.57 OF 2025
(Against the order/judgment dated 07.11.2024 passed by the Peshawar High Court, Abbottabad Bench in W.P.No.853-A/2024)

Mst. Zainab Bibi ...Petitioner(s)

Versus

Muhammad Waseem and others ...Respondent(s)

C.P.L.A.No.1350 of 2025
(Against the order/judgment dated 14.01.2025 passed by the Peshawar High Court, Abbottabad Bench in W.P.No.707-M/2020)

Mst. Iram Naz Begum ...Petitioner(s)

Versus

Fazal Khaliq and others ...Respondent(s)

For the Petitioner(s) : Ms. Uzma Munawar, ASC
(in CPLA No.57/2025)
Mr. Mudassar Khalid Abbasi, ASC
(in CPLA No.1350/2025)

For the Respondent(s) : Mr. Aftab Alam Yasir, ASC
(in CPLA 57/2025)
Mr. Saeed Ahmed, ASC
(in CPLA No.1350/2025)

Date of Hearing : 17th of August, 2026

ORDER

Shahid Waheed, J:- A marriage may be dissolved by a court, but neither spouse should be judicially deprived of a lawful right, nor judicially burdened with a stigma, without the foundation of law and evidence. This principle lies at the heart of the controversy before us. Marriage, in Islam, is a solemn covenant founded upon affection, tranquillity, mutual respect and the discharge of reciprocal obligations. Its dissolution, where

necessary, is therefore not merely a matter of terminating a legal relationship; it is an exercise of judicial power which must be undertaken according to law, with due regard to the rights, dignity and honour of both parties.

2. These two cases arise out of two separate family suits and two separate judgments. In each case, the wife sought dissolution of marriage on the ground of cruelty and, in the same proceedings, claimed recovery of maintenance allowance, dower and dowry articles. The Family Courts, after following the procedure prescribed by the Family Courts Act, 1964, concluded that cruelty had not been established. Nevertheless, having found that reconciliation had failed, they dissolved the marriages by khula and directed the wives to return or surrender the dower. The remaining claims were partly allowed. The appellate court, in the case of Mst. Zainab Bibi, modified the decree to the extent of the direction for return of the dower, holding that the husband had already taken the dower back from the wife. In the case of Mst. Irum Naz Begum, however, the appellate court maintained the decree passed by the Family Court. Both matters thereafter came before the High Court in its constitutional jurisdiction. In Mst. Zainab Bibi, the High Court restored the decree of the Family Court, whereas in Mst. Irum Naz Begum, it declined to interfere with the concurrent findings recorded by the courts below.

3. The wives are now before us with two principal grievances. First, that their marriages could not lawfully have been dissolved through khula because they had neither sought nor consented to khula; rather, their cases were founded upon cruelty and the marriages ought to have been dissolved on that ground; second, that their claims for maintenance, dower and dowry articles ought to have been allowed in their entirety.

4. We shall first address the second grievance. This grievance raises the question whether, in examining it, the High Court correctly exercised its constitutional jurisdiction. We do not propose to dwell upon it at length, for the limits of constitutional jurisdiction are well defined. However, it will not be amiss to

reiterate that Article 199 confers a jurisdiction of supervision, not a second appeal. It keeps the Courts within the bounds of law; it does not invite the High Court to enter the arena of facts and fight the case anew. The claims relating to maintenance, dower and dowry articles substantially turn upon appreciation of evidence. In the present cases, the Family Courts examined the evidence and adjudicated those claims; the appellate courts re-examined the material and found no legal infirmity in their conclusions. Once the matter reached the High Court, its jurisdiction under Article 199 of the Constitution was not appellate in character. The High Court did not sit to weigh the evidence afresh, reassess the credibility of witnesses, or substitute its own view merely because another inference might appear possible. The High Court could correct illegality; it could not re-try the facts. Supervision was not substitution, and certiorari was not an appeal in disguise. Interference could nevertheless be warranted where the decision suffered from an error of law, want or excess of jurisdiction, was founded on no evidence, or rested upon such misreading or non-reading of material evidence as rendered the conclusion legally unsustainable. The essential distinction was between a mere error of judgment on facts and an error which affected the legality of the decision-making process. The former ordinarily belonged to the domain of appeal; the latter could invite constitutional correction. The High Court could correct what the law forbids; it could not replace what the law permits. In the cases at hand, the Courts below acted within their lawful authority, applied the correct legal test, considered the material evidence, and reached conclusions reasonably open upon the record. Article 199, therefore, did not furnish a licence to embark upon another appraisal of the facts. A possible alternative view was not a constitutional error; a disagreement with the weight of evidence was not, by itself, a jurisdictional defect.[1] We therefore find that

[1] Universal Camera Corp v. NLRB (340 US 474, 488), Muhammad Hussain Munir v. Sikandar (PLD 1974 SC 139), R v. Secretary of the State for the Home Department, ex parte Khawaja (1984 AC 74), Shajar Islam v. Muhammad Siddique (PLD 2007 SC 45), Minister of Citizenship and Immigration v. Vavilov (2019 SCC 65), Mst. Tayyeba Ambreen v. Shafqat Ali Kiyani (2023 SCMR 246), Arif Fareed v. Bibi Sara (2023 SCMR 413), M. Hamad Hassan v. Mst. Isma Bukhari (2023 SCMR 1434) and Mushtaq v. Mst. Fatima (PLD 2025 SC 434).

the High Court was correct in declining to interfere with the findings concerning maintenance and dowry articles merely because the petitioners invited it to take a different view of the evidence. Dower, however, stands on a different footing. The question there is not merely whether the evidence was correctly appreciated, but whether the decree affecting the petitioners' lawful entitlement was founded upon a legally permissible basis. Where the marriages were dissolved by treating the proceedings as cases of khula, although the underlying claims were founded upon statutory dissolution, the legal consequence attributed to dower cannot be insulated from scrutiny. The dower issue, therefore, requires consideration on that distinct footing. We shall accordingly consider that question separately.

5. The first grievance stands on a different footing, as it concerns the very character of the decree dissolving the marriages. The record shows that each wife instituted proceedings seeking dissolution on the ground of cruelty. Neither wife elected khula as an alternative basis for dissolution before the Family Court. Nevertheless, having found cruelty unproved, the Family Courts proceeded to dissolve the marriages on the basis of khula without first obtaining the wives' clear and voluntary consent or election. That course cannot be sustained. Khula and dissolution under the Dissolution of Muslim Marriages Act, 1939 ("Act of 1939"), are distinct legal avenues, although both may ultimately terminate the marital relationship. Section 2 of the Act of 1939 confers upon a Muslim woman a statutory right to seek dissolution upon proof of one or more prescribed grounds, including cruelty. Such dissolution is founded upon an established matrimonial wrong or other statutory ground. Khula, on the other hand, is a distinct right of the wife to seek release from the marital bond where continuation of the marriage has become intolerable, and the limits prescribed by Allah Almighty cannot be observed. The distinction was authoritatively explained by this Court in Khurshid Bibi,[2] Mst. Saima Khan,[3] and Dr. Faryal

---

[2] Mst. Khurshid Bibi vs. Muhammad Amin (PLD 1967 SC 97)
[3] Ibrahim Khan vs. Mst. Saima Khan (PLD 2024 SC 645)

Maqsood,[4] wherein it was held that a suit for dissolution does not, by itself, amount to a suit for khula; that khula is an independent right of the woman; and that a court cannot convert a claim for statutory dissolution into khula without her clear and voluntary election, particularly where such conversion affects her dower rights.

6. The distinction is substantive, not merely semantic. Section 5 of the Act of 1939 expressly preserves the wife's right to dower where the marriage is dissolved under that Act. Khula, by contrast, ordinarily carries the financial consequences applicable to the wife's surrender or return of benefit for her release from the marital bond. The classification of the benefit may therefore determine substantive financial rights. A court cannot, by merely changing the legal description of the wife's claim from statutory dissolution to khula, impose upon her the consequences of a remedy which she never elected to pursue. The wife's consent in such circumstances is therefore not an empty procedural formality. It constitutes the juridical election by which she chooses khula, together with its legal consequences. This assumes particular significance where she has expressly claimed dower and invoked a statutory ground of dissolution. To deprive her of that right by converting her claim into khula would be to determine a substantive financial entitlement upon a basis which she never accepted.

7. The error committed by the Family Courts is consequently one of law and jurisdictional character, rather than a mere procedural irregularity. The courts proceeded upon a juridical basis which the petitioners had neither pleaded nor elected and which carried consequences materially different from those attached to the remedy invoked by them. In the absence of a clear statement, consent or election by the wives, decrees of khula could not lawfully have been passed. The position does not change merely because the pleaded ground of cruelty failed. Failure to establish cruelty does not authorise the court to

[4] Dr. Faryal Maqsood vs. Khurram Shehzad Durrani (PLD 2025 SC 262)

manufacture an election of khula on behalf of the wife. She remains entitled to choose whether to pursue her statutory claim or, if she so elects, to seek khula upon its lawful terms.

8. This conclusion, however, gives rise to a further question. Once it is found that khula could not lawfully have been granted without the wives' consent, should the matter necessarily be remanded, or can this Court, on the record already available, determine whether another independent legal ground exists upon which the marriages may lawfully be dissolved? Ordinarily, a court does not determine a case upon a ground which has neither been pleaded nor investigated, particularly where doing so would introduce a new factual controversy. Proceedings in family cases, however, possess certain distinctive features. Such proceedings are not conducted under the general procedural framework of the Code of Civil Procedure, 1908, nor do the strict technical rules regarding the admissibility and scrutiny of evidence, common in ordinary civil litigation, apply to them. Instead, an inquisitorial procedure, intended to facilitate fair and effective adjudication of family disputes, is adopted while preserving the fundamental requirement that each party has a fair opportunity to know and contest the case against him or her. The present cases possess an important distinguishing feature. The wives expressly sought dissolution of marriage; the husbands were fully aware of the matrimonial allegations made against them; evidence was recorded; the parties were heard; and the statutory process of reconciliation was undertaken but failed. The dispute was thereafter litigated before the appellate forum and the High Court. Thus, the question before us is not whether a new factual controversy should now be introduced, but whether the facts already established on the record disclose an independent legal ground upon which the marriages may lawfully be dissolved.

9. A perusal of the pleadings and evidence indicates that none of the grounds specified in section 2(i) to (viii) of the Act of 1939 is established so as to warrant dissolution on any of those specific grounds. The question then arises whether, where reconciliation has failed, and the matrimonial relationship has

descended into sustained and serious discord, the parties should nevertheless be compelled to remain in a relationship that has ceased to serve its essential purposes. It is in this context that section 2(ix) assumes significance. It provides for dissolution:

> "on any other ground which is recognised as valid for the dissolution of marriages under Muslim law."

The language of this provision is deliberately residuary. The legislature did not confine dissolution under the Act of 1939 to the eight preceding grounds, but preserved within the statutory scheme other grounds recognised as valid for dissolution under Muslim law. To help us determine the content of that residuary provision, particularly because the question concerns the scope of Muslim law, we sought the opinion of the Council of Islamic Ideology. In its considered response, the Council stated, in substance, that where there exists a serious breach between the spouses, the parties are unable to live together in accordance with the purposes of marriage, allegations arise from both sides or fault cannot fairly be attributed exclusively to one spouse, and reconciliation has failed, the resulting condition may constitute shiqaq recognised by Muslim law for purposes of dissolution. We have considered the opinion. It helps the Court understand the relevant principles of Muslim law. As the opinion of the Council does not substitute for judicial determination, the interpretation and application of section 2(ix), and the determination of whether a particular matrimonial condition satisfies the requirements of shiqaq under Muslim law, remain matters for the Court. We will, therefore, take a careful look at the scope and purpose of shiqaq to better understand its significance.

10. The source of the concept of shiqaq is found in the Holy Qur'an itself. Allah Almighty says:

> "If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they seek to set things aright, Allah will cause their reconciliation; for Allah hath full knowledge, and is acquainted with all things." (Al-Qur'an, 4:35)

The expression shiqaq denotes serious breach, discord or rupture between spouses. The verse is significant not merely because it identifies such a condition, but because it prescribes a juridical response to it. The process begins with reconciliation, reflecting a preference for restoration where possible. At the same time, the marital bond is not treated as an end in itself irrespective of the condition in which the spouses are required to live. The Holy Qur'an describes the purpose of marriage in terms of tranquillity, affection and mercy:

> "that you may find tranquillity in them, and He placed between you affection and mercy." (Al-Qur'an, 30:21)

It further directs:

> "retain in honour or release with kindness." (Al-Qur'an, 2:229)

The principles of imsak bil-ma'ruf, retention in a proper and honourable manner, and tasrih bi-ihsan, release with kindness, thus provide the moral and legal framework within which continuation and dissolution of marriage are to be understood.

11. The Qur'anic concept does not support either extreme: that every disagreement must result in dissolution, or that a marriage must continue indefinitely after the relationship has become a sustained and irreconcilable breach. Shiqaq is therefore not established by every quarrel, disagreement, incompatibility or temporary estrangement. It requires a genuine and continuing rupture of such character that the essential purposes of marriage cannot realistically be fulfilled, coupled with the failure of reasonable efforts at reconciliation. Shiqaq must also be distinguished from cruelty. Cruelty is a matrimonial wrong attributable to conduct falling within the statutory parameters of section 2(viii) of the Act of 1939. Shiqaq, by contrast, concerns the condition of the matrimonial relationship itself. A marriage may reach a state of serious rupture even though the evidence is insufficient to establish, against either spouse, the particular statutory wrong of cruelty.

12. The historical jurisprudence also requires consideration. A Division Bench of the Lahore High Court in Umar Bibi[5] expressed reservations about treating incompatibility, aversion or shiqaq as an independent basis for dissolution. A larger Bench subsequently dissented from that view in Balqis Fatima.[6] The latter judgment contains a substantial examination of verse 35 of Surah An-Nisa of the Holy Quran and the authority of the Qazi in cases of shiqaq, and recognises the legal significance of serious matrimonial breach coupled with failure of reconciliation. We prefer to subscribe to the view expressed in Balqis Fatima. Having considered the statutory language, the relevant principles of Muslim law and the jurisprudence, we hold that where the factual requirements of shiqaq are established, and the safeguards of fair procedure are satisfied, shiqaq is capable of constituting a ground recognised as valid for dissolution under Muslim law and therefore falls within the residuary provision contained in section 2(ix) of the Act of 1939.

13. This conclusion does not amount to the judicial creation of a general doctrine of “irretrievable breakdown of marriage” independent of statute. Nor does it authorise a Family Court to dissolve every unhappy marriage merely by describing it as shiqaq. The jurisdiction remains controlled by section 2(ix), the requirements of Muslim law, the evidence on record and the procedural obligation to attempt reconciliation. The Court must therefore distinguish between an unhappy marriage and one in a state of shiqaq. Mere incompatibility, occasional disagreement, anger, short separation or the existence of matrimonial litigation cannot, by themselves, satisfy the test. The Court must be satisfied that the breach is genuine, serious and continuing; that the matrimonial relationship has ceased to function in accordance with its essential purposes; and that reconciliation has failed despite meaningful judicial effort.

---

[5] Mt. Umar Bibi vs. Mohammad Din (AIR 1945 Lahore 51)
[6] Mst. Balqis Fatima vs. Najm-Ul-Ikram Qureshi (PLD 1959 (W.P) Lahore 566)

14. The Constitution reinforces, rather than displaces, this approach. Article 4 requires that every person be dealt with in accordance with law; Article 14 guarantees dignity; and Article 25 recognises equality before the law and equal protection of the law. These guarantees do not disappear when a matrimonial dispute enters a courtroom. The wife should not be compelled to surrender dower through an involuntary conversion of her statutory claim into khula. Equally, the husband should not be judicially characterised as cruel or guilty of matrimonial misconduct without the evidentiary foundation required by law. Allegations of cruelty, ill-treatment, neglect and misconduct frequently arise in an emotionally charged environment. The courtroom should not become an institution through which matrimonial discord is converted into a permanent injury to the reputation and dignity of either spouse. The law must determine rights; it need not aggravate human conflict. Where the evidence does not establish a particular matrimonial wrong to the standard required by law, the Court should refrain from declaring it proved. Conversely, where the evidence establishes that the matrimonial relationship itself has descended into a state of serious and continuing rupture, the absence of proof of a particular matrimonial wrong does not necessarily require the parties to remain bound to one another indefinitely.

15. It is important to state here the fundamental distinction between khula and shiqaq. Khula proceeds from the wife's voluntary election to obtain release from the marriage and ordinarily carries the financial consequences applicable to that remedy. Shiqaq, by contrast, arises from an objectively established condition of serious matrimonial breach and does not depend on the wife’s surrender of dower or any benefit as consideration for her release. Its legal foundation lies in Muslim law as preserved through section 2(ix) of the Act of 1939. The two routes may lead to the same ultimate consequence, the dissolution of marriage, but their juridical foundations are different. A court cannot employ shiqaq merely as a device to achieve khula without the wife's consent; nor can it employ khula

to avoid determining whether an independent statutory or Muslim-law ground of dissolution is established.

16. The financial consequence follows from the same distinction. Where dissolution takes place under the Act of 1939, section 5 preserves the wife's right to dower. Where dissolution takes place through khula, the financial consequences are governed by the principles applicable to that remedy, including the question of return or surrender of financial benefit. Once it is concluded that the present decrees could not lawfully have been passed as khula decrees, the directions requiring the wives to return, surrender or waive dower merely by reason of khula cannot survive. This determination does not require reopening every financial issue arising from the marriage. It affects only those consequences which flowed solely from the erroneous characterisation of the dissolution as khula.

17. We now turn to the evidence in the two cases before us. The record, when viewed as a whole, discloses not a mere disagreement or an isolated matrimonial discord, but a sustained and deepening rupture between the spouses. In the case of Iram Naz Begum, the principal grievance was that her husband had not disclosed, at the time of marriage, that he already had a first wife and children from that marriage. The resulting circumstances created such marital strain that the wife categorically stated that she was unwilling to resume matrimonial life with her husband even if he provided maintenance and a separate residence. The statement is significant not as an adjudication of fault, but as evidence of the depth of the estrangement and the extent to which the matrimonial relationship had broken down. In the case of Mst. Zainab Bibi, the evidence reflects persistent arguments, taunts and verbal exchanges between the spouses, which ultimately culminated in a physical altercation between the wife's brother and the husband and, thereafter, in criminal proceedings between the parties. The discord was not confined to a single incident. The allegations and counter-allegations reflected a relationship marked by continuing conflict, while repeated efforts at reconciliation before the Family

Courts failed to restore the parties to matrimonial life. The significance of these circumstances lies not in determining which spouse was exclusively responsible for the deterioration of the marriage. The question is whether the matrimonial relationship, viewed in its entirety, has reached a condition of serious and continuing rupture in which the essential purposes of marriage can no longer reasonably be fulfilled, and reconciliation has ceased to be a realistic possibility. On that question, the cumulative effect of the evidence is compelling. The parties have remained estranged; their attempts at reconciliation have failed; the litigation has persisted; and nothing appearing from the record furnishes a realistic basis for concluding that matrimonial life can be restored. We therefore find that the evidence, taken cumulatively and without attributing exclusive blame to either spouse, establishes a condition of serious and continuing matrimonial rupture amounting to shiqaq in both cases. This finding does not rest upon a determination that either spouse is the sole wrongdoer. It rests upon the demonstrated condition of the matrimonial relationship itself: reconciliation has failed, the relationship has ceased to serve the essential purposes for which the marital bond exists, and there remains no realistic prospect of the parties resuming a stable matrimonial life.

18. It is expedient to clarify here that a decree founded upon shiqaq cannot ordinarily be passed against a party who has had no fair opportunity to contest the factual and legal basis of such relief. Natural justice requires that the parties be heard. In the present cases, however, the matrimonial allegations were fully litigated. The husbands contested the allegations; the wives sought dissolution; evidence was recorded; and reconciliation was attempted but failed. The parties thereafter had opportunities before the appellate and constitutional forums to contest the continuation of the matrimonial relationship. As such, the finding of shiqaq reached by us is not founded upon a new allegation, new evidence or a new factual controversy. It is a legal characterisation of the matrimonial condition emerging from evidence already brought on the record and tested by the parties.

The factual foundation has therefore not been taken away from either party without an opportunity of contest. What changes is the legal consequence attached to facts already placed before and considered by the courts.

19. This finding does not amount to a determination that either husband is guilty of cruelty, nor does it attribute fault to either wife. Shiqaq recognises the condition of the matrimonial relationship rather than requiring the Court to manufacture a culprit. A marriage may reach a state of irreconcilable rupture without the evidence establishing the statutory wrong of cruelty against either spouse. In such circumstances, the law should permit the relationship to be brought to a lawful conclusion without converting the decree of dissolution into a declaration of personal dishonour. A decree founded upon shiqaq in these circumstances neither treats the wives as having voluntarily surrendered their financial rights through khula nor brands the husbands as legally cruel when cruelty has not been established. It accordingly preserves, to the extent permitted by law, the lawful rights and dignity of both spouses.

20. Applying these principles, we hold that the Family Courts committed an error of law in converting the petitioners' claims for dissolution on the ground of cruelty into decrees of khula without obtaining their clear and voluntary consent or election. Those decrees, to the extent that they rest upon khula, cannot be sustained. The record, however, does not warrant setting aside the dissolution altogether. The matrimonial relationships have undergone a serious and continuing rupture; reconciliation has failed; the evidence does not establish the statutory ground of cruelty; and the record, taken as a whole, establishes a condition of shiqaq of the kind contemplated by verse 35 of Surah An-Nisa of the Holy Quran and recognised under Muslim law, thereby bringing the cases within the residuary provision contained in section 2(ix) of the Act of 1939. The dissolution can therefore lawfully be sustained, but upon a juridical basis different from that adopted by the Family Courts.

21. We accordingly hold that the marriages of the petitioners are liable to dissolution on the ground of shiqaq falling within section 2(ix) of the Dissolution of Muslim Marriages Act, 1939, and not on the basis of khula. The directions requiring the petitioners to return, surrender or waive their dower merely as a consequence of khula shall consequently stand set aside. Their entitlement to dower shall be determined in accordance with the Act of 1939 and the findings otherwise sustainable on the record. The findings concerning maintenance and dowry articles, having been examined by the courts below and not having been shown to suffer from any error of law, jurisdictional defect, material misreading or non-reading of evidence warranting interference under Article 199 of the Constitution, shall remain undisturbed.

22. Family litigation should not be reduced to a contest in which one spouse must necessarily emerge judicially dishonoured for the other to obtain relief. Islam provides a path of reconciliation, but it also recognises the necessity of separation when the matrimonial relationship has become a source of persistent and irreconcilable discord. The Qur'anic emphasis upon reconciliation in cases of shiqaq is meaningful precisely because it contemplates the possibility that reconciliation may fail. The law should neither rush towards separation nor prolong a matrimonial relationship which has ceased to serve its lawful purposes. Where reconciliation has failed, and the relationship has reached the condition of shiqaq, the judicial task is to bring the matter to a lawful conclusion without unnecessary attribution of blame or deprivation of rights.

23. For the foregoing reasons, these petitions are converted into appeals and are partly allowed in the above terms. The decrees of the Family Courts are modified only to the extent necessary to substitute dissolution on the ground of shiqaq under section 2(ix) of the Dissolution of Muslim Marriages Act, 1939, in place of dissolution based on khula, and to set aside the consequential directions concerning return, surrender or waiver of dower founded solely upon khula. The remaining findings, including those concerning maintenance and dowry articles, shall

remain intact to the extent stated above. There shall be no order as to costs.

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Islamabad
17.08.2026
'APPROVED FOR REPORTING'
Irfan Aslam/*

Announced in open Court on _____.

JUDGE