

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Shahid Bilal Hassan

CPLA Nos.372-P & 373-P of 2019

Against judgment dated 04.03.2019 of the Peshawar High Court, Peshawar, passed in Writ Petition No.2810 & 4392 of 2018.

Mst. Farwa Noreen

Petitioner(s)

Versus

Hassan Ali Agha & others

Respondent(s)

CPLA No.1299 of 2023

Against judgment dated 14.02.2023 of the Lahore High Court, Multan Bench, passed in Writ Petition No.16321 of 2019.

Muhammad Ishaq

Petitioner(s)

Versus

Mst. Kalsoom Kauser and others

Respondent(s)

CPLA No.2850 of 2025

Against judgment dated 12.06.2025 of the Lahore High Court, Multan Bench, passed in Writ Petition No.11253 of 2018.

Muhammad Ayub

Petitioner(s)

Versus

The ADJ, DG Khan and others

Respondent(s)

CPLA No.5424 of 2025

Against judgment dated 28.10.2025 of the Lahore High Court, Rawalpindi Bench, passed in Writ Petition No.873 of 2024.

Naqash Ahmed Siddiqui

Petitioner(s)

Versus

Gulzardan Bibi and another

Respondent(s)

Civil Appeal Nos.821 & 822 of 2025

Against judgment dated 18.03.2024 of the Lahore High Court, Multan Bench, passed in Writ Petition Nos.14236 & 14235 of 2022.

Khalil Khadim and others

Appellant(s)

Versus

Humaira Khakwani and others

Respondent(s)

Civil Appeal No.823 of 2025

Against judgment dated 18.03.2024 of the Lahore High Court, Multan Bench, passed in Writ Petition No.14234 of 2022.

Khadim Hussain

Appellant(s)

Versus

Humaira Khakwani and others

Respondent(s)

Civil Appeal No.824 of 2025

Against judgment dated 20.01.2025 of the Lahore High Court, Lahore, passed in Writ Petition No.66473 of 2024.

Binyamin

Appellant(s)

Versus

The ADJ, Depalpur and others

Respondent(s)

Civil Appeal No.825 of 2025

Against judgment dated 23.01.2025 of the Peshawar High Court, Abbottabad Bench, passed in Writ Petition No.1453-A of 2023.

Mst. Nazia Bibi

Appellant(s)

Versus

Ishtiaq Ahmed and others

Respondent(s)

Civil Appeal No.826 of 2025

Against judgment dated 24.06.2025 of the Lahore High Court, Multan Bench, passed in Writ Petition No.960 of 2020.

Sajid Hussain

Appellant(s)

Versus

The ADJ Rajanpur and others

Respondent(s)

Criminal Appeal No.1066 of 2025

Against judgment dated 11.03.2025 of the Lahore High Court, Multan Bench, passed in CrI.Misc.No.1796-M of 2024.

Humaira Khakwani and others

Appellant(s)

Versus

The State through PG, Punjab & another

Respondent(s)

- For the Petitioner(s)/
Appellant (s)

:

Mr. Shan Gul, ASC
Mr. M. Tariq Khan Hoti, ASC *(Through Video Link Peshawar)*
Mr. Aftab Alam Yasir, ASC
Agha Muhammad Ali, ASC
Mr. Imran Feroze, ASC
Syed Riaz-ul-Hassan Gillani, ASC
(in CrI.A.No.1066/2025)
- For the Respondent(s)

:

Syed Riaz-ul-Hassan Gillani, ASC
(in C.A.Nos.821-823/2025)
Mr. Naveed Akbar, ASC
Mr. Riaz Hussain Azam, ASC
Mr. Aqeel Sarwar, ASC
Mirza Abid Majeed, DPG, Punjab.

Date of Hearing : 08.07.2026

JUDGMENT

SHAHID WAHEED, J.- This batch of cases presents questions which lie at the intersection of Islamic jurisprudence, constitutional values, statutory interpretation and family law. Although the dispute involved therein immediately concerns the legal effect of a stipulation recorded in a Nikahnama regarding dower (*mahr*), it transcends the controversy between the parties. The underlying principle to address such a dispute is that a husband's first duty is to pay dower with grace; a court's first duty is to enforce it without delay, for in the dower lies the dignity of the wife, and in the home lies the strength of the nation. It therefore requires this Court to revisit certain foundational principles governing Muslim marriage and to clarify the legal framework within which Family Courts and other courts of law are to determine disputes concerning dower and the interpretation of the Nikahnama.

2. The questions emanating from these cases are neither confined to the interpretation of a single clause of the Nikahnama nor limited to the private rights of two spouses. They concern the legal architecture of the Muslim family. They invite the Court to consider not only the principle established in the cases of Naheed Begum¹ and Fakhra Jabeen² but also to examine the institution of marriage in Islam, the legal character of dower, the status of the Nikahnama prepared under statutory authority, and the principles governing interpretation where the entries made by the Nikah Registrar are ambiguous, incomplete, or inconsistent with the parties' asserted intention. Since the answers to these questions are likely to govern the decisions in a large number of pending cases involving similar issues, we consider it appropriate that the legal questions be first authoritatively settled. The scope of the present proceedings is, therefore, deliberately confined. We will not examine the facts of the individual cases, assess the evidence, or express any opinion on the merits of the claims advanced by the parties. We are limiting ourselves to resolving the question of law coming out for determination. Once the questions are answered, each case shall be

¹ Haseen Ullah v. Mst. Naheed Begum and others (PLD 2022 SC 686)

² Mst. Fakhra Jabeen and others v. Wasif Ali and others (PLD 2026 SC 20)

decided independently by the appropriate Bench in accordance with law.

3. We are conscious that answers to these questions must be sought not in isolation but within the broader framework of the Constitution of the Islamic Republic of Pakistan (“the Constitution”), the injunctions of the Holy Qur'an and Sunnah, the accumulated wisdom of classical Islamic jurisprudence, the statutory scheme governing Muslim marriages, and the settled principles regulating public documents and evidentiary presumptions because none of these sources exists in conflict with another; each complements the other in the pursuit of justice.

4. In some of the present cases, questions were framed when leave was granted. However, as these cases were reviewed together, additional questions emerged that also need careful consideration. We deem it important to rephrase all questions that arise in these cases or may come up in similar situations to ensure clarity, fairness and consistency. The questions of law that arise for determination are:

- (i) *Whether marriage (Nikah) under Islamic law is merely a civil contract, or whether it constitutes a distinct legal institution possessing contractual features while simultaneously embodying religious, moral and social obligations?*
- (ii) *What is the legal nature, philosophy and object of dower (mahr), and whether it is merely contractual consideration or an independent legal obligation imposed by Islamic law?*
- (iii) *What is the legal implication of the transaction whereby a husband gives immovable property to his wife in lieu of, wholly or partly, her dower?*
- (iv) *Whether the Nikahnama prescribed under law is itself the marriage contract or merely an official record evidencing the contract already concluded between the parties?*
- (v) *What principles govern the interpretation of the Nikahnama, and to what extent the presumption attached to a Nikahnama may be displaced by evidence demonstrating that the recorded entries do not faithfully reproduce the agreement actually concluded between the spouses?*
- (vi) *What is the relationship between Columns 13, 14, 15 and 16 of the Nikahnama?*

5. These questions are of recurring importance. Every year thousands of marriages are solemnised throughout Pakistan using a uniform statutory Nikahnama. Equally numerous are disputes arising from entries relating to dower, delegated power of divorce, conditions of marriage and identification of property promised to the wife. The answers provided by different courts have not always been consistent. There is no necessity to refer to such cases here. However, it is sufficient to say that in some cases, excessive emphasis has been placed upon the literal wording of isolated entries. In others, the surrounding circumstances have been permitted to override the statutory record without adequate legal justification. Such inconsistency inevitably undermines the certainty of the law and gives rise to prolonged litigation that affects the stability of families.

6. The significance of the present cases extends beyond legal certainty. It concerns the protection of rights which Islamic law itself regards as fundamental incidents of marriage. The institution of dower has, on occasion, been reduced in practice to a ceremonial formality, with little appreciation of the philosophy underlying it. Equally, Nikahnama has sometimes been treated as though it creates rights independently of the agreement which it merely records. Neither approach is consistent with the principles governing Muslim personal law.

7. The task before this Court is therefore neither to innovate nor to reform Islamic law according to contemporary preferences. It is to identify the principles already embedded within Islamic jurisprudence, constitutional norms and statutory provisions, reconcile them where necessary, and articulate them with sufficient clarity.

8. We therefore commence by examining the juristic character of the institution of marriage as understood in Islamic jurisprudence, for every subsequent question that falls for determination by this Bench derives its legal meaning from the nature of that institution itself. Every legal consequence flowing from marriage derives its meaning from the nature of the institution that gives rise to it. If marriage is viewed as nothing more than an ordinary civil contract, then the principles governing commercial transactions would naturally dominate its interpretation. Conversely, if marriage

is understood as a unique legal institution possessing contractual, moral and religious dimensions, the principles governing its interpretation necessarily assume a different complexion.

9. The starting point of every inquiry into Muslim personal law must be the Holy Qur'an. Marriage is not introduced in the Holy Qur'an as an economic arrangement or a contractual exchange. It is presented as one of the Divine signs manifesting the wisdom and mercy of Almighty Allah. The Holy Qur'an, in verse 21 of Surah Ar-Rum, declares:

"And among His signs is that He created for you spouses from among yourselves so that you may find tranquillity in them, and He placed between you affection and mercy." (30:21)

The verse identifies three essential objects of marriage: tranquillity (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*). These concepts are not merely moral aspirations; they define the normative framework within which matrimonial rights and obligations are to be understood. Tranquillity denotes emotional stability and mutual security. Affection signifies voluntary love arising from companionship. Mercy reflects compassion, patience and forbearance, particularly when affection alone becomes insufficient to sustain the relationship. Together they distinguish marriage from commercial transactions, whose primary objective is the exchange of economic interests.

10. The Holy Qur'an further in Surah Al-Baqarah, describes spouses as garments for one another:

"They are a garment for you, and you are a garment for them." (2:187)

The metaphor is remarkable in its legal significance. A garment protects, conceals imperfections, provides dignity, and remains inseparable from the person wearing it. The reciprocal nature of the verse demonstrates that marriage creates corresponding obligations that rest equally upon both spouses, though the content of those obligations may differ under Islamic law.

11. In Surah An-Nisa (4:21), marriage is described as a *mithaqan ghaliza*, a solemn covenant. The Arabic expression is of exceptional importance. The word *mithaq* denotes a

covenant/contract attended by binding moral and legal obligations. The adjective *ghaliza* intensifies that meaning by describing the covenant/contract as weighty, solemn and grave. The same expression is employed in the Holy Qur'an only in relation to covenants of extraordinary importance. Its application to marriage therefore excludes the possibility of reducing Nikah to the level of an ordinary commercial bargain.

12. At the same time, Islamic jurisprudence recognises that marriage comes into existence through offer (*ijab*) and acceptance (*qabul*)³. Mutual consent is indispensable.⁴ Neither spouse may ordinarily be compelled into marriage against his or her lawful consent. The parties possess legal capacity. Witnesses are required.⁵ Certain conditions invalidate the transaction. These characteristics resemble the law of contracts. But similarity in the mode of formation does not establish identity of legal character. Many legal institutions originate through consent while being governed by rules peculiar to their respective purposes. Partnership, agency, endowment, and arbitration likewise arise through consensual acts, yet each possesses its own governing principles because each serves different legal objectives. The Muslim jurists therefore discussed marriage within the law of transactions because it is concluded through consent, but they never suggested that every doctrine governing sale, lease or exchange should automatically govern marriage. On the contrary, they repeatedly recognised that marriage occupies an independent position within Islamic jurisprudence.

13. The distinction between marriage and sale is particularly important. In a contract of sale, the principal object is the transfer of ownership of property from one person to another in consideration of price. Rights and obligations are generally exhausted upon completion of the exchange except where the parties agree otherwise. Marriage achieves no such transfer. Neither spouse becomes the property of the other. Neither acquires proprietary rights over the personality of the other; each retains an independent legal identity, independent ownership of property and independent capacity to sue and be sued. It is therefore a serious doctrinal error to describe dower

³ Fatawa Alamgriyyah, Kitab al-Nikah

⁴ Al-Sarakshi, Vol.5, P.2

⁵ Burhan al-Din Al Marghinani, Al-Hidayah

as the price of the wife.⁶ Such characterisation is inconsistent with the Holy Qur'an, the Sunnah, classical Hanafi jurisprudence, and the constitutional guarantee of human dignity. The wife is not the subject matter of sale; her consent is not purchased; her personality is not transferred; and her dignity is not commodified. Dower is imposed because marriage honours her; it is not paid because she is being acquired.⁷

14. The distinction is further demonstrated by the legal consequences that arise from a valid marriage independently of any express stipulation. Among them are: (a) the spouses become lawful for one another; (b) the wife acquires entitlement to dower; (c) the husband becomes liable for maintenance according to law; (d) legitimacy of future children is secured; (e) mutual rights of inheritance arise upon death, subject to the conditions prescribed by law; and (f) affinity is created, giving rise to permanent prohibitions of marriage with specified relatives. None of these consequences depends upon express contractual stipulation. They arise because the law ordains them. Conversely, parties to an ordinary commercial contract may ordinarily determine for themselves the content of their obligations, provided the agreement is lawful. Marriage permits no such unrestricted autonomy. A husband cannot contract himself out of the obligation to maintain his wife where maintenance is otherwise due. Nor may the parties abolish the wife's entitlement to dower altogether. These obligations exist because Islamic law imposes them.⁸

15. The foregoing discussion demonstrates that two propositions are simultaneously true. First, marriage is in the nature of civil contract because it originates through offer and acceptance freely exchanged between legally competent persons. Secondly, its essential incidents arise independently of contractual intention and are regulated by Divine law.⁹ We therefore settle the principle that Nikah is a unique legal institution (*sui generis*). It is formed through contract, regulated by Shariah, recognised by statute and protected by the Constitution. Its contractual features facilitate its formation.

⁶ Neil B.E. Baillie, *A Digest of Moohummudan Law*, Chapter VII — “Of Dower”

⁷ Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, P.334

⁸ Dr. Tanzil-ur-Rehman, *A Code of Muslim Personal Law*, Chapter-1

⁹ *Mst. Khurshid Bibi v. Baboo Muhammad Amin* (PLD 1967 SC 97)

Its religious character defines its moral foundation. Its legal incidents determine the rights and obligations of spouses. Its social function preserves the family, lineage and moral order. To emphasise only one dimension while ignoring the others produces an incomplete and potentially misleading understanding of the institution. Principles of contract may therefore assist in determining questions relating to its formation, interpretation and proof, but they cannot be applied mechanically where doing so would defeat rights or principles which Islamic law attaches to marriage.¹⁰

16. We now proceed to examine the institution of *mahr* (dower), for it is one of the most important legal incidents of marriage. Indeed, no proper understanding of Muslim matrimonial law is possible unless the true nature and purpose of dower are first appreciated.

17. The principal source of the law relating to dower is the express command contained in Surah al-Nisa:

"And give the women their dower graciously; but if they, of their own pleasure, remit any part thereof to you, then consume it with satisfaction and good cheer." (4:4)

This verse constitutes the cornerstone of the law of dower. Three features of the verse deserve particular attention. First, the command is addressed directly to the husband. The obligation to pay dower is imposed upon him personally. Secondly, the dower is described as belonging exclusively to the woman. The Holy Qur'an neither directs payment to her guardian nor permits another person to appropriate it merely because of familial relationship. Thirdly, the husband is commanded to pay it **graciously** (*nihlah*),¹¹ signifying that the obligation must be discharged willingly, honourably and without reluctance or humiliation. The Arabic word *nihlah* has been the subject of extensive discussion among the classical exegetes. It conveys the idea of a willing discharge of an obligatory duty springing from sincerity and honour. It emphatically does not suggest that dower is a voluntary charity capable of being withheld at pleasure. Rather, it requires that a compulsory obligation be performed with grace and dignity. The distinction is significant. Islamic law not only

¹⁰ Abdur Rahim, The Principles of Muhammadan Jurisprudence (1963 Ed.), P.326

¹¹ Saadia Usman and another v. Muhammad Usman Iqbal Jadoon and another (2009 SCMR 1458)

commands performance of legal obligations; it also prescribes the manner in which they are to be performed. The Holy Qur'an immediately proceeds to declare that if the wife voluntarily remits any part of her dower after acquiring ownership thereof, the husband may lawfully retain it. The legal implication is unmistakable. A person can remit only that which already belongs to him or her. Consequently, ownership of the dower vests in the wife immediately upon its becoming payable according to law. It is because she has become its owner that she possesses legal capacity to waive, remit or gift it back. This principle has profound consequences. Neither the husband nor his relatives may compel the wife to relinquish her dower. Any remission must proceed from her free consent. The Holy Qur'an thus safeguards not merely the existence of the right but also the freedom with which it may subsequently be exercised.

18. The Sunnah of the Holy Prophet (peace and blessings be upon him) further illuminates the philosophy of dower. The Prophet (peace be upon him) never treated dower as a ceremonial formality. He insisted that every marriage include dower according to the means of the husband.¹² He encouraged moderation in its amount. He condemned unnecessary extravagance. At the same time, he consistently recognised the wife's proprietary entitlement.¹³

19. Numerous authentic traditions further establish that dower may consist of money, gold, silver, movable property, immovable property or any valuable benefit recognised by Islamic law. Its form may therefore vary, but its essential characteristic remains the same: it must constitute a lawful proprietary benefit capable of becoming the exclusive entitlement of the wife.¹⁴

20. Dower is consequently a mandatory legal incident of marriage. The parties may determine its amount, its form and whether it is prompt or deferred. They may agree upon an increase in its amount during the subsistence of the marriage. What they cannot ordinarily do is abolish the institution of dower itself.

¹² Sahih al Bukhari, Book of Al-Nikah, Hadith Nos. 5121, 5135, 5141, 5150, and Sahih Muslim, Hadith 3318

¹³ Ibn Rushd, *The Distinguished Jurist's Primer (Bidayat al-Mujtahid wa Nihayat al-Muqtasid)*, trans. Imran Ahsan Khan Nyazee, vol. 2 (Reading, UK: Garnet Publishing, 2000), 21.

¹⁴ Babu Ram Verma, *Mohammadan Law in India & Pakistan*, Chapter IV, Section 36

21. The philosophy underlying dower becomes apparent once these principles are understood. Islam did not institute dower because marriage is a commercial exchange. It instituted dower because marriage is an honourable union creating reciprocal rights. The obligation reminds the husband, at the very commencement of married life, that marriage confers responsibilities no less than privileges. The wife enters marriage not as an object of acquisition but as an equal participant in a solemn covenant whose dignity receives immediate legal recognition. Dower therefore represents far more than a financial obligation. It embodies respect. It recognises autonomy. It secures proprietary independence. It affirms that the wife possesses enforceable rights which neither social custom nor familial pressure may lawfully diminish. Its payment is not merely an economic transaction. It is the first legal manifestation of the husband's acknowledgement that the marriage covenant carries binding responsibilities ordained by Allah Almighty.¹⁵ Courts administering Muslim personal law must therefore approach disputes concerning dower with these foundational principles constantly in view. Where the law confers a proprietary right in fulfilment of a Divine command, judicial interpretation should, so far as the language of the law reasonably permits, advance rather than frustrate its effective protection.

22. It is in this jurisprudential context that we shall next examine the constitutional significance of dower and its relationship to the dignity, equality and financial security of women under the Constitution. Since Muslim personal law forms part of the law administered by the courts of this country, its interpretation must harmonise with the constitutional values that animate our legal order. Significantly, the constitutional principles of human dignity, equality, protection of the family, and adherence to the injunctions of Islam do not operate in separate compartments; they converge to reinforce the legal protection afforded to a wife's right to dower.

23. Article 2A incorporates the Objectives Resolution as a substantive part of the Constitution. It declares that Muslims shall be enabled to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and Sunnah. The

¹⁵ Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, P.334

constitutional significance of this provision lies not merely in affirming the Islamic identity of the State but in directing courts to interpret laws affecting Muslim personal relations consistently with those injunctions wherever the statutory language reasonably permits. The obligation to pay dower being expressly ordained by the Holy Qur'an, the Court cannot adopt an interpretation that renders the right illusory or incapable of effective enforcement. The constitutional command is not satisfied by formal recognition alone. Rights ordained by Islam must receive practical and meaningful protection through judicial interpretation.

24. Article 14 guarantees the inviolability of the dignity of man, a guarantee which extends equally to women. Human dignity is not confined to protection against physical abuse or unlawful detention. It permeates every legal relationship in which one individual may otherwise be placed at the mercy of another. Matrimonial relations are no exception. The institution of dower reflects this constitutional value in a remarkable manner. Long before modern constitutions recognised women's independent proprietary rights, Islamic law acknowledged the wife as a separate legal person possessing the unrestricted capacity to own and manage property. The obligation imposed upon the husband to provide dower at the commencement of marriage is among the earliest legal manifestations of that recognition. A wife who receives dower does not receive charity. She receives no favour. She receives no benevolence. She receives that which the law has declared to be her own. The distinction is fundamental. One who receives charity remains dependent upon the generosity of another. One who enforces dower vindicates a legal right.

25. Article 25 guarantees equality before law and equal protection of law. Equality, however, does not invariably require identical treatment. It requires that rights conferred by law receive equal recognition and equal protection. The law of dower illustrates this principle. Islam imposes financial obligations upon the husband while simultaneously relieving the wife from corresponding obligations. She remains the exclusive owner of her dower, even though the husband continues to bear responsibility for maintenance under the law. This distinction is not inequality. It is part of the equitable distribution of reciprocal rights and

responsibilities established by Islamic law. Courts must therefore resist two opposite errors. The first is to dilute the wife's entitlement in the name of formal equality. The second is to convert dower into an instrument of unjust enrichment contrary to the actual agreement of the parties. The judicial task is neither to diminish rights nor to enlarge them beyond lawful limits, but faithfully to enforce what Islamic law and the parties' agreement together require.

26. Article 35 obliges the State to protect marriage and the family. This constitutional directive is frequently understood only in relation to legislation concerning divorce or child welfare. Its reach is considerably broader. Protection of marriage necessarily includes protection of those legal rights which strengthen mutual respect and financial security within marriage. The institution of dower is one such right. A marriage in which the wife's financial entitlement is treated casually or denied without lawful justification cannot fully realise the objectives contemplated by Article 35. Protection of the family does not consist merely in preserving the legal bond between spouses. It requires preservation of justice within that relationship. Justice is the foundation upon which enduring families are built.

27. Article 227 provides further constitutional support. Where the Holy Qur'an expressly commands payment of dower and repeatedly legislates concerning its enforcement, courts must approach disputes concerning *mahr* with the presumption that Islamic law intended effective protection of the wife's entitlement. This does not authorise judicial legislation. It simply requires courts to avoid interpretations which unnecessarily defeat a right expressly recognised by Divine command.

28. Courts must remain conscious that legal institutions often perform important social functions beyond their immediate juridical consequences. Dower is among them. It reminds the husband that marriage begins with responsibility. It assures the wife that her financial rights are recognised from the very inception of the marital relationship. It symbolises honour without commodifying dignity. It provides financial security without reducing marriage to commercial exchange. It encourages seriousness in entering the marital covenant. Regrettably, social practices have at times undermined these objectives. Nominal dower amounts are

occasionally fixed merely to satisfy custom. In other instances, substantial dower is recorded without any genuine intention of performance. Sometimes valuable property is mentioned in the Nikahnama without adequate description or certainty. At other times, husbands acknowledge valuable dower at marriage but subsequently deny the agreement itself. Each of these practices frustrates the philosophy underlying Islamic law. Courts cannot reform social customs by judicial decree. They can, however, ensure that where parties have genuinely agreed upon dower, the right receives effective legal protection, and where ambiguity exists, interpretation is guided by the objectives which Islamic law sought to achieve rather than by technical formalism alone.

29. It follows that disputes concerning dower must not be approached as ordinary commercial litigation. The Court is not concerned merely with enforcing financial bargains. It is concerned with enforcing one of the principal proprietary rights which Islamic law attaches to marriage. This does not justify abandoning settled principles of evidence. It does require those principles to be applied with due appreciation of the nature of the right in issue. Accordingly, where two interpretations of a matrimonial transaction are reasonably open upon the evidence, the interpretation that best preserves the wife's lawful entitlement, while remaining faithful to the parties' actual agreement and the governing principles of Islamic law, should ordinarily be preferred. Such an approach neither favours one party nor creates new rights. It simply gives meaningful effect to the legal policy unmistakably reflected in the Holy Qur'an, the Sunnah, and the Constitution.

30. The discussion may be summarised in the following propositions:

- (i) *Dower is a mandatory legal incident of marriage imposed by Islamic law.*
- (ii) *It is neither the price of the wife nor consideration in the technical common-law sense.*
- (iii) *It constitutes the exclusive proprietary right of the wife.*
- (iv) *The institution reflects and reinforces the constitutional values of human dignity, equality before law, protection of the family and fidelity to the injunctions of Islam.*
- (v) *Courts must interpret laws affecting dower in a manner that gives practical and effective protection to the wife's lawful entitlement while remaining faithful to the actual agreement proved by the evidence.*

31. We now turn to the legal character of the transaction whereby a husband gives, either before the marriage or at the time of marriage or thereafter, immovable property to his wife in lieu of, wholly or partly, of her dower. The real purpose of this inquiry is not what form the transaction outwardly resembles, but what legal obligation the transaction is intended to discharge. Islamic jurisprudence has consistently attached greater importance to the substance of legal transactions than to the labels assigned to them. Transactions are judged according to their legal reality and intended operation, not merely according to the terminology employed by the parties.¹⁶ We are therefore of the view that greater doctrinal clarity is achieved by recognising that the act of giving property derives its legal character from the obligation of dower rather than by forcing it into categories developed for materially different transactions. It is made because Islamic law has already imposed upon the husband an enforceable proprietary liability, which he has elected to satisfy by giving property. In this respect, the transaction bears closer resemblance to performance of an obligation than to the creation of a contractual exchange. The property functions as the agreed medium of dower. We, therefore, consider that the better view is that to give an immovable property in lieu of dower is, in substance and legal effect, a mode of discharging a matrimonial obligation, and its validity, interpretation and enforcement must primarily be governed by the principles regulating dower itself.¹⁷ It bears noting that Muslim personal law creates and regulates the obligation of dower. The transfer of ownership in immovable property, however, is also governed by statutory law. Neither body of law operates in isolation. The Court's duty is to harmonise them so that each is given its proper field of operation. It is a settled principle that where one law creates a substantive right and another prescribes the mode by which that right is to be effectuated, the two should ordinarily be read together rather than in conflict. Muslim personal law determines whether a wife has become entitled to property as dower. The general law of property determines how title in that property is legally conveyed and protected.¹⁸

¹⁶ A famous legal maxim of Islamic Jurisprudence

(العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني) (In contracts, consideration is given to the objectives and meanings, not merely to the words and forms)

¹⁷ Kasani, *Badai al-Sania*, Vol. 2, P.282 to 297

¹⁸ *Fazal-ur-Rehman v. Mst. Sosan Jan and others* (1989 SCMR 651)

32. The next question before us concerns the legal character of the Nikahnama itself. Is it the marriage contract from which the parties' rights originate, or is it a statutory record prepared by a public functionary to preserve evidence of a contract already concluded? The answer to that question will determine the proper approach to interpreting ambiguous or inaccurate entries made in the prescribed form of Nikahnama. The answer is of far-reaching importance. If the Nikahnama is itself the contract, every right of the parties must necessarily originate from its contents. If, however, it is merely an official record of a transaction already completed, the Court's function extends beyond reading the document. It must ascertain whether the document faithfully records the agreement actually concluded between the parties.

33. Under Islamic law, a marriage comes into existence immediately upon a valid offer (*ijab*) and acceptance (*qabul*) exchanged between legally competent parties in the presence of the witnesses required by law. The legal relationship arises at that very moment. The rights and obligations of the spouses arise at that very moment. The obligation to pay dower likewise arises at that very moment. None of these consequences depends upon the subsequent preparation of a written document. The Nikahnama is ordinarily prepared after the essential ingredients of marriage have already been completed. The parties have agreed. The marriage has been solemnised. The witnesses have attested it. Only thereafter does the Nikah Registrar perform his statutory duty of recording the transaction in the prescribed form, that is, the Nikahnama. Chronology itself demonstrates that the marriage is the juridical source of the rights; the Nikahnama is their official memorial.

34. Be it noted here that the requirement of maintaining a Nikahnama was introduced not to alter the juristic nature of marriage but to secure certainty, authenticity and public record. The Legislature recognised that matrimonial disputes frequently arose regarding dower, delegated divorce, conditions of marriage and other agreed terms. A contemporaneous written record prepared by an authorised public functionary was therefore intended to minimise subsequent controversy. The statute, the Muslim Family Laws Ordinance, 1961, sought to improve proof. It did not seek to redefine marriage. The prescribed Nikahnama is therefore an instrument of

evidence. It records. It does not create. It certifies. It does not solemnise. It preserves. It does not originate.

35. The legal position of the Nikah Registrar also deserves careful attention. The Union Council, under section 5 of the Muslim Family Laws Ordinance, 1961, grants a licence to any person competent to solemnise a marriage under Muslim Law to act as a Nikah Registrar. He performs public duties.¹⁹ He is required to maintain official registers and record the particulars of marriages in the manner prescribed by law.²⁰ He is not, however, a party to the marriage contract and has no authority to negotiate its terms on behalf of either spouse. His function is ministerial, though undoubtedly important. The Nikah Registrar neither determines the amount of dower nor decides the conditions upon which the parties agree. The spouses or their authorised representatives settle those matters before or at the time of the solemnisation of marriage. The Nikah Registrar's duty is to faithfully reduce those agreed terms into the prescribed Nikahnama. His authority is evidentiary, not creative.

36. To emphasise what we have stated above, it may also be noted that every legal system recognises a distinction between a legal transaction and the document recording it. A contract for sale exists because the parties agree. A deed records or effectuates that agreement according to law. A judgment records the decision of the Court. The judgment is not the dispute. Likewise, a birth certificate records a birth; it does not bring the child into existence. The Nikahnama belongs to the same evidentiary category. It is evidence of the marriage. It is not the marriage contract itself.

37. We have thus identified the legal character of the Nikahnama. The remaining question concerns the evidentiary principles governing its use and the methodology by which ambiguous entries in the Nikahnama are to be interpreted. Since that issue affects not only disputes relating to dower but every material stipulation contained in the Nikahnama, it calls for the formulation of clear principles capable of uniform application by the Courts throughout the country.

¹⁹ Muhammad Arif v. Muhammad Kawshar Ali (PLD 1969 SC 435)

²⁰ Sections 8, 9 and 10 of the Muslim Family Laws Ordinance, 1961 read with Rule 8 of the Rules under the Muslim Family Laws Ordinance, 1961

38. A Nikahnama is both a private and a public document in different senses. It records a private transaction between two individuals.²¹ It is, however, prepared in the manner prescribed by statute. A public officer completes it. It forms part of an official register maintained under law. The law therefore attaches public importance to its preparation and preservation. Even so, its public character does not alter the source of the rights recorded therein. The rights continue to arise from the agreement of the parties as recognised by Islamic law. The statutory record merely preserves evidence of those rights. Accordingly, the interpretation of the Nikahnama must simultaneously respect two objectives: first, preserving the integrity of official records; and secondly, giving effect to the actual consensus of the parties. Neither objective should be sacrificed unnecessarily in favour of the other.²²

39. Being prepared by a public functionary in the discharge of statutory duties, the Nikahnama enjoys a presumption of regularity.²³ Courts ordinarily presume that official acts have been regularly performed.²⁴ Consequently, the entries made by the Nikah Registrar constitute prima facie evidence of the matters recorded therein. The presumption is an important one. It promotes certainty. It protects public confidence in official records. It discourages frivolous challenges. Nevertheless, the presumption is not conclusive. It is rebuttable. The law has never regarded official records as infallible. Public officers may misunderstand instructions. They may omit particulars. They may employ inaccurate language. They may commit clerical errors. The purpose of the presumption is to facilitate proof, not to perpetuate injustice.

40. Experience demonstrates that many matrimonial disputes arise not because the parties failed to reach agreement but because the agreement was imperfectly recorded. Several factors contribute to this difficulty. The Nikahnama is completed under circumstances that are often informal. The parties are ordinarily not trained in law. The Nikah Registrar frequently records legal concepts causally. Many entries are made in haste. Some columns are left

²¹ Fazal ur Rehman v. Mst. Sosan Jan and others (1989 SCMR 651)

²² Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd., [2002] 1 S.C.R. 678

²³ Ashiq Ali and others v. Mst. Zamir Fatima and others (PLD 2004 SC 10)

²⁴ Art. 129, Qanun-e-Shahadat, 1984.

blank. Others are completed without fully appreciating their legal significance. Occasionally, ambiguous expressions are employed to describe valuable immovable property. None of these possibilities may be ignored by the Court. Under the scheme of the Muslim Family Laws Ordinance, 1961, and the rules made thereunder, the Nikah Registrar is not expected to adjudicate disputes. His function is administrative. He records what he is told. The possibility of recording error is therefore inherent in the statutory scheme.

41. It would be contrary to both justice and common sense to hold that every inaccuracy committed by the Nikah Registrar automatically destroys rights genuinely agreed upon by the parties. Such an approach would subordinate substance to form. It would make the statutory record superior to the transaction which it was designed merely to preserve. The law does not favour such inversion. Equally unacceptable would be the opposite approach, whereby every dissatisfied litigant is permitted to disregard the Nikahnama upon making a bare allegation that it does not reflect the true agreement. Such an approach would undermine the very certainty which the statutory record was intended to achieve. The law must therefore strike an appropriate balance.²⁵ We accordingly hold that the Nikahnama occupies a dual evidentiary position. It is the primary documentary evidence²⁶ of the terms of the marriage. Ordinarily, the Court shall begin with the language employed in the Nikahnama. Where that language is clear, complete and free from ambiguity, it ordinarily furnishes the best evidence of the parties' agreement. Where, however, the language is reasonably capable of more than one interpretation, is internally inconsistent, contains obvious omissions, inaccurately describes the subject matter, or is challenged by cogent evidence demonstrating that it does not faithfully record the actual agreement, the Court is not confined to the document alone. It may receive admissible evidence directed to ascertaining the true consensus of the parties.²⁷

²⁵ *Frederick E. Rose (London) Ltd. v. William H. Pim Jnr. & Co. Ltd* (1953) QB 450 and *Crane v. Hegeman-Harris Co.* (1939) 1 All ER 662

²⁶ Articles 102 and 103 of the Qanun-e-Shahadat, 1984

²⁷ Article 105 of Qanun-e-Shahadat, 1984, *Dalip Singh and others v. Dalip Singh and others* (AIR 1930 Lahore 446) and *Arya ad others v. Daundi and others* (AIR 1940 Lahore 236)

42. The burden of displacing the presumption attached to the Nikahnama rests upon the party asserting that the document does not correctly record the transaction. A mere denial is insufficient. A party faced with such a situation would be obliged to plead the true agreement with all its essential details; identify the erroneous or ambiguous entries; produce evidence of the parties' common intention; explain that the mistake originated with the Nikah Registrar; and seek an interpretation consistent with the parties' actual agreement.²⁸ The evidence to be presented must be clear, convincing and consistent. The greater the departure sought from the official record, the heavier becomes the evidentiary burden. Whenever such a dispute arises, the Court should ordinarily proceed in the following sequence:

First, determine whether the disputed entry is clear or genuinely ambiguous.

Secondly, ascertain the source of the ambiguity, including whether it arose from the Nikahnama, the Nikah Registrar, the parties themselves, or subsequent events.

Thirdly, where ambiguity genuinely exists, consider admissible evidence relating to the circumstances prevailing at the time of marriage.

Fourthly, evaluate subsequent conduct only insofar as it reliably reflects the parties' original intention.

Fifthly, prefer the interpretation that best harmonises all parts of the Nikahnama rather than rendering any material entry meaningless.

Sixthly, adopt the interpretation which most faithfully gives effect to the actual agreement of the parties, provided it is consistent with Islamic law and the applicable statutory provisions.

This approach neither weakens the evidentiary value of the Nikahnama nor diminishes the authority of the Nikah Registrar. On the contrary, it preserves the integrity of the statutory scheme by recognising that official records exist to serve justice rather than to defeat it. The law protects documents because they ordinarily record the truth. It does not require courts to ignore the truth merely because the document is imperfect.

²⁸ Crane v. Hegeman-Harris Co. (1939) 1 All ER 662, Frederick E. Rose (London) Ltd. v. William H. Pim Jnr. & Co. Ltd (1953) QB 450 and Swainland Builders Ltd v. Freehold Properties Ltd. (2002) 2 EGLR 71

43. It is important to reiterate that family disputes differ fundamentally from commercial litigation. The purpose of adjudication is not merely to identify technical defects in documentation. It is to administer justice within relationships that frequently involve unequal bargaining power, limited legal advice and documents prepared by public officials in informal settings. Excessive technicality is therefore particularly inappropriate where it defeats rights clearly intended to be created. This does not mean that courts are at liberty to rewrite the Nikahnama according to subjective notions of fairness. Judicial interpretation is not judicial legislation. The Court cannot create obligations never undertaken. Nor can it deprive one party of rights clearly reserved by lawful agreement. The object remains faithful interpretation, not benevolent reconstruction. We accordingly hold that where a material entry in the Nikahnama is reasonably capable of more than one meaning, or where the Nikahnama fails adequately to record the transaction actually concluded by the parties, the Court shall interpret the document by reading its language in light of the surrounding circumstances, the conduct of the parties, the objectives of the law relating to marriage and dower, and the constitutional principles protecting dignity, justice and the family, always striving to give effect to the true agreement proved by the evidence rather than to an accidental imperfection in the statutory record.

44. It is now necessary to examine the relationship between Columns 13, 14, 15 and 16 of the Nikahnama. These columns are presented in the following manner in the Nikahnama prescribed in the rules under the Muslim Family Laws Ordinance, 1961:

- | | |
|--|----------|
| 13. Amount of dower | : _____ |
| 14. How much of the dower is mu'ajjal (prompt) and how much mu'wajjal (deferred) | : _____ |
| 15. Whether any portion of the dower was paid at the time of marriage, if so, how much | : _____ |
| 16. Whether any property was given in lieu of the whole or any portion of the dower with specification of the same and its valuation agreed to between the parties | : _____” |

A review of these columns shows that all relate to dower, though each addresses a distinct aspect of it. They are complementary rather than contradictory. Before examining these provisions in more detail, however, two elementary principles concerning dower must be kept

in view. First, in Islamic law there is no maximum limit prescribed for dower. Accordingly, any lawful object having value may be settled as dower. It may, therefore, take the form of cash, merchandise, goods, gold, jewellery, movable or immovable property, shares in a company, dividends, or any other lawful asset of value. Second, the amount or subject matter of dower may be fixed at any time before the marriage, at the time of marriage, or even after the marriage, so long as the marriage subsists. It may also be increased during the subsistence of the marriage.²⁹ With these principles in mind, we turn to the relevant columns of the Nikahnama, which is prescribed in the English language and is contained in Form II of the Rules framed under the Muslim Family Laws Ordinance, 1961. **Column 13** records the amount of dower. It is important to clarify at the outset its three important aspects: first, the words “amount of dower” are not preceded by the word “total”, which means the amount of dower stated in this column does not represent the whole existing dower. The second is that the word “amount” is used here as a noun, which, according to the Oxford Advanced Learner’s Dictionary of Current English, means the quantity of something. Therefore, the words “amount of dower” refer to the quantity of dower. The third is that translating the word “amount” into Urdu as “رقم” (“raqam”) may, in certain contexts, be misleading. The word “رقم” (“raqam”) is commonly understood to denote cash, and if construed narrowly, it may unduly restrict the concept of dower to monetary consideration alone, whereas under Islamic law and the statutory scheme, dower may consist of any lawful object of value. Such a restrictive interpretation would not be consistent with the underlying legal principles governing dower. In substance, Column 13 requires the Nikah Registrar to record the dower correctly agreed between the parties, which may consist of cash, movable or immovable property, gold, jewellery, or any other lawful object of value. **Column 14** specifies what portion of the dower is prompt (mu'ajjal) and what portion is deferred (mu'wajjal). **Column 15** records whether any portion of the dower was paid at the time of marriage and, if so, the amount or value thereof. **Column 16** records whether any property is given in lieu of the whole or any portion of the dower, together with a

²⁹ Mian Aziz A. Sheikh v. The Commissioner of Income Tax Investigation, Lahore (PLD 1989 SC 613), Mst. Naziran Begum through LRs v. Mst. Khurshid Begum through LRs (1999 SCMR 1171), and Ghania Hassan v. Shahid Hussain Shahid and another (2016 SCMR 2170)

specification of that property and the valuation agreed upon by the parties. At this juncture, four features of Column 16 are particularly significant. First, the words "**at the time of marriage**", which expressly appear in Column 15, are not in Column 16. This omission is not without purpose; it may signify a transaction that had not taken place at the time of marriage. It is equally possible that it is related to that dower that was agreed upon at the time of marriage. That is why it has been couched in a language that is unfettered by the constraints of time. Second, Column 16 refers to "**property**", which may be of any kind, whether movable or immovable. Third, it requires the property given in lieu of the whole or any portion of the dower to be specifically identified, together with its valuation as agreed between the parties. Fourth, it does not stipulate that the dower mentioned in it is an alternative arrangement to the dower listed in Columns 13, 14 and 15. Neither excludes the other. If the legislature intended this, it would have stated it explicitly. The omission regarding this point is deliberate and meaningful. Thus, a harmonious reading of these columns suggests that the dower specified within them collectively represents the total amount of dower agreed upon. As such, the view expressed in *Naheed Begum* and *Fakhara Jabeen* with regard to these columns is hereby clarified and further explained, albeit in a somewhat different tone and with certain modifications.

45. There is, however, an additional issue that frequently arises in proceedings for the recovery of dower. Our attention has been drawn, based on empirical study and experience, to instances where a husband gives, and records in the *Nikahnama* or *Kabinnama* as dower, immovable property which he neither owns nor possesses, or he partially owns and possesses the property, or where he gives property without providing its details and descriptions. There are also instances where the property so given is the subject matter of litigation, and the husband subsequently loses his title thereto as a consequence of such proceedings. It is to be noted here that when the parties agree that an immovable property shall be given to the wife in lieu of, or towards satisfaction of, dower, such an entry in the *Nikahnama* ordinarily evidences an agreement or undertaking to transfer the property. Therefore, in the circumstances described above, the husband cannot be permitted to defeat his undertaking

and the wife's entitlement to dower merely because the property specified in the *Nikahnama* could not ultimately be transferred to or retained by her. The inability to transfer the property cannot, by itself, extinguish the underlying obligation to pay the dower. The husband must remain liable to discharge that obligation. It would, therefore, be appropriate to hold that where immovable property has been stipulated as dower but ultimately cannot be transferred to the wife, the husband remains liable to satisfy the dower obligation by paying the value of the immovable property expressly agreed between the parties and recorded in the *Nikahnama*. Where no such value has been agreed or recorded, the Court may determine the value of the property on the basis of its market value prevailing at the time of decree or adjudication of the wife's claim for recovery of dower. Such an approach preserves the substance of the parties' agreement, prevents the husband from taking advantage of his own inability or failure to transfer the property, and, most importantly, ensures the effective enforcement of the wife's vested entitlement to dower.³⁰

46. The foregoing principles answer the interpretive issues. It now remains to synthesise the conclusions reached throughout this judgment into clear answers to the questions formulated and to issue such directions as may be necessary for the guidance of Courts, *Nikah* Registrars and other authorities entrusted with the administration of Muslim family law. This is important because it concerns not merely the interpretation of a particular *Nikahnama*, but the proper legal methodology for construing a statutory marriage document. The entries in different columns cannot be read in isolation; they must be harmonised so that every entry is given effect, if reasonably possible. No single column should ordinarily be treated as overriding another. A *Nikahnama* is prepared by a public functionary on a prescribed statutory form. Any ambiguity or inconsistency in the entries is, therefore, not to be visited upon the spouses without first attempting a harmonious construction consistent with Islamic law, the intention of the parties, and the surrounding circumstances.

³⁰ *Rustam Ali v. Abdul Jabbar* (AIR 1923 Cal 535), *Dr. Asma Ali v. Masood Sajjad and others* (PLD 2011 SC 221), *Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan and others* (PLD 2016 SC 613), *Fawad Ishaq and others v. Mst. Mehreen Mansoor and others* (PLD 2020 SC 269)

47. Before parting, we wish to emphasise that we must not allow the institution of marriage to be reduced to a transaction where the wife's rights are an afterthought. We must not allow husband to treat dower as a weapon to be used in later disputes. I will pay you if you behave; I will pay you if you do not ask for divorce. That is not dower. That is coercion. True dower is given with a good heart, at the time agreed, without conditions that demean the wife. And when it is not given, the courts must step in, not with hesitation, not with apology, but with the full authority of the law. Because to fail to enforce dower is to tell every woman in this jurisdiction that her rights are theoretical. It is to tell every man that he can make promises before Allah and before the law and then ignore them. It is to weaken the family and, through the family, to weaken the nation. Therefore, in every case that comes before a court involving dower, the court must begin with this premise: the wife's dignity is at stake. Her right is not a favour. It is a command of the Shari'ah, a command of the statute, and a command of justice. The Court's task is to determine, on evidence, what that right is, and then to ensure that it is fulfilled. Let no husband think that he can escape this liability by silence. Let no court think that it can dispose of this matter lightly. For in protecting dower, we are protecting the home. By protecting the home, we protect society. And in protecting society, we are fulfilling the promise of a nation that claims to be founded on the principles of Islam, justice, and human dignity. The law is clear. The religion is clear. The conscience of society is clear. What remains is only the determination of fact: what was the dower, and how did the husband agree to pay it? Once that is determined, the decree must follow, and it must be enforced with grace if the husband complies, and with the full force of law if he does not. That is the only way to ensure that the dignity of a wife, which begins at the Nikah, is protected until the very end.

48. In view of the foregoing discussion, we have answered the questions of law formulated hereinabove. As the present proceedings were confined to the resolution of those legal questions, we have deliberately refrained from expressing any opinion on the merits of the individual cases or on the factual controversies involved therein, lest any observation made by us should prejudice either party. The office is, therefore, directed to place each of these cases before the

appropriate Bench, in accordance with the roster, for decision on its own merits in the light of the evidence available on the record.

**Sd/-
Judge**

**Sd/-
Judge**

**Sd/-
Judge**

**Sd/-
Judge**

While agreeing, I have
added my additional note.

Announced in open Court at
Islamabad on **22.09.2026**.

Judge

APPROVED FOR REPORTING.

ADDITIONAL NOTE IN CPLAs Nos.372-P & 373-P of 2019, etc.

SHAHID BILAL HASSAN-J: I have had the privilege of perusing the illuminating judgment authored by my respected colleague Mr. Shahid Waheed, J., and I find myself in respectful concurrence therewith. Nonetheless, considering the significance of the issues involved, I deem it expedient to append a separate concurring opinion by way of additional reasons.

2. Family is the basic unit of society, and its stability and well-being depend upon the institution of marriage. In Islam, marriage is the only lawful and honorable relationship between an adult man and woman, serving as the foundation of family life while prohibiting intimate relations outside this bond. It establishes a relationship based on love, mercy, mutual trust, and respect, enabling spouses to live as lifelong partners who support one another and nurture their personal growth. Marriage is therefore regarded as the cornerstone of a stable family and an essential step towards peace, progress, and the development of a Muslim society. As strong families form the foundation of a harmonious society, the stability and prosperity of the community ultimately depend upon the strength and sanctity of the marital relationship.³¹ Recognizing the central role of the family, the Constitution of the Islamic Republic of Pakistan incorporates its protection within the *Principles of Policy*. Article 29³² requires every organ and authority of the State to act in accordance with these principles, while Article 35³³ specifically obligates the State to protect marriage, the family, the mother, and the child, thereby affirming the constitutional commitment to preserving and strengthening this fundamental institution of society.

3. The matrimonial bond and the institution of family occupy a central place in Islamic values and teachings. Our religion and culture regard marriage as a sacred covenant, with the Holy Quran describing spouses as garments for one another, symbolising protection, mutual

³¹ Gender Perspective in the UN Document on the Fourth World Conference on Women in Beijing. An Analysis of Platform for Action by Dr. Zeenath Kausar

³² 29. **Principles of Policy.** (1) The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.

(3) In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each Province in relation to the affairs of his Province, shall cause to be prepared and laid before each House of Majlis-e-Shoora Parliament or, as the case may be, the Provincial Assembly, a report on the observance and implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the National Assembly and the Senate or, as the case may be, the Provincial Assembly, for discussion on such report.

³³ 35. **Protection of family, etc.** The State shall protect the marriage, the family, the mother and the child.

respect and dignity.³⁴ This principle finds meaningful expression in the teachings of the Holy Quran and the sayings of the Holy Prophet (PBUH), as follows:

‘And among His signs is this: that He created mates for you from yourselves that you may find rest and peace of mind in them, and He ordained between you love and mercy. Certainly, herein indeed are signs for people who reflect.’³⁵

‘they are apparel for you, and you are apparel for them’.³⁶

‘Marriage is my sunnah. Whosoever keeps away from it is not from me’.³⁷

‘He who marries completes half of his religion’.³⁸

‘O group of youngsters, whoever amongst you has the means should get married, because it keeps the gaze down the best and it is the most protecting for the private parts. Whoever does not have the means should fast, because that breaks the temptation.’³⁹

‘Divorced women must wait three monthly cycles ‘before they can re-marry’. It is not lawful for them to conceal what Allah has created in their wombs, if they ‘truly’ believe in Allah and the Last Day. And their husbands reserve the right to take them back within that period if they desire reconciliation. Women have rights similar to those of men equitably, although men have a degree ‘of responsibility’ above them. And Allah is Almighty, All-Wise.’⁴⁰

‘O believers! It is not permissible for you to inherit women against their will or mistreat them to make them return some of the dowry ‘as a ransom for divorce’—unless they are found guilty of adultery. Treat them fairly. If you happen to dislike them, you may hate something which Allah turns into a great blessing.’⁴¹

‘If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware.’⁴²

4. While some legal systems regard marriage primarily as a sacrament, others treat it as a civil contract. In Islam, however, marriage occupies a distinctive and more profound position. The Holy Quran

³⁴ Saleh Muhammad and another v. Mst. Mehnaz Begum and others **PLD 2025 Supreme Court 1039**

³⁵ The Holy Quran, 30:21,

³⁶ The Holy Quran, 2:187,

³⁷ Sahih Bukhari, Book of Marriage (62), Volume 7,1.

³⁸ Sahih Bukhari (n 7)

³⁹ Sahih Bukhari, Book of Marriage (62), Volume 7, 4.

⁴⁰ The Holy Quran, 2:228

⁴¹ The Holy Quran, 4:19

⁴² The Holy Quran, 4: 35

describes the marital bond as “Mithāqan Ghalīẓan” a firm and solemn covenant⁴³, signifying that marriage is not merely an ordinary civil arrangement but a sacred and deeply binding commitment between the spouses. It is regarded as a righteous act and an act of devotion (*‘ibadah*). The Holy Prophet (PBUH) further underscored the importance of marriage by declaring it part of his Sunnah and encouraging young men to marry as a means of safeguarding their character, maintaining moral purity, and living a virtuous life.

5. The renowned scholar Dr. Tanzil-ur-Rehman defines marriage (*nuptiae*) as a legal contract that legitimizes the physical relationship between a man and a woman, establishes the lineage of their offspring, and creates reciprocal civil rights and obligations between the spouses. While acknowledging that an Islamic marriage shares certain characteristics with a civil contract, he distinguishes it from a purely civil contract. According to him, the contractual nature of *Nikah* is inseparably linked with the religious principles and obligations prescribed by Islamic Shari'ah, giving it a character distinct from that of an ordinary civil contract. This distinction is evident in several respects. Unlike an ordinary civil contract, which is governed by the general law of contract, a Muslim marriage is regulated by the principles of Islamic Shari'ah and may only be contracted between parties legally competent under Islamic law. Likewise, the rights and obligations of spouses arise primarily from the injunctions of Islam, while any contractual stipulations must remain consistent with the essential requirements of a valid *Nikah*. Its dissolution is also subject to specific legal and religious safeguards, particularly for the protection of the wife. Furthermore, the validity of a *Nikah* requires the presence of witnesses under Sunni jurisprudence, and the Maliki school additionally emphasizes its public proclamation (*i'lan*), reflecting its distinct legal and social character. Accordingly, *Nikah* is not merely a civil or social contract. Although it gives rise to legally enforceable civil rights and obligations and is civil in its legal consequences, its foundation lies in the commands of Allah and the Sunnah of the Prophet Muhammad (peace be upon him). Its legal effects arise from the mutual offer and acceptance of the parties within the framework prescribed by Islamic law. For this reason, Muslim jurists regard *Nikah* as both a religious and a temporal institution.⁴⁴ Judicial support for this understanding is

⁴³ The Holy Quran, 4:21,

⁴⁴ Dr. Tanzil-Ur-Rahman, A Code of Muslim Personal Law, vol 1 (Hamdard Academy First Edition, 1978)

found in the case of *Mst. Khurshid Bibi*⁴⁵ and *Shahida Parveen*⁴⁶, wherein it was observed that, under Islamic law, marriage is not a sacrament but is essentially in the nature of a civil contract. However, this contractual relationship is imbued with profound spiritual and moral significance. Legally, it remains an agreement between the parties that may be dissolved for a valid and lawful cause. In this respect, Islam the *Dīn al-Fiṭrah* (the religion of human nature) accords with the dictates of human nature and does not require a man and a woman to remain bound in what has aptly been described as a "holy deadlock."

6. Islamic law traces its origins to the life of the Holy Prophet Muhammad (peace be upon him) and the revelation of the Holy Qur'an over a period of twenty-three years. The Muslim community established in Madinah became the foundation upon which Islamic law developed as a system for organizing and governing society. The commands and prohibitions revealed by Allah through the Holy Qur'an and explained through the Sunnah of the Holy Prophet (peace be upon him) formed the basis of Islamic law. These teachings were preserved and transmitted by the Companions, their successors, and later generations as Islam spread beyond Arabia and its legal principles were gradually systematized and elaborated.

7. The formative period of Islamic jurisprudence began after the era of the Holy Prophet (peace be upon him) and continued during the classical period of Islamic civilization. During this period, Muslim jurists addressed matters not expressly covered by the Qur'an or the Sunnah by developing principles of Islamic jurisprudence. In doing so, they drew upon the Qur'an and the Sunnah, together with other recognized sources and methods of legal reasoning, including *Ijma* (consensus), *Qiyas* (analogical reasoning), *Urf* (custom), *Istihsan* (equity or juristic preference), and *Istislah* (consideration of public interest). The evolution of *fiqh* through these sources and methods gradually gave rise to distinct schools of Islamic law, most notably the Hanafi, Shafi'i, Maliki, Hanbali, and Ja'fari schools, each developing its own juristic doctrines and scholarly tradition.

8. During the Mughal period, India was administered through a decentralized system in which towns and cities exercised responsibility for the administration of justice. While remaining subject to the authority of the Mughal Emperor, local authorities applied the dominant school of law and recognised customary practices. Under the patronage of Emperor Aurangzeb Alamgir, five hundred jurists compiled the

⁴⁵ *Mst. Khurshid Bibi v. Baboo Muhammad Amin* **P L D 1967 Supreme Court 97**

⁴⁶ *Shahida Parveen v. Samiullah*, **PLJ 2006 Lahore 1215**

Fatawa-i-Alamgiri, a comprehensive digest of Hanafi law. This work served as the principal legal reference during the Mughal period and later became an important source for the administration of Islamic law during British rule. It also continues to be regarded as an authoritative source and is cited in D.F. Mulla's *Principles of Muhammadan Law*, a work frequently referred to by Pakistani courts.

9. During the colonial period, the British transformed the existing system of Islamic law into what became known as Anglo-Muhammadan law. Although the substantive rules remained Islamic, they were administered through English courts applying common law principles of justice and equity. The British established a hierarchy of courts, translated important Islamic legal texts into English, and sought to codify Islamic law through interpretation, legislation, adjudication, and legal education. As a result, Islamic law was reduced to a defined body of legal texts to facilitate its application by colonial judges. Following the independence of Pakistan in 1947, the legislation governing Islamic Family Law largely remained unchanged until the publication of the Report of the Marriage and Family Laws Commission in 1956 and the promulgation of the Muslim Family Laws Ordinance, 1961.⁴⁷

10. The Commission on Marriage and Family Laws was constituted by the Government of Pakistan on 4 August 1955 to examine whether the existing Muslim personal laws relating to marriage, divorce, maintenance, inheritance, and other family matters required reform in order to ensure that Muslim women enjoyed the status and rights envisaged by the principles of Islam. The Commission consisted of seven distinguished members representing the fields of law, religion, and public affairs. Following the untimely demise of its first Chairman, Dr. Khalifa Shuja-ud-Din, the Commission was reconstituted under the chairmanship of Mian Abdul Rashid, the former Chief Justice of Pakistan. At the outset, the Commission recognised that Islamic law derives its authority from the Qur'an and the Sunnah, but also acknowledged that these primary sources permit the exercise of Ijtihad to address emerging social issues. It observed that while the fundamental principles of Islam remain permanent and unalterable, the legal rules governing social relations may be adapted to changing circumstances, provided such adaptations remain faithful to the spirit and objectives of Islamic law. Proceeding on this understanding, the Commission undertook a fresh examination of Muslim family law in light of the social conditions prevailing in Pakistan. To ensure that its

⁴⁷ Muslim Family Laws Bench Book for Judges in Pakistan (Musawi Private Limited) <https://musawi.org/projects/bench-book-for-judges-on-muslim-family-laws/>

recommendations reflected a broad spectrum of opinion, the Commission prepared a comprehensive questionnaire and circulated it among religious scholars, jurists, judges, lawyers, women's organizations, educational institutions, and other knowledgeable persons. The responses received represented diverse viewpoints and assisted the Commission in identifying the principal issues confronting Muslim family law before framing its recommendations.

11. The Commission ultimately proposed a number of reforms aimed at improving the administration of Muslim family law while, in its view, remaining consistent with Islamic principles. It recommended the compulsory registration of marriages and divorces through a prescribed *Nikah Nama*, so that the essential terms of the marriage contract would be formally recorded and legally enforceable. It further supported the inclusion of lawful contractual stipulations in the marriage contract, including the delegation of the husband's right of divorce (*Tafweez-e-Talaq*), where mutually agreed by the parties. With regard to polygamy, the Commission observed that the Qur'anic permission to contract more than one marriage is conditional upon the husband's ability to deal justly with all wives. Considering that this condition was often ignored in practice, it recommended that a husband should not be permitted to contract another marriage during the subsistence of an existing marriage without first obtaining the permission of a Matrimonial Court, thereby placing polygamy under judicial supervision. In relation to divorce, the Commission sought to discourage arbitrary and unilateral divorces by introducing judicial oversight. It proposed that no divorce should become effective unless proceedings had first been brought before a Matrimonial and Family Laws Court, thereby providing an opportunity for reconciliation and ensuring fairness to both spouses. The Commission also made recommendations concerning maintenance, guardianship, inheritance, and the welfare of children. It proposed that the courts should have the authority to appoint any suitable person, including the mother, as the guardian of a minor's property whenever such an appointment best served the interests of the child. Recognising that effective legal remedies require an appropriate institutional framework, the Commission recommended the establishment of special Matrimonial and Family Laws Courts, presided over by officers of the rank of District Judge, with appeals lying directly to the High Court. It emphasised that matrimonial disputes should be decided promptly, observing that prolonged litigation often defeats the very purpose of justice in family matters. In conclusion, the Commission expressed the view that although a comprehensive codification of Muslim family law

would ultimately be desirable, immediate legislative attention should focus on the establishment of specialised family courts and the regulation of polygamy and divorce through judicial control. It believed that these reforms would address the most pressing grievances affecting Muslim families, particularly women, while laying the foundation for a more coherent and effective system of family law in Pakistan.⁴⁸

12. The Muslim Family Laws Ordinance, 1961 was promulgated to implement certain recommendations made by the Commission on Marriage and Family Laws. As reflected in its preamble, the Ordinance gives statutory effect to those recommendations and applies to Muslim citizens of Pakistan. It is a special legislation governing specific aspects of Muslim family law.

13. The Ordinance addresses the law of succession by recognizing the inheritance rights of the children of a predeceased son or daughter. It also preserves the inheritance rights of persons belonging to the Fiqah-e-Jafria (Shia school of thought) in accordance with their personal law. A significant feature of the Ordinance is the compulsory registration of every marriage solemnized under Muslim law. To facilitate this process, it provides for the appointment of Nikah Registrars, the maintenance of marriage records, and the procedure for registration. The Ordinance also regulates polygamy. It requires a man, during the subsistence of an existing marriage, to obtain the prior written permission of the Arbitration Council before contracting another marriage. It further prescribes the procedure for obtaining such permission and specifies the legal consequences of contracting another marriage without the required approval. With respect to divorce, the Ordinance requires a husband who has pronounced *talaq* to give written notice to the Chairman and to provide a copy of that notice to his wife. It further provides for the constitution of an Arbitration Council to attempt reconciliation, prescribes the period after which *talaq* becomes effective, and contains special provisions applicable to persons governed by Fiqah-e-Jafria. The same procedural framework, with necessary modifications, also applies to the dissolution of marriage otherwise than by *talaq*, including cases where the husband has delegated the right of divorce to the wife. The Ordinance further provides a mechanism for determining maintenance where a husband fails to maintain his wife adequately or fails to maintain his wives equitably. It also declares that where the mode of payment of dower is not specified in the *Nikah Nama* or marriage contract, the entire amount of dower shall be deemed

⁴⁸ The Report of the Commission on Marriage and Family Laws (The Gazette of Pakistan No. F.9(4)56-Leg) dated 11th June, 1956

payable on demand. Finally, the Ordinance empowers the Federal Government and the Provincial Governments to make rules for carrying its provisions into effect.

14. Section 11 of the Muslim Family Laws Ordinance, 1961 empowers the Federal Government, in respect of Cantonment areas, and the Provincial Government, in respect of all other areas, to make rules for carrying the purposes of the Ordinance into effect. In exercise of this rule-making power, the Governor of West Pakistan framed the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, to regulate the implementation of the provisions of the Ordinance.

15. The Rules⁴⁹ prescribe the procedure for implementing the provisions of the Muslim Family Laws Ordinance, 1961. They regulate matters relating to Arbitration Councils, registration of marriages, polygamy, revision proceedings, preservation of records, payment of fees, and complaints under the Ordinance.

16. The Rules determine the jurisdiction of the Union Council in matters concerning permission for a subsequent marriage, notice of *talaq*, and applications for maintenance. They also prescribe the procedure for the constitution and functioning of the Arbitration Council, including the nomination of representatives by the parties, the conduct of proceedings, the recording of decisions, and the mode of serving notice of *talaq* where the wife's whereabouts are unknown. In relation to marriage registration, the Rules provide for the licensing of Nikah Registrars, the maintenance of registers and official records, the registration of marriages solemnized within and outside Pakistan, and the payment of prescribed fees. They also prescribe Form I for the licence of a Nikah Registrar and Form II, which contains the prescribed form of the *Nikah Nama*. With regard to polygamy, the Rules specify the matters to be considered by the Arbitration Council while deciding an application for permission to contract another marriage and prescribe the form, contents, and fee for such applications. They further lay down the procedure for revision proceedings, regulate the preservation and inspection of records, the issuance of certified copies, the payment of prescribed fees, and the institution of complaints for offences under the Ordinance and the Rules.

17. The controversy in the present case centres on the interpretation of the columns of the prescribed *Nikahnama*. The starting point for determining its legal significance is Section 5 of the Muslim Family Laws Ordinance, 1961, which makes the registration of every Muslim

⁴⁹ The Muslim Family Laws Rules, 1961

marriage compulsory and authorizes the prescription of the form of the *Nikahnama*, the registers to be maintained by Nikah Registrars, the records to be preserved by the Union Council, and the procedure for registration. Rule 8 gives effect to this statutory scheme by requiring every licensed Nikah Registrar to record marriages only in the official bound register of *Nikahnamas* supplied by the Union Council. The prescribed *Nikahnama* is, therefore, not a document prepared at the discretion of the parties but a statutory form prescribed under the authority of the Ordinance.

18. It is a settled principle of statutory interpretation that a form appended to a statute or contained in a Schedule is ordinarily intended to serve as a model or guide and cannot be permitted to override, enlarge or restrict the clear language of the substantive/enacting provision. Where there is any inconsistency between the enacting part of the statute and the prescribed form, the former must prevail. Such forms may, however, be consulted as an aid to construction where they throw light upon the meaning or operation of the substantive provision. The position would be different where the statute itself makes compliance with the prescribed form imperative, or the language of the form clearly indicates that strict adherence was intended; in such circumstances, the form assumes a mandatory character and must be followed accordingly.⁵⁰

19. Within the framework of the Ordinance, the prescribed *Nikahnama* occupies a distinct legal position. Its use is mandatory, and compliance with the prescribed form is a statutory obligation imposed upon every Nikah Registrar. More importantly, the *Nikahnama* constitutes the official record of the marriage contract. Prepared at the time of the marriage and signed by the spouses, the witnesses, and the Nikah Registrar, it records the terms and conditions mutually agreed upon by the parties. Being prepared in the prescribed statutory form and preserved as an official public record, it carries substantial evidentiary value unless its contents are successfully challenged in accordance with law. It follows that every column of the prescribed *Nikahnama* must be given its due and meaningful effect. The legislature cannot be presumed to have incorporated separate columns without purpose. Each column is intended to record a distinct aspect of the marriage contract and must be interpreted according to its language, the intention of the parties, and the principles of Muslim law coupled

⁵⁰ Commissioner of Agricultural Income Tax, Bengal v. Keshab Chandra Mandal **AIR 1950 Supreme Court 265**, Swaranath Bhatia **AIR 1948 Mad 427**, Banarsi Das Vs. The Cane Commissioner and Ors. **AIR 1963 Supreme Court 1417**

with pleadings of the parties. No entry can be treated as redundant or insignificant unless the statute expressly provides otherwise.

20. The prescribed *Nikahnama* is, therefore, much more than a document for the registration of marriage. It is a statutory instrument forming an integral part of the legal framework established by the Ordinance, 1961 and the Rules framed thereunder. At the same time, it is the authentic record of the marriage contract, preserving the rights and obligations agreed upon by the spouses and serving as the primary documentary evidence for resolving disputes concerning the terms of their marriage.

21. So far as the columns of the *Nikahnama* are concerned, they form the substantial question of law before this Court. A careful reading of the prescribed *Nikahnama* shows that its columns are arranged in a systematic sequence. Columns 1 to 6 relate to the place where the *Nikah* is solemnized and record the particulars of the spouses, including their names, parentage, age, and marital status, i.e., whether they are unmarried or previously married. Columns 7 to 11 deal with the essential requirements of a valid *Nikah* by providing for the names of the witnesses and, where applicable, the name of the *Wakeel* appointed on behalf of either spouse. Column 12 simply records the date on which the *Nikah* was solemnized. The real controversy in the present case centres on Columns 13 to 16, which deal with the fixation of dower (*Mahr*). The prescribed form does not treat dower as a single entry; instead, it divides the subject into four separate columns, each intended to record a different aspect of the parties' agreement. In practice, however, these columns are often filled in mechanically, without appreciating the distinct purpose each of them serves, even though the language used in the form is plain and self-explanatory.

22. Lastly, Column 17 may be used to record conditions relating to the mutual rights and responsibilities of the spouses and other aspects of their married life. Such conditions may regulate or qualify the exercise of a right belonging to either party, but they cannot altogether extinguish or deprive a party of a lawful right. The conditions may be limited to a specified period or may continue throughout the subsistence of the marriage. They should be expressed in clear and unambiguous terms so as to avoid uncertainty or difficulties in their interpretation and enforcement.

23. Moving further, Column 18 deals with the question whether the husband has delegated to the wife the right to pronounce *Talaq* and, if so, the conditions subject to which that right may be exercised. This relates to *Talaq-e-Tafweez* (delegated divorce), under which the husband

confers upon the wife the authority to pronounce *Talaq* on his behalf. Such delegation is ordinarily recorded in Column 18 of the Nikahnama. Unlike the husband's inherent right to pronounce *Talaq*, the wife's authority under *Talaq-e-Tafweez* exists only where it has been expressly delegated and incorporated into the marriage contract. The object of this arrangement is to enable the wife, in appropriate circumstances, to dissolve the marriage where its continuation has become untenable, without being entirely dependent upon the husband's willingness to pronounce *Talaq*. Likewise, Column 19 asks whether any restriction has been placed on the husband's right to pronounce *Talaq*. The legal position in this regard is well settled. This Court, in case of Tania Bibi⁵¹ in line with the settled principles of Islamic jurisprudence, held that the husband retains the right to pronounce *Talaq*, and that any condition which seeks to take away, prohibit, or completely restrict the exercise of that right is void and without legal effect.

24. Similarly, Column 20 asks whether any separate written instrument relating to dower, maintenance, or any other matrimonial matter was executed at the time of the marriage. Columns 21, 22, and 23 relate to the husband's marital status. They require disclosure of whether he has any existing wife, the number of children from such marriage, and whether prior permission to contract another marriage, where required, was obtained from the concerned Union Council. Finally, Columns 24 to 26 deal with the particulars of the Nikah Registrar (*Nikah Khawan*), the date of registration of the marriage, and the registration fee paid in accordance with the provisions of the parent statute.

25. At the conclusion of the Nikahnama, the spouses, the witnesses to the marriage, and the other persons required under the prescribed form append their signatures along with the necessary particulars, thereby completing the execution of the Nikahnama. Once registered, the Nikahnama serves as proof of the marriage and is admissible as evidence in legal proceedings concerning the marriage. It records the facts and conditions of the Nikah as agreed upon by the parties and reflected in its prescribed columns.

26. As the controversy before this Court pertains to entries Nos. 13 to 16 of the Nikahnama, which relate to dower, it is appropriate, at the outset, to examine the concept and nature of dower in the light of the injunctions of the Holy Quran, the Sunnah and Ahadith of the Holy

⁵¹ Tania Bibi v. Muhammad Arif **2008 SCMR 186**

Prophet (PBUH), the applicable law, and the judicial precedents laid down by this Court from time to time.

27. One of the important features of a Muslim marriage is *Mahr*, commonly known as Dower or *Haq Mehr*. It is a right that a wife acquires from the very inception of the marriage and is payable by the husband. The Arabic term *Al-Mahr* refers to this right, which Allah (S.W.T.) has granted to women and made binding upon the husband. It is, therefore, not simply a customary payment or a voluntary gift; rather, it is a recognized obligation arising from the marital relationship and belongs exclusively to the wife. In its essence, *Mahr* is a gift that the husband is obliged to give to his wife at the time of marriage. It carries a deeper meaning, as it reflects the husband's sincerity, affection, and commitment towards the marital relationship. The Holy Quran recognizes the wife's entitlement to dower and directs that it be given to her willingly and graciously. Once it becomes due, the wife alone has the right to receive and deal with it, and neither the husband nor his family can claim ownership over it. The amount of *Mahr* and the manner in which it is to be paid may be agreed upon by the parties. Depending upon the terms of the marriage, it may be payable immediately or may be deferred until a later time or event. This distinction only relates to the timing of payment and does not diminish the wife's underlying right to receive it. More importantly, *Mahr* recognizes the wife as an independent holder of property and financial rights. It provides her with something that belongs to her in her own right and over which she may exercise ownership according to law. In this sense, *Mahr* is not merely a financial transaction accompanying marriage; it is an expression of the respect, dignity, and security that Islamic law seeks to secure for a woman within the marital relationship. Muslim jurists and scholars have explained and defined the concept of *Mahr* or Dower in different ways. Some of the notable definitions are set out below:

‘Dower is a consideration which belongs absolutely to Wife.’⁵²

‘Dower is the sum of money or other property which a wife is entitled to receive from Husband in consideration of marriage.’⁵³

‘Dower is that financial gain which the wife is entitled to receive from her husband by virtue of the marriage contract itself whether named or not in the contract of marriage.’⁵⁴

‘Dower, under the Mahamman Law, is a sum of money or other property promised by the husband to be paid or delivered to the

⁵² Ameer Ali

⁵³ DF. Mulla

⁵⁴ Dr. Tanzil Ur Rahman, 1978, p. 218

wife in consideration of the marriage, and even where no dower is excessively fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife.’⁵⁵

‘Dower is not a consideration proceeding from the Husband for the contract of marriage. But it is an obligation imposed by law on Husband as a mark of respect for the wife, as it is evident from the fact that non-specification of Dower does not affect the validity of marriage.’⁵⁶

The dower’s importance under Islamic law is evidenced from the fact that it satisfies various functions which leads to the success and prosperity of the marital relationship in between the spouses. The Holy Quran expressly recognizes the obligation of dower and provides guidance in the following words:

‘and give the women (on marriage) their dower as a free gift, but if they, of their own good pleasure, remit any part of it for you, take it and enjoy it with cheer.’⁵⁷

‘wed them with their leave, and give them their dowers according to what is reasonable.’⁵⁸

The above verses of the Holy Quran clearly establish the right of a woman to receive *Mahr* and, at the same time, mark a clear departure from the practices relating to dower that existed in the pre-Islamic era. The use of the word “give” in the imperative form is particularly significant, as it conveys a direct and obligatory command upon the husband to pay the dower to his wife. It is also noteworthy that, although marriage is a relationship of mutual interest and companionship between the spouses, Islamic law places the financial obligation of *Mahr* upon the husband. Thus, while the husband is required to give *Mahr* to the wife from his own means as an incident of marriage, the wife is under no corresponding obligation to pay anything to the husband for entering into the marital relationship. This arrangement reflects the recognition accorded by Islamic law to the wife's independent financial right and dignity within the institution of marriage.

The Sunnah of the Holy Prophet (PBUH) further affirms a woman’s right to dower. Ibn Abbas (RA) narrates that:

‘When Hazrat Ali (RA) got married to Hazrat Fatima (RA), the Holy Prophet (PBUH) said to him. Give her something as a (dower). Hazrat Ali (RA) replied: I have nothing with me. The Prophet

⁵⁵ Abdul Kadir v. Salima, (1886) ILR 8 ALL 149

⁵⁶ The Principles of Muhammadan Jurisprudence by, Abdul Rahim

⁵⁷ The Holy Quran, 4:4.

⁵⁸ The Holy Quran, 4:25.

asked: Where is your Hutaimiyyah Shield? I said: It is with me.

He said: Give it to her.⁵⁹

This indicates that Hazrat Ali (RA) was required to give her something, even if of little material value, such as a shield or any other symbolic gift, with the intention of acknowledging her right and bringing her happiness.

There is another Hadith narrated by Hazrat Abu Salama (RA) that:

‘I asked Hazrat Aisha (RA): How much (amount) had Allah’s Messenger (PBUH) given as dower to his wives? She replied: His (dower) to his wives was twelve ‘uqiyyas and one nash. She asked, Do you know what a nash was? I replied: No. She said: it was half an ‘uqiyyas; so the total was five hundred dirhams and that was the Holy Prophet’s dower to his wives.’⁶⁰

In Islamic jurisprudence, dower (*mahr*) is a mandatory financial right that every wife acquires by virtue of a valid marriage. It is a gift that the husband is under a legal and religious obligation to give to his wife as a mark of honour, respect and recognition of her status in marriage. The right belongs exclusively to the wife, and neither her father nor any other family member has a claim over it. Because dower is her independent legal right, she may insist upon its payment.

28. The Islamic law does not prescribe any maximum limit for the amount of *Mahr* that may be given to a woman. Neither the Holy Quran nor the Sunnah of the Holy Prophet (PBUH) lays down a fixed upper limit for dower. The amount may, therefore, be determined according to the husband's financial capacity and the circumstances of the parties. A husband may agree to a higher or lower amount, depending upon his means, family circumstances, customs, traditions, and prevailing practices. What is important, however, is that the dower should have some recognized value. It may consist of money, property (moveable or immovable), or any other thing having lawful value. The essential requirement is that the subject matter of *Mahr* must be lawful under Islamic law. If the parties agree upon something prohibited by Allah (S.W.T.), as dower, such an agreement would not constitute a valid *Mahr*, although the marriage itself would remain valid. In such circumstances, the wife would be entitled to a proper dower equivalent to that ordinarily received by women of similar status in her family or circumstances, in accordance with the principles of Shari’ah.

29. As discussed above, Muslim jurists are agreed that there is no maximum limit to the amount of *Mahr*. They, however, differ on the

⁵⁹ SunanAl-Nasa’i, Book: 26, Kitab Al-Nikah, Hadith: 180.

⁶⁰ Sunan Ibn Majah, Book:9, KitabAl Nikah, Hadith: 1960.

question of its minimum amount, with three principal views emerging among the schools of Islamic jurisprudence. According to the Hanafi jurists, the minimum amount of Mahr is ten dirhams, and a wife should not receive less than this amount. The Maliki jurists, on the other hand, prescribe a minimum of one-quarter of a dinar in gold or three dirhams of pure silver. The Shafi'i and Hanbali jurists, however, take a different view. They do not prescribe any fixed minimum amount for Mahr. According to them, anything having monetary or recognized value, or anything that can lawfully be used to purchase goods, may constitute valid Mahr. Thus, while the three schools differ as to the minimum amount, they agree on the fundamental principle that Mahr is an essential right of the wife arising from the marriage contract.

30. A practice has increasingly developed in our society whereby an unusually high amount of *Mahr* is mentioned in the marriage documents, primarily to enhance the prestige or glorify the status of the family. In such cases, however, the parties may privately agree that the publicly stated amount is not intended to be enforced, and that the actual dower payable would be the amount privately settled between them. This practice is referred to as the principle of *As-Sum'at*.⁶¹ Consequently, where the wife subsequently seeks recovery of the publicly stated amount of *Mahr*, she may rely upon the documentary record reflecting that amount. The husband, on the other hand, may dispute that the publicly stated amount was ever intended to be payable and may seek to establish the privately agreed amount by producing appropriate evidence in support of his plea.

31. Islamic jurisprudence primarily classifies *Mahr* on the basis of its fixation into two categories: specified dower (*Mahr-i-Musamma*) and proper or customary dower (*Mahr-i-Misl*). Specified dower is the amount mutually agreed upon by the parties at the time of *Nikah* or subsequently by their consent. The parties may agree to increase the amount, and the quantum may vary according to their circumstances, financial position, family background and prevailing customs. Proper or customary dower, on the other hand, becomes relevant where no amount has been specified at the time of marriage or where the stipulated dower cannot legally take effect. In such circumstances, the wife's entitlement is determined with reference to the dower ordinarily received by women of similar standing, particularly those belonging to her paternal family, such as her sisters, paternal aunts and other comparable female relatives. The wife's personal circumstances and

⁶¹ Nasir Ahmad Khan v. Mst. Ismat Jehan Begum **PLD 1969 Supreme Court 194**

qualities, including her age, education, intelligence, beauty and social position, may also be taken into account, along with the financial condition of the husband and the customs and prevailing conditions of the society. The underlying principle is that the wife should receive “dower among her equals”; thus, even where the parties have failed to specify an amount, the law provides a basis for determining a fair and appropriate *Mahr* having regard to the circumstances of the wife and the parties.

32. With respect to the time of payment, specified dower is generally divided into prompt dower (*mu’ajjal*) and deferred dower (*mu’wajjal*, or *ghair mu’ajjal*). Prompt dower becomes payable immediately upon marriage and may be demanded by the wife at any time thereafter, whether before or after consummation. Its essential characteristic is that, once demanded, it is payable without further delay. Until the prompt dower is paid, the wife may, in appropriate circumstances, refuse to enter into or continue the marital relationship. Deferred dower, on the other hand, is an amount whose payment is postponed until a future date, an agreed event or a circumstance recognized by law. The parties may specify the time or condition of payment in the *Nikahnama*. Traditionally, where no particular time was fixed, deferred dower becomes payable upon the dissolution of marriage by divorce or upon the death of either spouse. The distinguishing feature of deferred dower is its time of payment. Until the agreed time or event for its payment occurs, the wife ordinarily cannot demand it as a presently due amount. The husband, however, may, if he chooses, pay the deferred dower earlier and thereby discharge his obligation before its normal maturity.⁶² Thus, the postponement affects the time when the wife can enforce payment, but does not take away her substantive right to the dower. The wife’s right in deferred dower is, therefore, a vested right rather than a contingent one. If she dies before the deferred amount becomes payable, the right does not disappear with her; it forms part of her estate and may be claimed by her heirs. Similarly, where the parties have expressly agreed that the deferred dower may be paid earlier, such an agreement would ordinarily govern the time of payment. In this way, deferred dower serves a dual purpose: it secures the wife’s financial right while also placing upon the husband a continuing obligation arising from the *Nikahnama*, payment of which ordinarily becomes enforceable upon the agreed maturity of the dower. The distinction between prompt and deferred dower concerns the time of payment, rather than the

⁶² Syed Sajjad Hussain v. Judge Family Court and Others **2019 CLC 1462**, Muhammad Qayyum Anjum v. ADJ etc **2022 MLD 416**

existence of the wife's right. Her right to *Mahr* arises from the marriage itself, while the agreed terms determine when that right becomes enforceable for payment. Deferred dower may therefore be payable upon a specified condition, divorce or death.⁶³ Where the parties do not specify the nature of the dower, i.e., whether it is prompt or deferred, then, the entire dower is treated as prompt.⁶⁴ Thus, the absence of an express stipulation does not deprive the wife of her right to dower; rather, the law determines the time of payment according to the applicable principles. Likewise, an exception to the general rule governing deferred dower arises where a man contracts another marriage during the subsistence of an existing marriage without obtaining the prior written permission of the Arbitration Council. In such circumstances, the entire amount of dower, whether prompt or deferred, becomes immediately due and payable to his existing wife or wives.⁶⁵ Importantly, dower becomes due and remains unpaid, it constitutes a financial obligation or debt owed by the husband to the wife. Thus, while Islamic law allows the parties considerable flexibility in determining when dower is to be paid, the wife's proprietary right remains protected throughout. Whether the amount is payable immediately, on demand, after an agreed period, or upon dissolution of marriage, *Mahr* remains an enforceable obligation belonging exclusively to the wife.

33. So far as the controversy relating to entries of dower is concerned, it may be noted that the *Nikahnama* contains four columns, i.e., Columns 13 to 16, relating to the fixation and payment of dower. However, all four columns are not necessarily applicable in every case; their applicability depends upon the terms agreed upon by the parties and the circumstances of each marriage. It is, therefore, appropriate to examine the scope and purpose of each column separately. Column 13 of the *Nikahnama* begins with the words 'Amount of dower.' The use of the word 'amount' should not, however, be understood in a narrow sense as referring only to cash or a specific monetary sum. The expression is of general import and may encompass the value of property or other assets agreed to be given as dower, whether movable or immovable. The ordinary meaning of the word 'Amount' also supports such a broader understanding, as defined in the dictionary in the following terms: 'the total of something in number, size, value, or

⁶³ Saadia Usman and another v. Muhammad Usman Iqbal Jadoon and another **2009 SCMR 1458**

⁶⁴ S. 10 of Muslim Family Law Ordinance, 1961 and Khalid Pervaiz v. Samina and others **2024 SCMR 142**

⁶⁵ S. 6(5)(a) of the Ordinance, 1961.

extent⁶⁶. Accordingly, this column should comprehensively reflect the entire dower agreed to be given by the husband to the wife, whether payable as prompt or deferred dower, and whether consisting of movable or immovable property. Column 14, headed “How much of the dower is *mu’wajjal* (prompt) and how much *ghair mu’wajjal* (deferred)”, requires the parties to specify how the total dower mentioned in Column 13 is to be divided between prompt (*mu’ajjal*) and deferred (*ghair mu’ajjal/mu’wajjal*) dower. It should, therefore, clearly indicate the portion payable immediately and the portion whose payment is deferred. Where the parties have not agreed upon any such division, the position should be expressly recorded in the *Nikahnama*. In the absence of a stipulation distinguishing between prompt and deferred dower, the entire dower is treated as prompt and becomes payable on demand. Column 15, headed “Whether any portion of the dower was paid at the time of marriage, if so, how much,” relates to the payment of the dower mentioned in Column 13 at the time of *Nikah*. Where any part of the dower, or the entire amount, has actually been paid at the time of solemnization of the marriage, the fact and the amount so paid should be clearly recorded in this column. Since the entry concerns an actual payment, due care should be taken to ensure that the amount recorded has in fact been paid before the relevant entry is made in the *Nikahnama*. Column 16, headed “Whether any property was given in lieu of the whole or any portion of the dower with specification of the same and its valuation agreed to between the parties,” is intended to record any movable or immovable property agreed to be given as *Mahr*, whether in substitution for, or in satisfaction of, the whole or any part of the dower specified in Column 13. Where property is agreed to be given as dower, its particulars should be stated with sufficient clarity, including its description, measurements, nature, location and the value mutually agreed upon by the parties. Accurate recording of these particulars is important, as it facilitates the identification and enforcement of the wife's entitlement to the property.

34. Importantly, the *Nikahnama* is a statutory form, and due regard must therefore be given to all of its entries. Its meaning and effect should be gathered from the document as a whole, particularly by reading together the entry relating to the total dower with those dealing with its nature, mode and timing of payment. The statutory scheme shows that these entries are complementary rather than mutually exclusive. Each serves a specific purpose, but, when read together, they present the

⁶⁶ **Concise Oxford English Dictionary**, 11th ed., ed. Catherine Soanes and Angus Stevenson (Oxford University Press, 2008)

complete picture of the parties' agreement concerning *Mahr*. Accordingly, the entries should be given their ordinary meaning and interpreted harmoniously so that effect is given to the transaction recorded in the *Nikahnama*, rather than allowing one entry to override, nullify or render another redundant. In this regard, the proper approach is to treat Columns 13 to 16 as interrelated components of a single statutory scheme governing dower. The entry concerning property cannot, therefore, be regarded as wholly independent of the other dower-related entries, nor can it invariably be treated as subordinate to them. Its legal effect must be determined in the context of the dower agreed between the parties and the *Nikahnama* read as a whole. The intention of the parties is undoubtedly material, but such intention must be objectively ascertained from the *Nikahnama* as a whole, read in conjunction with the pleadings of the parties and the evidence led in support thereof, rather than being inferred merely from an isolated entry or a subsequent unilateral assertion of either spouse. Such an approach respects the statutory character of the *Nikahnama* while, at the same time, giving due effect to the actual agreement of the parties and protecting the wife's proprietary entitlement to *Mahr*.

35. It is not out of place to observe that the law provides a complete statutory mechanism for filling in the columns of the *Nikahnama* and expressly casts the corresponding duty upon the Nikah Registrar. The Muslim Family Laws Ordinance, 1961 places the registration of every marriage solemnized under Muslim law within a statutory framework. Section 5 provides for the appointment of licensed Nikah Registrars by the Union Council, ordinarily one for each Ward. Under the Rules, any person competent to solemnize a marriage may apply for a licence, which may be granted by the Union Council after satisfying itself that the applicant is a fit and proper person. The licence remains permanent unless revoked for violation of its conditions. The Nikah Registrar is not merely a person who records a marriage; he is a statutory functionary entrusted with maintaining an authentic official record of the marriage. He is supplied with the prescribed *Nikahnama* register and official seal and, where he solemnizes the marriage, is required to complete the prescribed form, obtain the requisite signatures, authenticate it with his signature and seal, preserve the original, provide copies to the spouses and forward the prescribed copy to the Union Council. Where the marriage is solemnized by someone other than the Nikah Registrar, that person must complete the prescribed form and deliver it, along with the registration fee, to the concerned Nikah Registrar, who must thereafter process it in the same manner as a marriage solemnized by him. The

statutory scheme also imposes liability for non-compliance, including penalties for failure to report a marriage or violation of the conditions of the licence. Thus, the role of the Nikah Registrar is essentially public and statutory: to ensure that the marriage is properly documented, authenticated, preserved and incorporated into the official record. His functions assume particular importance because the Nikahnama records the terms and conditions agreed between the spouses and serves as the primary statutory record of their marriage.

36. The issue concerning the dower related columns of the Nikahnama has repeatedly engaged the attention of this Court in cases of *Mst. Fakhra Jabeen*⁶⁷, *Haseen Ullah*⁶⁸, and *Muhammad Yousaf*⁶⁹.

37. In cases of **Mst. Fakhra Jabeen, Haseen Ullah and Muhammad Yousaf** the court emphasis was that Columns 13 to 16 of the Nikahnama must be read in the light of the parties' actual intention, rather than mechanically by reference to the headings of the columns. The court further observed that column 13 ordinarily records the cash component of dower, while Column 16 concerns dower in the form of property and may represent the whole or a portion of the dower in addition to cash. Thus, an entry in Column 13 is not, by itself, a rider or substitute for the property recorded in Column 16; where the intention is to provide both, both constitute enforceable components of dower. In case of ambiguity, the Nikahnama must be construed as a whole, with the court primarily seeking to ascertain the parties' free and informed intention. With utmost respect, I find it difficult to agree with an approach which gives overriding importance to the intention of the parties while treating the particular columns of the Nikahnama as merely incidental. The Nikahnama is not an ordinary private document; it is a statutory form prescribed under the Muslim Family Laws Ordinance, 1961 and the Rules made thereunder. The columns are provided for a purpose, and therefore their language and placement cannot, in my respectful view, simply be brushed aside. In my view, the intention of the parties must certainly be given effect, but that intention should ordinarily be gathered from the Nikahnama itself, read as a whole, and by giving meaning to each of its relevant entries. If the parties have recorded different aspects of dower in different columns, the Court should be slow to disregard that statutory arrangement merely on the assumption that the parties or the Nikah Registrar may not have appreciated the legal significance of those columns. The prescribed form

⁶⁷ *Mst. Fakhra Jabeen and others v. Wasif Ali and others* **PLD 2026 Supreme Court 20**

⁶⁸ *Haseen Ullah v. Mst. Naheed Begum and others* **PLD 2022 Supreme Court 686**

⁶⁹ *Muhammad Yousaf v. Huma Saeed* **2024 SCMR 1078**

must retain its meaning and purpose. I would, therefore, respectfully take a different view from an approach which makes the perceived intention of the parties the sole or predominant test. Intention is important, but it must be objectively gathered from the document as a whole, including the language, structure and placement of its entries, rather than reconstructed afterwards from oral assertions or circumstances extraneous to the Nikahnama. This, in my respectful opinion, gives proper effect both to the agreement of the spouses and to the statutory character of the Nikahnama.

38. In order to ensure compliance with the Muslim Family Laws Ordinance, 1961 and the Rules framed thereunder, and to ensure that the terms of Nikah are accurately and unambiguously recorded, the following directions are hereby issued for future compliance:

- Nikah Registrars shall strictly use the prescribed Nikahnama and shall ensure that all its relevant columns are properly and carefully completed. No column should be left blank or treated as unnecessary without a lawful basis, as each column has been provided for a specific purpose.
- Particular care shall be taken while recording the terms of dower in Columns 13 to 16. The Registrar shall ensure that these columns are completed in a manner that clearly reflects the agreement actually reached between the parties.
- Column 13 shall clearly state the total dower agreed between the parties, whether the dower consists of money, movable property or immovable property.
- Where any property is agreed to be given as dower, Column 16 shall contain sufficient particulars to identify that property, including its description, measurements, location and the value, if, agreed between the parties.
- The Registrar shall read out or explain the relevant entries to the parties before obtaining their signatures/thumbmark particularly where the Nikahnama contains entries relating to dower, special conditions, delegated right of Talaq or any property given as dower. The object should be to ensure that the document reflects the parties' actual agreement.
- Any special condition recorded in Column 17 shall be expressed. The Registrar shall record the condition as agreed by the parties and should not introduce terms of his own.

- The Registrar shall not make any entry on the basis of assumption or personal understanding. Where the parties' agreement is unclear, he should seek clarification from the parties before completing the relevant column.
- After completion and execution of the Nikahnama, the Registrar shall properly authenticate and preserve the record, provide the prescribed copies to the spouses and forward the requisite copy to the concerned Union Council in accordance with law.
- The competent authorities, particularly the Chairman/Secretary concerned Union Councils, shall ensure that all licensed Nikah Registrars are adequately familiar with the statutory purpose and proper manner of completing each column of the prescribed Nikahnama, with particular attention to Columns 13 to 16.
- Periodic training or orientation of Nikah Registrars shall be arranged so that the prescribed form is not filled mechanically and the terms agreed between the parties are accurately reflected.
- The competent authorities, particularly the Secretary shall periodically inspect the registers maintained by Nikah Registrars to ensure compliance with the Ordinance, the Rules and the conditions of their licences.
- Where a Nikah Registrar fails to perform his statutory duties or violates the conditions of his licence, the competent authority should take action in accordance with law.

JUDGE

Islamabad

Approved for Reporting