THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mrs. Justice Ayesha A. Malik
Mr. Justice Naeem Akhter Afghan

CPLA NO.3268 OF 2024

[Against order dated 27.05.2024 passed by the Peshawar High Court, Peshawar in WP No.5015-P of 2020]

Dr. Seema Hanif Khan ...Petitioner(s)

Versus

Waqas Khan and others ...Respondent(s)

For the Petitioner	:	Mr. Sher Afzal Khan Marwat, ASC Sh. Mahmood Ahmad, AOR
For the Respondents	:	Sh. Muhammad Suleman, ASC
Date of Hearing	:	19.09.2025

JUDGMENT

Ayesha A. Malik, J.- This Civil Petition is directed against order dated 27.05.2024 passed by the Peshawar High Court, Peshawar (**High Court**) whereby the writ petition filed by the Petitioner was dismissed.

2. Counsel for the Petitioner contends that the Petitioner sought dissolution of marriage on several grounds including cruelty, non-payment of maintenance during the subsistence of marriage and on taking an additional wife. The Judge Family Court-IV, Peshawar as well as the Additional District Judge-XI, Peshawar totally disregarded the Petitioner's prayer, her contentions and the evidence and instead granted her *khula*, without her consent, thereby depriving her of her dower which included Plot No.38 street No.136 measuring 200 square yards situated in Federal Employees Society Jinnah Garden Phase-I, Islamabad (**Plot**), 30 tola gold ornaments (**Gold**) and Rs.500,000/- (**Money**) (collectively referred to as **Dower**). Learned counsel further states that such a declaration by the courts is not only against the record but also stigmatizes the reputation and dignity of the Petitioner without any legal justification. Counsel for Respondents, on the other hand, argued that the Petitioner's suit was not one for dissolution of marriage on the ground of cruelty,

maintenance and second marriage rather she sought *khula* and therefore the Family Court was correct in granting *khula* as she had time and again asserted that she had no desire to live with Respondent No.1 (**Respondent**). He argued that even otherwise there was no evidence before the court to establish cruelty and the fact that she left his home of her own accord in pursuance of her career renders her disobedient and unwilling to live in his home. Learned counsel also stated that the Respondent has been more than generous with the Petitioner and tried to save the marriage, however, given the fact that she was more interested in her career she never really tried to honor the marriage bond between the two.

3. In the context of the arguments raised, there are two issues before us; whether the Family Court can of its own accord, without explicitly seeking the consent of the wife, grant *khula* to a plaintiff seeking dissolution of marriage on the ground stipulated in Dissolution of Muslim Marriages Act, 1939 (**DMMA**). The second issue is the standard of proof under the DMMA to establish the grounds for dissolution, in this case being the ground of cruelty, taking an additional wife and non-payment of maintenance. An integral part of the issues raised before us is the manner in which the Family Court proceeded with the case for dissolution of marriage, especially the appraisement of evidence, and the language used in the judgement which the Petitioner states has stigmatized her reputation and dignity.

4. The facts in this case are that the *nikah* between the Petitioner and the Respondent took place on 31.05.2015. In terms of the *nikahnama,* the Petitioner was given the Plot, Gold and Money as Dower and in terms of clause-17, Rs.10,000/- per month as maintenance. The *rukhsati* took place on 09.04.2016 and on 04.07.2017 the Petitioner filed the suit for dissolution of marriage. The Family Court granted *khula* on 22.07.2019 and awarded maintenance for the period of her *iddat* in the amount of Rs.30,000/- with the direction to return the Gold and the Plot in lieu of the *khula*, however, the Family Court concluded that the Money was never paid by the Respondent, hence, it was treated as surrendered dower in lieu of *khula* and so did not have to be returned. The appeal filed by the Petitioner was dismissed on 12.10.2020 and the Petition filed before the High Court was dismissed on 27.05.2024.

5. In order to appreciate the context of the issues raised it is necessary to understand the legislation being the DMMA. This law pre-dates the creation of Pakistan having been enacted by the Central Legislative Assembly of British India with the objective of consolidating and clarifying the provisions of Muslim law relating to suits for dissolution of marriage by women and is currently the primary legislation in Pakistan that enables a Muslim woman to seek dissolution of her marriage on specified statutory grounds. Dissolution of marriage in this context means that the marriage can be brought to an end at the instance of the woman if she is able to successfully establish one or more of the statutory grounds provided within the DMMA. Section 2 of the DMMA lists these grounds, which include the husband's disappearance, failure to provide maintenance, imprisonment, impotence, insanity, cruelty and, by virtue of clause (ii-a) inserted through the Muslim Family Laws Ordinance, 1961 (**MFLO**), the taking of an additional wife. Each of these grounds reflects a recognition that the marital bond may become so impaired by the husband's conduct or circumstances that its continuation would cause injustice to the wife. Among the grounds outlined in the DMMA, Section 2 (ii) lists out the ground for failure to provide maintenance, Section 2 (ii-a) lists out the ground for taking an additional wife and Section 2 (viii) presents the ground of cruelty. These sections have been reproduced below for ease of reference:

> *"**2. Grounds for decree for dissolution of marriage.** A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:*
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> *(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;*
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> *(ii-a) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;*
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> *(viii) that the husband treats her with cruelty, that is to say,*
> *(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or*
> *(b) associate with women of evil repute or lead an infamous life, or*
> *(c) attempts to force her to lead an immoral life, or*
> *(d) disposes of her property or prevents her exercising her legal rights over it, or*
> *(e) obstructs her in the observance of her religious profession or practice, or*
> *(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran."*

6. We take up the ground of cruelty first. The legislature did not attempt to define cruelty in the DMMA; instead, it provided a series of illustrations that show the range of conduct that can fall

within this ground. These illustrations show that cruelty can range from physical assault, to mental or emotional abuse, to interference with property or religion, to inequitable treatment in the context of a second marriage. The examples listed in Section 2 (viii) of the DMMA are not exhaustive but illustrative, ensuring that courts remain flexible in recognizing cruelty in its many different forms. Accordingly, cruelty is not limited to physical harm rather it includes any conduct, which results in mental and emotional harm, that makes it impossible for the wife to live with dignity and security within the marital home and relationship.

7. As per our jurisprudence, courts have defined cruelty as being behavior which is not limited to physical abuse but involves behavior which can result in mental and emotional abuse.[1] Therefore, cruelty encompasses physical harm; such as slaps, beatings or assault, as well as mental cruelty, such as humiliation, verbal abuse, or unfounded allegations of unfaithfulness in a marriage; emotional cruelty, such as neglect or indifference; and, at times, the broader environment of the marriage, such as hostility in the home or oppressive behavior by in-laws tolerated or encouraged by the husband. It is also held that cruelty can involve a series of acts, disconnected but collectively causing harm which renders it intolerable for the wife to remain in the marriage bond. Courts have also expanded on what constitutes cruelty by holding that cruelty includes the intentional or malicious infliction of mental suffering, abusive treatment, or false accusations. This means that physical injury is not a prerequisite and cruelty may consist entirely of conduct that causes anguish, loss of confidence, or injury to self-respect and may even encompass violent or non-violent acts, gestures, words, and even silence or neglect. More recently this Court[2] has held that cruelty may be physical or mental, intentional or unintentional, premeditated or not. Essentially, it is behavior, the impact of which is so painful, so severe, and so harsh that it would be impossible to live in the marriage. This Court emphasized that the conduct and the impact of that conduct is relevant because marriage is seen as a bond where there is trust, respect, love and affection failing which, where a woman seeks dissolution of marriage, a court must examine whether that

[1] Muhammad Shariful Islam v. Suraya Begum (PLD 1963 Dacca 947), Shahana Bibi v. Nadeem Shah (2015 MLD 1623) and Rabia Rasheed v. Faisal Mir (2013 CLC 1203).
[2]. Tayyeba Ambareen v. Shafqat Ali Kiyani (2023 SCMR 246).

conduct was so unbearable that she no longer wishes to maintain the marital bond. In this way, we note that, as per the jurisprudence, the relevant and decisive factor is the impact of the husband's conduct on the woman such that she no longer deems it possible to live with him. Accordingly, for a court examining whether a case of cruelty is made out to dissolve the marriage, cruelty must be assessed in all its forms in the context of its impact whether physical, mental, emotional, and even environmental.

8. In classical English law, marriage was treated as a lifelong sacrament, divorce in the modern sense was unknown and at most, the court could order separation "from bed and board" while leaving the bond intact. Within this framework, cruelty was understood as conduct endangering "life, limb or health."[3] Gradually, the concept broadened as the impairment of mental health was recognized alongside physical safety as a ground for cruelty.[4] The Courts began to accept that cruelty was not limited to blows or physical assaults, but also of words, conduct, and patterns of behavior that inflicted deep emotional distress. Where the impact of such behavior rendered marital life unsafe or intolerable, it was termed as cruelty.[5] While examining cruelty the court held that when looking at establishing cruelty, that the court should examine both objective and subjective elements in order to understand the lived reality of the parties. In doing so it recognized that there can be no fixed definition or instance of cruelty rather it will vary from case to case.[6] Today under international standards, CEDAW (1979) requires States to eliminate discrimination in marriage and family life (Art. 16), and its General Recommendations 19 (1992) and 35 (2017) affirm that gender-based violence including domestic abuse is a form of discrimination demanding effective remedies such as divorce, separation, and protection orders. The ICCPR (1966) prohibits torture and cruel, inhuman or degrading treatment or punishment (Art. 7) and has been applied by the Human Rights Committee to abusive marriages. The 1993 UN Declaration on the Elimination of Violence against Women defines violence broadly as physical, sexual, and psychological, and urges states to secure women's access to justice and remedies in family law.

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[3] Evans v. Evans 1 Hag. Con. 35 and 161 E.R. 466 and Russell v. Russell [1897] AC 395 (HL).
[4] Horton v. Horton [1940] P 187.
[5] Gollins v. Gollins [1964] AC 644 (HL) and Williams v. Williams [1964] AC 698 (HL).
[6] Livingstone-Stallard v. Livingstone-Stallard [1974] Fam 47.

9. Cruelty under the DMMA is related to the conduct of the husband such that his behavior or treatment towards the wife involves physical abuse in the form of assault as well as emotional and mental abuse such that his conduct is so reprehensive for her that she is miserable and unable to live with him. This means that cruelty can be physical, mental as well as emotional. It involves an element of abuse, whether physical or verbal, or through behavior or conduct which in the mind of the married woman is harmful, unsafe and impossible to live with. More importantly, it does not have to be a continuous form of behavior but can be a pattern of behavior that undermines her dignity, lifestyle, peace of mind and health. So, the question of cruelty is sensitive to social contexts, personalities, and lived realities of marriage. Accordingly, cruelty in matrimonial cases is not to be judged by a standard so rigid that it replicates a criminal trial. The question is not whether guilt has been established beyond reasonable doubt, but whether the conduct complained of, viewed in the context of the marriage, is such that the wife cannot reasonably be expected to continue with the relationship. Cruelty is therefore a subjective test, to be assessed in light of the effect of the behavior on the aggrieved woman, rather than by reference to strict categories or technical rules of proof.

10. The question that arises is how should the Family Court assess the evidence and determine whether cruelty has been established. Counsel for the Respondent, while relying on the *Hamad* Case[7], argued that while exercising jurisdiction under Article 199 of the Constitution[8], the High Court is not empowered to re-appraise or reconsider findings of fact already recorded by the courts below as its jurisdiction is confined to rectifying jurisdictional errors and procedural improprieties so as to ensure the proper administration of justice, and therefore, this Court should not interfere in the matter given that the Family and Appellate Courts have held and the High Court endorsed the fact that cruelty was not established. In this context, while it is correct that this Court should not reappraise the evidence which the Courts below have considered as per law, the legal issue in this case is the applicability of the *correct standard of proof* while assessing evidence, which is distinct from actually assessing the

[7] Hamad Hassan v. Mst. Isma Bukhari and others (2023 SCMR 1434) (**Hamad Case**).
[8] Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**).

evidence. Hence, the reliance on the *Hamad* Case is misconstrued. We are required to determine whether the correct standard of proof was applied by the Family Court in the context of the evidence before it. The nature of a dispute under the DMMA, being governed by family law, is essentially a civil dispute pertaining to the dissolution of the marriage at the instance of the woman. Such a dispute is to be assessed on civil standards of evidence. Accordingly, a woman is entitled to obtain a decree for dissolution of her marriage provided she can establish one or more of the grounds stipulated in Section 2 of the DMMA on the balance of probabilities. Where she invokes the ground of cruelty, it becomes a factual matter to be determined on the basis of evidence to be assessed according to the civil standard of proof being the balance of probabilities[9] meaning that there must be sufficient evidence to show that a fact is more likely to be true than not.[10] Therefore, the Family Court is required to look at the woman's testimony narrated in her own words and supported by surrounding circumstances. The standard of proof applied under the DMMA being the balance of probabilities means that the Court must decide whose side of the story is more likely to be true, that is more probable than the other, while examining the evidence and testimony of the woman, the circumstances she describes, and the impact of the conduct on her ability to continue marital life in the context of the defense he sets out by way of evidence. The law does not condition her entitlement on being able to demonstrate injuries or police reports or bring medical reports to support every slap or instance of emotional or mental trauma. In considering the evidence, the court must remember that there is no single definition of cruelty. What may be cruelty in one marriage may not be cruelty in another. The concept of cruelty differs from person to person depending upon the upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. Apart from this, the concept of cruelty cannot remain static as it is bound to change with the passage of time and with circumstances. Furthermore, there can

[9] Salamat Ali v. Muhammad Din (PLD 2022 SC 353), Nazeeran v. Ali Bux (2024 SCMR 1271), Khalid Hussain v. Nazir Ahmad (2021 SCMR 1986), Muhammad Amir v. Khan Bahadur (PLD 1996 SC 267) and Begum Hamid Mehmood v. Muhammad Masood (1995 SCMR 955).

[10] Meezan Bank Limited v. WAPDA First Sukuk Company Limited (2022 CLC 974).

never be a rigid formula for determining mental or emotional cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances on the balance of probabilities. The essential factor being the impact of the behavior termed as cruelty on the life of the woman.

11. We have examined the record and find that the Family Court and Appellate Court failed to apply the correct standard of proof by totally ignoring the Petitioner's evidence, by requiring documentary corroboration of physical abuse, and more significantly by equating her education and desire to work with disobedience without putting her testimony into context. The correct standard of proof is to assess the evidence on the balance of probabilities meaning thereby, that the entire evidence of the Petitioner had to be considered which includes her statement with respect to the impact of the physical, mental, and emotional mistreatment which made it impossible for her to remain in the marriage. The Petitioner described the cruelty through four witnesses[11] including herself who deposed on oath that she was abused by the Respondent. The Petitioner alleged that while residing in the house of her in-laws, the Respondent would return home late at night and that the male servants of his family would freely enter and move about in areas within which she was residing, causing her fear and distress. When she complained to the Respondent, he showed indifference. Witnesses stated that she had visible bruising around her lip caused by slaps. She further stated that her in-laws subjected her to verbal and emotional abuse, and that the presence of pet dogs, before which she was once thrown, added to her sense of humiliation and fear. Even after she began living in a separate accommodation with the Respondent, he would often remain out until two or three o'clock in the morning, causing her anxiety. He also blocked her number, preventing her from contacting him, and failed to provide maintenance or adequate food during this period. Her witnesses deposed about an incident when she was taken out of his house under police supervision. All witnesses remained firm during their cross examination and denied all suggestions of good behavior on part of the Respondent, but almost all of them agreed that the Petitioner was not beaten in front of them. The Petitioner

[11] PW2 (Cousin), PW4 (Self), PW5 (Uncle) and PW6 (Mother), pages 69 till 127.

supplemented these allegations through a police report[12] dated 29.07.2016. In contrast, the Respondent sought to resist the claim of cruelty by producing his ownself as his witness who could attest to his good behavior during the subsistence of the marriage. None of his other witnesses[13] spoke about the disobedience and self-desertion of the Petitioner or the good behavior of the Respondent throughout their evidence. The Respondent's entire focus was on portraying the Petitioner as *disobedient*, *career-oriented*, *free minded* and therefore unwilling to carry out her marital obligations or reside in the matrimonial home. He denied her allegations of cruelty since she had lodged no FIR, produced no medical report, and had not documented her abuse. In assessing the evidence, the Family Court and the Appellate Court fell into error by insisting upon documentary or medical proof, such as FIRs, hospital certificates, or written complaints for proof of physical abuse, failing which they concluded that cruelty was not established. In this context, they failed to examine the mental and emotional abuse and the impact of the cruelty on the Petitioner. The Family Court also proceeded on an incorrect premise by discarding the statements of the witnesses of the Petitioner on the ground that she was never beaten in front of them. It is important to note that abuse within the marital home is often a bedroom crime which is committed in private and for which there are no witnesses.[14] This crime remains largely unreported due to socio-cultural barriers, economic dependency and the lack of information on the issue. As a consequence, victims remain silent and *endure* for the sake of the family or the children.[15] Without appreciating the woman's perspective, courts treat domestic violence as a private matter which is discouraging for the victim to say the least. In this case, the Family Court dismissed the Petitioner's evidence because it was unsupported by documents establishing cruelty. The Family Court failed to consider the evidence as a whole on the balance of

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[12] PW2/1 and PW2/2, pages 130 and 131.

[13] DW1, DW2 and DW3 all being jirga members and DW4 being the Respondent himself, pages 202-224.

[14] According to UNFPA Pakistan, 28% of women aged 15-49 have experienced physical violence, and 6% have experienced sexual violence. 34% of married women have experienced spousal physical, sexual, or emotional violence. 5% percent of women have experienced spousal sexual violence. 56% of women who have experienced any type of physical or sexual violence have not sought help and or talked with anyone about the violence.

[15] Domestic abuse constitutes not only a ground for the dissolution of marriage but, in many jurisdictions abroad, also a distinct criminal offence. In the United Kingdom, for instance, the Domestic Abuse Act 2021 recognizes physical, emotional, psychological, sexual, controlling or coercive behavior and economic abuse as criminal conduct, imposing custodial penalties on perpetrators. Similarly, Canada's Criminal Code classifies spousal assault and coercive control within the broader framework of assault and harassment offences, ensuring that violence within the home is prosecuted with the same gravity as violence outside it. In the United States, domestic violence is recognized at both federal and state levels as a serious criminal offence, encompassing acts of physical harm, intimidation, and threats. The Violence Against Women Act provides the federal framework, while individual states criminalize domestic assault, stalking and coercive control within intimate relationships. These legislative frameworks reflect an evolved understanding that domestic abuse violates fundamental human rights to life, dignity, and security of person.

probabilities, to determine whether the Petitioner is entitled to dissolve the marriage. It was the duty of the Family Court and the Appellate Court to give weightage to the Petitioner's story on the balance of probabilities rather than treat the absence of documentary proof as conclusive to the fact that cruelty was not established. Both the Family Court and the Appellate Court readily accepted the Respondent's evidence even though he did not produce a single witness to corroborate his stance of good behavior or to corroborate his stance that he did not cause her any form of mental or emotional trauma. In doing so, the Family Court and the Appellate Court fell into grave error by not conforming to the standard of proof and by ignoring the principle of balance of probabilities. Hence, it failed to assess the evidence as per the required standard of proof to establish whether the Petitioner was entitled to dissolution on the ground of cruelty. As to the High Court and the Impugned Judgement, it ignored the issues in totality.

12. On the issue of the second marriage, under Section 6 of the MFLO, a husband may contract another marriage during the subsistence of the first marriage only after seeking the consent of his existing wife. If such consent is refused, he must then apply to the Chairman of the Union Council, stating his reasons for the proposed marriage. The Chairman is then required to constitute an Arbitration Council which may grant permission only if it is satisfied that the proposed marriage is "necessary and just." Non-compliance with this process attracts penal consequences under Section 6(5) of the MFLO, including the immediate payment of the entire dower to the first wife and criminal liability punishable with imprisonment or fine. In this case, the Petitioner alleged that the Respondent took a second wife without her consent and without obtaining the permission of the Arbitration Council, thereby acting in clear contravention of the provisions of the MFLO and DMMA. The Respondent admitted to having contracted the second marriage, not only in the written statement but also in his evidence.[16] It is a settled principle of law that facts admitted require no further proof[17] and the burden of proof thus shifted to the Respondent to establish that he had obtained permission either from the Petitioner or from the Arbitration Council. Admittedly, no such permission was ever sought, hence the fact of the

[16] Para 12 of para-wise reply, page 66 in Written Statement and page 219 from cross-examination.
[17] Rehmat v. Zubaida Begum (2021 SCMR 1534) and Nazir Ahmad v. M. Muzaffar Hussain (2008 SCMR 1639).

second marriage stood established. Accordingly, the second marriage was contracted in clear violation of Section 6 of the MFLO, thereby attracting clause (ii-a) of Section 2 of the DMMA, which alone was sufficient for the Family Court to dissolve the marriage. This fact is fortified by the conviction of the Respondent by the judgement dated 26.01.2023 passed by the Judicial Magistrate-II, Peshawar (**Conviction Judgement**)[18] which arises out of the Petitioner's complaint under Section 6(5) of the MFLO filed on 28.06.2018. In this context, there was clear and undeniable evidence as to the Respondent's second marriage which was totally ignored by all three courts and instead, the Family Court placed the blame on the Petitioner for *self-deserting* the marital home. Even during the present proceedings, when the counsel for the Respondent was confronted with the record, he admitted to the conviction of the Respondent and the fact that this conviction has not been challenged. Counsel for the Respondent explained that the penalty of Rs.5,000/- arising from the Conviction Judgement has been paid, hence, the matter has ended. We cannot agree with this argument. The question was whether the ground of taking an additional wife was established for the purposes of dissolving the marriage. The Family Court erred in dismissing the ground of taking an additional wife and thereby dissolving the marriage on this ground alone.

13. The Family Court, instead of dissolving the marriage granted a *khula* to the Petitioner without her asking for it. The question is whether the Family Court could of its own accord grant *khula,* and this Court in *Mst. Saima Khan,*[19] held that *khula* is a distinct cause of action grounded in the wife's consent and autonomy, and it cannot be judicially imposed to replace a failed statutory ground under the DMMA. The practice of converting a suit for dissolution of marriage into one of *khula* without the consent of the wife is totally in contravention to the law, as *khula* being an alternate mode of dissolution requires the wife's voluntary decision to end the marriage and pay compensation in exchange for release from the marital bond. Consequently, it is critical that the court records the consent of the wife on the record and ensures that she fully understands its legal consequences before forfeiting her dower to get *khula*. To infer consent merely from a woman's unwillingness to reside

[18] Case No. 27/Complaint instituted on 28.06.2018 before the Judicial Magistrate-II, Peshawar, at page 242.
[19] Ibrahim Khan v. Mst. Saima Khan (PLD 2024 SC 645).

in the marital home without considering the surrounding circumstances is to ignore her right to make her own decision and wrongly presume her consent. In this regard, filing of a suit for dissolution does not in itself amount to seeking *khula*. Such reasoning not only conflates two separate legal remedies being dissolution and *khula*, but also undermines the purpose of the DMMA, which was enacted to protect women from cruelty, neglect, and unequal treatment. The consequence of the Family Court granting a decree for *khula* instead of the dissolution as prayed for, the Petitioner was wrongly disentitled from her maintenance and Dower despite these being legal obligations of the Respondent. Courts must therefore remain mindful that equity cannot be achieved by overriding consent or denying a woman the statutory protections she invokes. The law demands that women's choices, words, and rights be respected as a matter of principle, not presumption. The earlier precedents[20] cited by the Respondent pre-date this case. Accordingly, these arguments cannot be sustained.

14. Following this, the Petitioner also raised the ground of non-payment of maintenance during the subsistence of the marriage at the rate of Rs.10,000/- per month as stipulated in column 17 of the *nikahnama*. Instead of appraising the evidence to determine whether maintenance was paid, the entire focus of the Family and Appellate Courts was the alleged disobedience of the Petitioner which was used to disentitle her from maintenance. Non-payment of maintenance is a legally recognized ground for dissolution under the DMMA, therefore, a clear finding as to its payment or lawful justification for non-payment was necessary before rejecting the Petitioner's claim. The Petitioner led evidence to this effect through herself and her mother as witnesses both of whom testified to the fact that she was not paid any maintenance during the marriage. Her mother also clarified that she was not paid maintenance since December, 2016 when both parties separated and began residing in their respective homes. This statement was neither cross-examined nor rebutted by any evidence from the Respondent. Moreover, in his examination-in-chief, the Respondent has not said that he paid maintenance as agreed in the *nikahnama* nor did any of his witnesses depose as to payment of maintenance by him. He also did not submit

[20] Muhammad Arif v. Saima Noreen (2015 SCMR 804) and Shazia Haider v. Gul Islam (PLD 2014 Peshawar 194).

any documentary evidence either. In light of this evidence, the Family Court had to determine whether the Petitioner was paid at the very least, Rs.10,000/- per month, as per his legal obligation as stipulated in the *nikahnama*. Instead, the Family Court rejected this claim by holding that the Petitioner was a *disobedient* and *self-deserting* wife and dissolved the marriage on the basis of *khula*. These findings are totally misconstrued and do not come out of the evidence. Furthermore, alleged disobedience is not a legal ground to deny maintenance. Labelling the Petitioner *career oriented*, *free minded* and using the Petitioner's background in a co-education system as an assumption that she was disobedient does not render her disobedient and cannot nullify the obligation to pay maintenance. In this case, there is a binding legal obligation through the *nikahnama* to pay Rs.10,000/- per month which cannot be done away with on the basis of presumptions and notions. The Family Court must be very cautious and careful with its findings which must be based on evidence and facts and again must use the balance of probabilities as the legal standard for proof through evidence.

15. Similar reasoning was applied to the question of the Gold, Money and Plot. As far as the Gold is concerned, the Family and Appellate Courts have concluded that the same was paid to Petitioner at the time of *nikah* while relying on contents of the *nikahnama*. The Family and Appellate Courts also concluded that the Money was not paid by the Respondent to the Petitioner. However, on account of the *khula*, the Petitioner had to return the Gold and Plot and surrender her claim for the Money to obtain a *khula*. This reasoning comes from the false assumption that the Petitioner sought *khula* in place of dissolution as otherwise evident from her plaint. By treating it as *khula*, the courts wrongly assumed that she had given up her financial rights and took away the benefits that the law and *nikahnama* granted her. Consequently, the Petitioner was unfairly and wrongfully denied her Dower which were obligations that the Respondent was required to fulfil as per the contents of the *nikahnama*.

16. The critical factor in this case is the manner in which the Family Court proceeded with the suit for dissolution of marriage and the Appellate Court and High Court endorsed the Family Court's judgement. The entire emphasis has been based on the presumption

that the Petitioner was *disobedient* and a *self-deserting* wife. They failed to consider the evidence that on three separate occasions *jirgas* were held to reconcile the parties after which the Petitioner voluntarily returned to the marital home all three times being; the first *jirga* held on 27.07.2016, the second *jirga* held 21 days later and the third *jirga* held after which the Respondent agreed to separate accommodations. It was only in December 2016 that the Petitioner left the marital home after which she was never contacted by either the Respondent nor his family members. Soon thereafter, the Respondent contracted his second marriage on 29.04.2017 during the subsistence of his marriage with the Petitioner and without her permission. It is then that the Petitioner lodged a complaint which resulted in the conviction of the Respondent through the Conviction Judgement. On the balance of probabilities, these surrounding facts rebut any presumption that she voluntarily left the marital home or is a self-deserting wife. Moreover, what is even more alarming is that the Family Court also justified the second marriage of the Respondent on the presumption that the Petitioner is a disobedient and self-deserting wife. This reasoning is illogical as no one can be *compelled* to contract a second marriage and similarly a husband cannot be *forced* to contract a second marriage by blaming the woman for her behaviour. In this context, the Respondent relied on a judgment of the Peshawar High Court[21] to justify the taking of a second wife during the subsistence of his first marriage. However, this has never been the law, and as recently reaffirmed by a three-member bench of this Court,[22] such reliance is wholly misplaced. The Supreme Court has clarified that clause (ii-a) of Section 2 of the DMMA remains an operative and subsisting ground for dissolution, and any reasoning to the contrary, stands declared *per incuriam*. To reiterate, the Respondent's argument holds no weight as he has been convicted which conviction has not been challenged, and therefore the decision attained finality.[23]

17. The consequence of proceeding in this manner is that the Family and Appellate Courts accepted the Respondent's narrative and

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[21] Rashid Ali Shah v. Haleema Bibi (PLD 2014 Pesh 226).

[22] Faryal Maqsood v. Khurram Shehzad Durrani (PLD 2025 SC 262) (**Faryal Maqsood**).

[23] The learned counsel for the Respondents attached a newspaper article published by Dawn titled 'Council of Islamic Ideology comes out against SC verdict in polygamy case' dated 25.03.2025 wherein the Council of Islamic Ideology (**CCI**) challenged *Faryal Maqsood* by stating that it is not valid as per the norms of Sharia law as it is un-Islamic to grant the first wife the right to annul the marriage as a result of solemnizing second marriage, by her husband, without her permission. However, according to Ishaq Khan Khakwani v. Mian Muhammad Nawaz Sharif (PLD 2015 SC 275), it has long been settled that the CII, established under Articles 228 and 230 of the Constitution, is an advisory and recommendatory body whose opinions carry no binding legal effect unless adopted through legislation. Its function is to guide the legislature and government on whether laws conform to Islamic injunctions, but it has no adjudicatory or enforcement authority, which lies exclusively with the Federal Shariat Court under Article 203D.

ignored the Petitioner's evidence and lived experience. This approach produced a harsh and biased result that protected the husband's conduct instead of assessing it in accordance with the law. More significantly, it reflected a failure to examine the case through a gender sensitive lens. A gender perspective is essential because it helps the court understand the social realities in which women experience cruelty. Many women face pressure, fear or dependence that make it difficult to speak out or prove abuse in the way the courts expect. Seeing the case through a gender lens also means understanding the different ways women experience harm. The reasoning used by the Family and Appellate Courts rested on assumptions rather than evidence, and furthermore they failed to understand the Petitioner's experience and the impact of the cruelty and the second marriage as stated in the plaint and through her evidence. Furthermore, using language loosely or without thought stigmatizes women, trivializes abuse, and reinforces the same patriarchal thinking that the law seeks to overcome. Words used in judicial reasoning matter. When judgments rely on stereotypes or excuse unlawful conduct, they perpetuate inequality and shape social attitudes in ways that deny women dignity, fairness, and justice.

18. In this context, the language used by the Family Court in its reasoning also requires our attention as it reflects a deeply patriarchal mindset. The repeated mischaracterization of the Petitioner as a *"disobedient wife"* and a *"self-deserted lady"*, or the assumption that she *"created such circumstances which compelled the defendant to contract a second marriage,"* shifts the discussion from cruelty towards the woman and the exercise of her autonomy to her obedience and disobedience. This reasoning shields the cruel behavior and unlawful acts of her husband while portraying him as a dutiful and "good husband." These are social judgments disguised as findings of law. It is therefore necessary to address and correct such language as a matter of substantive justice. The Family Court's presumption that only an "*obedient wife*" is entitled to maintenance must be replaced with the legally correct position as maintenance is a husband's statutory obligation during the subsistence of the marriage.[24] Similarly, the finding that the Petitioner *"wanted to go to Ireland without the consent of the defendant"* and was

[24] Haseen Ullah v. Mst. Naheed Begum (PLD 2022 SC 686).

therefore *"disobedient"* misconstrues the exercise of a woman's educational or professional aspirations as defiance. In reality, the Family Court failed to recognize that the Petitioner's desire to pursue her career or education abroad is not disobedience and is not to be equated to misconduct rather it is an exercise of her personal autonomy. Similarly, the Family Court and the Appellate Court relied on presumptions against victims of domestic abuse and the treatment they experience behind closed doors. The Family and Appellate Court's continuously focus on the failure of the Petitioner to report every slap or beating or incident of hitting and provided that the Petitioner, being a doctor, *"could easily have provided a medical report."* A similar reasoning was used in response to the Petitioner's plea for the recovery of the Gold which was discarded by the Family and Appellate Courts since "*she did not lodge an FIR"*, she was not entitled to the Gold. Likewise, the conclusion that the second marriage of the Respondent is not a ground of cruelty because the Petitioner created such circumstances which *compelled* him to contract a second marriage is completely absurd. Such reasoning perpetuates a patriarchal standard that excuses male misconduct by attributing blame to the wife. Collectively, these observations reveal concepts that conflate patriarchal thinking with legal reasoning. The Family Courts must consciously move away from such language. Words like *"disobedient," "self-deserting," "mummed," "served the defendant's family by heart"* and *"compelled to contract second marriage"* should be replaced as they reinforce a moral hierarchy that measures women by servitude and compliance in total disregard of her fundamental rights especially to have life with dignity and to exercise her right to choice. It also ignores all surrounding circumstances which means that such words and depiction of women in family cases are used as a means to deprive the woman of the rights given under the law. It is important to emphasize that language shapes perception. The continued use of moralistic or gendered terms undermines the impartiality of the courts and offends the constitutional values of dignity, equality, and non-discrimination guaranteed by Articles 14, 25 and 35 of the Constitution. Hence, courts must ensure that their reasoning and their language uphold these fundamental guarantees.

19. For the reasons discussed above, this Petition is converted into an appeal and allowed. The judgments and decrees of

the Family Court and the Appellate Court as well as the order of the High Court are hereby set aside to the extent of *khula*, Dower, and maintenance. The marriage is dissolved on the ground that the Respondent contracted a second marriage in violation of the law. Consequently, the Petitioner will not be required to return her Dower and will keep the Gold, Money, and Plot given to her. She is also entitled to maintenance of Rs.10,000/- per month for the period during which the marriage subsisted, to be calculated and paid according to law.

JUDGE

JUDGE

'Approved for Reporting'
*Azmat/Uzma Zahoor/Nurayn Qasim**
Announced in open court on _____ at _____

JUDGE