

# Shiqaq Divorce in Pakistan: Supreme Court Distinguishes Khula and Preserves Dower Rights

A five-judge Supreme Court Bench sustained dissolution for shiqaq, rejected khula without the wives' voluntary election and removed dower-surrender orders based solely on khula.

CPLA No. 57 of 2025 and CPLA No. 1350 of 2025 | 2026-08-17

By Shahbaz Shah, Advocate High Court | Published 7 October 2026

## Shiqaq provides a distinct legal basis for dissolution

The Supreme Court of Pakistan has held that serious and continuing matrimonial rupture, amounting to shiqaq under Muslim law, can support dissolution of marriage through section 2(ix) of the Dissolution of Muslim Marriages Act, 1939. It is distinct from both cruelty and khula.

In the two cases before the Court, the wives had sought dissolution on cruelty grounds but had not elected khula. Although cruelty was not established, the record demonstrated shiqaq and failed reconciliation. The Court therefore sustained dissolution on that independent basis and removed the directions to return, surrender or waive dower imposed solely because the lower courts had characterized the relief as khula.

The ruling does not make every unhappy marriage a case of shiqaq. It requires a genuine, serious and continuing rupture, failure of meaningful reconciliation and fair procedure. Nor does it declare every disputed dower amount automatically payable: entitlement remains governed by the 1939 Act and findings otherwise sustainable on the record.

## The two cases and the five-judge Bench

The combined decision concerns Mst. Zainab Bibi v Muhammad Waseem and others, CPLA No. 57 of 2025, and Mst. Iram Naz Begum v Fazal Khaliq and others, CPLA No. 1350 of 2025. Justice Shahid Waheed authored the order for a Bench comprising Justice Waheed, Justice Naeem Akhter Afghan, Justice Muhammad Hashim Khan Kakar, Justice Ishtiaq Ibrahim and Justice Miangul Hassan Aurangzeb.

The hearing and the date at the end of the supplied fifteen-page order are 17 August 2026. The copy is approved for reporting and contains no reporter citation. Its separate open-court announcement line is blank; the article does not assign an announcement or official upload date that the copy does not establish.

The petitions challenged Peshawar High Court, Abbottabad Bench decisions dated 7 November 2024 in W.P. No. 853-A/2024 and 14 January 2025 in W.P. No. 707-M/2020. Although arising from different family suits, they presented the same essential question about involuntary conversion to khula and its financial consequences.

## Why the wives challenged the khula decrees

Each wife sued for dissolution on the ground of cruelty and also claimed maintenance, dower and dowry articles. The Family Courts found cruelty unproved but, after reconciliation failed, dissolved the marriages by khula and directed return or surrender of dower. Neither wife had clearly and voluntarily elected that remedy.

In Zainab Bibi's case, the appellate court modified the dower-return direction on the basis that the husband had already taken the dower back. The High Court restored the Family Court decree. In Iram

Naz Begum's case, the appellate court maintained the decree, and the High Court declined interference with the concurrent findings.

Before the Supreme Court, the wives challenged both the characterization of dissolution and the failure to allow their financial claims in full. Those grievances required different legal treatment: a disagreement about the weight of evidence is not the same as an order imposing the consequences of a remedy that was never elected.

## **Statutory dissolution and khula are different remedies**

Section 2 of the Dissolution of Muslim Marriages Act, 1939 permits dissolution on prescribed grounds. Cruelty is addressed in section 2(viii); section 2(ix) preserves other grounds recognized as valid for dissolution under Muslim law.

Khula proceeds from the wife's voluntary election to obtain release from the marital bond and ordinarily carries the financial consequences applicable to that remedy. A suit for statutory dissolution does not automatically amount to a suit for khula merely because its aim is to end the marriage.

Paragraphs 5 to 7 treat this as a substantive distinction. The choice affects legal and financial rights, particularly dower. Failure to prove cruelty does not authorize the court to manufacture an election of khula on the wife's behalf. Her clear and voluntary choice is required before her claim can be converted into that remedy.

This ruling concerns the wife's election. It should not be confused with a requirement that the husband must agree before she can invoke khula. The issue decided here was the court's imposition of a remedy she had not chosen.

## **The Supreme Court authorities on consent and dower**

The Court relied on *Mst. Khurshid Bibi v Muhammad Amin*, PLD 1967 SC 97; *Ibrahim Khan v Mst. Saima Khan*, PLD 2024 SC 645; and *Dr. Faryal Maqsood v Khurram Shehzad Durrani*, PLD 2025 SC 262, in explaining the distinct legal avenues and the need for the wife's voluntary election of khula.

The present order expressly adopts the principle that a dissolution suit is not, by itself, a khula suit and that changing its classification without the wife's choice cannot lawfully impose the different consequences of khula. These authorities are used here through the propositions attributed to them in the supplied order. Their separate full judgments are not represented as independently reviewed for this article.

The distinction matters in drafting and in recording statements. A wife may seek a statutory ground, elect khula, or frame alternative relief where appropriate. The court must ascertain the actual claim and election rather than infer consent merely from unsuccessful reconciliation or an unsuccessful cruelty allegation.

## **Section 2(ix): the statutory foundation of shiqaq**

After finding that khula could not stand without the wives' consent, the Supreme Court examined whether another independent legal ground supported dissolution on the evidence already recorded. Paragraph 9 found none of the grounds in section 2(i) to (viii) established in these cases and turned to the residuary provision in section 2(ix).

That provision incorporates grounds valid under Muslim law into the statutory scheme. The Court used it to recognize shiqaq where the necessary factual and procedural conditions are satisfied. It did not create an unrestricted doctrine of irretrievable breakdown independent of the Act.

The Court obtained the Council of Islamic Ideology's opinion to assist its understanding of Muslim law. It expressly retained responsibility for interpreting the provision and determining whether the evidence met its requirements. The Council's opinion assisted the legal inquiry; it did not substitute for the Court's decision.

## What shiqaq requires, and what is insufficient

The Court traced shiqaq to the concept of serious breach between spouses in verse 4:35 of the Qur'an, with reconciliation as the starting point. It considered the purposes of marriage, including tranquillity, affection and mercy, and the principles of honourable retention or release with kindness.

Paragraphs 11 and 13 identify the essential threshold. The rupture must be genuine, serious and continuing, of such a character that the essential purposes of marriage cannot realistically be fulfilled. Reasonable reconciliation efforts must have failed, and the court must make the determination on evidence through fair procedure.

Mere incompatibility, occasional quarrels, anger, short separation or the existence of matrimonial litigation do not establish shiqaq by themselves. The court cannot simply relabel every unhappy marriage. The depth, persistence and practical condition of the relationship require examination.

Cruelty and shiqaq answer different questions. Cruelty concerns a matrimonial wrong attributable to conduct meeting the statutory ground. Shiqaq concerns the condition of the relationship. Serious rupture may be established even where the evidence does not prove cruelty against either spouse.

That distinction does not make proof irrelevant. It changes the legal fact that must be established: the state of the marriage and failure of meaningful reconciliation, rather than necessarily a particular spouse's statutory misconduct.

## Umar Bibi and Balqis Fatima: the historical disagreement

Paragraph 12 addresses the earlier jurisprudence. *Mt. Umar Bibi v Mohammad Din*, AIR 1945 Lahore 51, expressed reservations about incompatibility, aversion or shiqaq as an independent ground. The Court noted that a larger Bench subsequently dissented from that approach in *Mst. Balqis Fatima v Najm-Ul-Ikram Qureshi*, PLD 1959 (W.P.) Lahore 566.

The Supreme Court preferred the view in *Balqis Fatima*, including its treatment of the Qazi's authority, serious matrimonial breach and failed reconciliation. It then located the legal basis within section 2(ix) rather than presenting shiqaq as a remedy outside statute.

The 1945 authority belongs to the pre-Pakistan historical setting. It is included because the present Court expressly discussed the competing line, not as a superior authority overriding the five-judge decision. The explanation here is confined to that discussion; it does not claim a complete independent account of either older case.

## Why shiqaq was established on these records

In *Iram Naz Begum's* case, her principal grievance was that the husband had not disclosed his first wife and children at the time of marriage. Her statement that she would not resume matrimonial life even if provided maintenance and separate accommodation showed the depth of the estrangement. The Court used that evidence to assess the relationship's condition, rather than to make an independent finding of cruelty.

In *Zainab Bibi's* case, the record showed persistent arguments, taunts and verbal exchanges, a physical altercation involving her brother and husband, and criminal proceedings. Allegations and counter-allegations formed part of a continuing conflict, while reconciliation before the Family Courts failed.

Paragraph 17 assesses the cumulative record. The parties remained estranged, reconciliation had failed and there was no realistic basis for expecting a stable matrimonial life to resume. The Court found shiqaq without declaring either spouse exclusively responsible for the rupture.

The judgment therefore should not be summarized as punishment for one spouse's proven cruelty. Cruelty was not established. The legal conclusion concerned an objectively demonstrated matrimonial condition.

## **Fair hearing remains necessary when the legal basis changes**

Ordinarily, a case should not be decided on a ground neither pleaded nor investigated, especially if it introduces a new factual dispute. Paragraphs 8 and 18 preserve that safeguard while explaining why a fresh remand was not necessary here.

The wives had sought dissolution; the husbands knew and contested the matrimonial allegations; evidence had been recorded; the parties were heard; and reconciliation was attempted. The same controversy had been examined at appellate and constitutional stages. The Court regarded shiqaq as a legal characterization of tested facts already on the record, rather than a new allegation or evidentiary case.

Family proceedings have a distinctive procedure, but that does not eliminate natural justice. A party ordinarily must have a fair opportunity to contest the factual and legal foundation of shiqaq. The decision does not authorize a surprise decree on an untested account of marital rupture.

For a new suit, counsel should plead the relevant facts and basis of relief clearly. Relying on this exceptional record-based characterization is not a substitute for giving the opposing party notice and a meaningful opportunity to respond.

## **Dower after shiqaq: what section 5 preserves**

Section 5 of the 1939 Act preserves the wife's right to dower when dissolution occurs under that Act. Paragraphs 15 and 16 distinguish that statutory position from financial consequences attached to khula. Shiqaq does not depend on surrender of dower or another benefit as consideration for release.

The Court accordingly removed directions requiring return, surrender or waiver solely because the lower courts had treated the decrees as khula. It did not reopen every financial issue arising from the marriage. Paragraph 21 states that dower entitlement is to be determined according to the Act and findings otherwise sustainable on the record.

The distinction is between removing an erroneous legal consequence and automatically allowing a financial claim in full. The actual dower terms, payment record and sustainable findings still matter. This judgment should not be reported as an unconditional award of every amount or item claimed by either petitioner.

The Court also connected the approach with Articles 4, 14 and 25 of the Constitution. A wife should not lose financial rights through an involuntary change of remedy, while a husband should not be legally branded cruel without the required proof. The lawful conclusion of a failed relationship need not manufacture a finding of blame.

## **Article 199: financial evidence is not retried as a second appeal**

Paragraph 4 restates the limits of constitutional review. The High Court supervises legality; it does not simply reweigh witnesses and evidence because another factual conclusion might be possible.

Interference may still be justified by an error of law, absence or excess of jurisdiction, a conclusion founded on no evidence, or material misreading or non-reading that makes the decision legally unsustainable. A mere disagreement with evidentiary weight is insufficient.

On the record here, the maintenance and dowry-article findings showed no such defect and remained undisturbed. The dower consequence of an involuntary khula decree was different: it involved the legality of the remedy and its effect, not merely a request to reassess evidence.

## **The final order**

The petitions were converted into appeals and partly allowed. The Family Court decrees were modified to substitute dissolution on shiqaq under section 2(ix) for dissolution based on khula. The consequential dower-return, surrender or waiver directions founded solely on khula were set aside.

The remaining findings, including maintenance and dowry articles, were left intact to the extent specified in the order. There was no order as to costs. The marriages remained dissolved; the Court changed the legal basis and the financial consequences improperly attached to it.

## Practical points for family-law litigation

For the wife, counsel should separate the ground of dissolution from the monetary claims, record any khula election clearly and voluntarily, and prove the facts relevant to the chosen statutory ground. A shiqaq claim requires evidence of sustained rupture and meaningful failed reconciliation, not a label added to ordinary disagreement.

For the husband, the record should address the alleged relationship condition, reconciliation efforts and financial claims individually. Contesting cruelty alone may not answer a properly established section 2(ix) case, while the absence of cruelty proof should prevent an unsupported finding of that wrong.

For the Family Court, the judgment requires an identifiable legal basis, fair hearing, a genuine reconciliation effort and a careful distinction between khula, cruelty and shiqaq. Dower consequences should follow the remedy lawfully established, with separate treatment of sustainable maintenance and dowry findings.

## Frequently asked questions

### Can a Family Court convert a cruelty suit into khula without the wife's consent?

The Supreme Court held that it cannot impose khula without the wife's clear and voluntary election. Failure to prove cruelty does not itself authorize that conversion, particularly where it changes dower rights.

### Does shiqaq require proof that the husband committed cruelty?

No. Shiqaq concerns serious and continuing marital rupture, rather than necessarily a proved matrimonial wrong by one spouse. Its factual threshold, failed meaningful reconciliation and fair-hearing safeguards must still be satisfied.

### Must a wife surrender dower when dissolution is granted for shiqaq?

Shiqaq under section 2(ix) does not depend on surrendering dower for release. Section 5 preserves dower rights. The actual entitlement remains governed by the Act and sustainable findings; this ruling does not automatically award every disputed claim in full.

### Does every unhappy marriage qualify as shiqaq?

No. Occasional quarrels, incompatibility, anger, short separation or litigation alone are insufficient. The court must find a genuine, serious and continuing rupture and failed reconciliation on evidence.

## Source and paragraph guide

The complete supplied fifteen-page combined order is available through the judgment PDF download. Paragraph 4 concerns Article 199; paragraphs 5 to 7 distinguish statutory dissolution and khula; paragraphs 8 to 13 examine section 2(ix) and shiqaq; paragraphs 14 to 16 discuss dignity and financial consequences; paragraphs 17 to 19 apply the evidence and fair-hearing safeguards; paragraphs 20 to 23 state the relief. The article PDF is an explanatory publication, separate from the judicial order.

## Primary sources and online article

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