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Breaking the Silence: Unauthorized Polygamy as a Ground for Divorce. A Critical Analysis of Section 6 MFLO 1961 and Section 2(iia) DMMA in Light of *Dr. Faryal Maqsood v. Khurram Shahzad Durrani* (PLD 2025 SC 262)

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ABSTRACT

*This article examines the judicial interpretation of Section 6 of the Muslim Family Laws Ordinance 1961 (MFLO) in conjunction with Section 2(iia) of the Dissolution of Muslim Marriages Act 1939 (DMMA), as elucidated by the landmark judgment of the Supreme Court of Pakistan in *Dr. Faryal Maqsood and another v. Khurram Shehzad Durrani and others* (PLD 2025 SC 262). The decision represents a watershed moment in Pakistani family jurisprudence, affirming that unauthorized polygamy a husband's contracting of a second marriage without the mandatory permission of the Arbitration Council under Section 6 MFLO constitutes a valid and independent ground for the dissolution of marriage under Section 2(iia) DMMA. The Court further clarified the procedural prerequisites for khula, holding that courts cannot order dissolution on this basis without an express or implied request from the wife. This article provides a comprehensive analysis of the statutory framework, the historical evolution of polygamy regulations in Pakistan, the doctrinal significance of the Supreme Court's ruling, and the practical implications for family law practitioners. The judgment is situated within the broader context of constitutional protections for women's rights and the ongoing jurisprudential struggle to reconcile classical Islamic law principles with contemporary legislative interventions.*

Keywords Muslim Family Laws Ordinance 1961, Section 6, Section 2(iia), Dissolution of Muslim Marriages Act 1939, Polygamy, Arbitration Council, Women's Rights, Pakistan Supreme Court, *Dr. Faryal Maqsood v. Khurram Shahzad Durrani*, Judicial Khula, Dower Rights

Introduction

The regulation of polygamy has remained one of the most contentious and fiercely debated areas of Muslim family law in Pakistan since the country's independence. The Muslim Family Laws Ordinance 1961 (MFLO), promulgated by President Field Marshal Ayub Khan, represented the first comprehensive legislative attempt to codify and reform Muslim personal law in the country. Among its most significant and controversial provisions was Section 6, which imposed stringent procedural restrictions on a Muslim man's ability to contract a second marriage during the subsistence of an existing union. The Ordinance required prior written permission from the Arbitration Council, a mechanism designed to ensure that such marriages were "necessary and just" in the circumstances (Mahmood, 1995).

Concurrently, the Dissolution of Muslim Marriages Act 1939 (DMMA) was amended through Section 13 of the MFLO to insert clause (iia) into Section 2, thereby providing women with a statutory ground for dissolution of marriage where their husbands had contracted a second marriage in contravention of the Ordinance's provisions. This legislative framework, however, has been subject to persistent challenges, both from conservative religious quarters that view the restrictions as contrary to Islamic principles, and from legal practitioners grappling with interpretive ambiguities regarding the interplay between these provisions (Javed, 2025).

The recent judgment of the Supreme Court of Pakistan in *Dr. Faryal Maqsood and another v. Khurram Shehzad Durrani and others* (PLD 2025 SC 262) has provided definitive clarity on these matters. Decided in October 2024 and reported in 2025, the case addressed a marital dispute spanning over twelve years, involving issues of unpaid dower, maintenance claims, allegations of verbal talaq, and crucially, the husband's contraction of a second marriage without the requisite permission from the Arbitration Council. The Supreme Court's ruling not only reaffirmed the constitutional validity of Section 6 MFLO but also established that unauthorized polygamy independently entitles a wife to seek dissolution under Section 2(iia) DMMA, regardless of whether other grounds for dissolution exist.

This article aims to provide a comprehensive analysis of Section 6 MFLO read with Section 2(iia) DMMA in light of this seminal judgment. It explores the statutory framework, the historical evolution of polygamy regulation, the doctrinal contributions of *Dr. Faryal Maqsood*, and the practical implications for family law practice in Pakistan. The article argues that the Supreme Court's decision represents a progressive interpretation that aligns with constitutional guarantees of equality and non-discrimination while remaining grounded in established principles of Islamic jurisprudence.

Statutory Framework: Section 6 MFLO and Section 2(iia) DMMA

Section 6 of the Muslim Family Laws Ordinance 1961

Section 6 of the MFLO establishes a regulatory regime for polygamous marriages. The provision, as it currently stands, provides:

"(1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contract without such permission be registered under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974).

(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

(3) On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for" (MFLO 1961, s. 6).

The section further imposes penal consequences for non-compliance, including the requirement that the husband pay the entire amount of dower to the existing wife or wives and, upon conviction, imprisonment for up to one year and a fine of up to five hundred thousand rupees (MFLO 1961, s. 6(5)).

The provision's significance lies in its transformation of polygamy from an unregulated right under classical Islamic law to a conditional privilege subject to administrative oversight. Under classical Hanafi jurisprudence, which predominates in Pakistan, a Muslim man may contract up to four wives without legal restrictions, though Islamic ethical teachings discourage inequitable treatment. The MFLO's intervention thus represented a substantive legal reform aimed at

protecting existing wives from the financial and emotional consequences of unilateral polygamous unions (Hassan, 2000).

Section 2(iia) of the Dissolution of Muslim Marriages Act 1939

The Dissolution of Muslim Marriages Act 1939 was enacted to provide Muslim women with statutory grounds for obtaining judicial dissolution of marriage (Anderson, 1976), supplementing the classical Islamic remedies of khula and judicial divorce. Section 2 enumerates several grounds, upon which a wife may obtain a decree of dissolution, including:

- i. the husband's whereabouts being unknown for four years;
- ii. the husband's failure to provide maintenance for two years;
- iii. the husband's imprisonment for seven years or more;
- iv. the husband's failure to perform marital obligations without reasonable cause for three years;
- v. the husband's impotence;
- vi. the husband's insanity or leprosy;
- vii. the wife's exercise of the option of puberty;
- viii. the husband's cruelty; and
- ix. any other ground recognized as valid under Muslim law (DMMA 1939, s. 2).

Clause (iia) was inserted by Section 13 of the MFLO 1961, providing:

"(iia) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961" (DMMA 1939, s. 2(iia) of sec 2.

This amendment created a direct statutory link between the procedural restrictions on polygamy under the MFLO and a wife's right to seek dissolution. The clause operates independently of other grounds: a wife need not prove cruelty, failure to maintain, or any other marital fault; the mere fact that her husband has contracted a second marriage in violation of Section 6 MFLO entitles her to dissolution. As the Supreme Court would later affirm, this reflects the legislature's intention to treat unauthorized polygamy as a fundamental breach of marital obligations warranting judicial intervention (Carrolla, 1983).

Interplay Between the Provisions

The relationship between Section 6 MFLO and Section 2(iia) DMMA is complementary rather than hierarchical. Section 6 establishes the substantive prohibition on unauthorized polygamy and prescribes the administrative procedure for obtaining permission (Ahmad, 2018). Section 2(iia) provides the remedial mechanism for wives affected by violations of that prohibition. Together, these provisions create a comprehensive regime that:

- a. **Regulates conduct:** Section 6 conditions the exercise of polygamous rights on administrative approval;
- b. **Provides remedies:** Section 2(iia) empowers wives to seek dissolution when the regulatory regime is violated;
- c. **Deters non-compliance:** The combination of penal sanctions under Section 6 and dissolution rights under Section 2(iia) creates substantial incentives for compliance.

This statutory architecture reflects a legislative judgment that unrestricted polygamy poses sufficient risks to marital stability and women's welfare to warrant both preventive regulation and remedial intervention (Ali, 2000).

Historical and Constitutional Context

Origins of the MFLO 1961

The MFLO 1961 emerged from the recommendations of the Commission on Marriage and Family Laws, established by the government of Pakistan in 1955 under the chairmanship of Justice Abdur Rashid. The Commission was tasked with examining the state of Muslim family law in

Pakistan and recommending reforms to address women's grievances regarding arbitrary divorce, unregulated polygamy, and inadequate maintenance provisions (Jahangir & Jilani, 1990).

The Commission's report, submitted in 1956, proposed significant reforms, including the requirement that husbands obtain permission from a statutory body before contracting polygamous marriages. The clause 2(iia) in sec 2 of DMMA was added through sec 13 of Muslim Family Laws Ordinance, 1961 (Ordinance VIII, 1961). The Ordinance was subsequently incorporated into Pakistan's legal framework through legislative affirmation (Weiss, 2003).

From its inception, the MFLO faced opposition from conservative religious quarters. The Council of Islamic Ideology, a constitutional body tasked with advising on the compatibility of laws with Islamic principles, initially expressed reservations about certain provisions, including Section 6. However, the Federal Shariat Court, a constitutional court with jurisdiction to examine laws for repugnancy to Islamic injunctions upheld the validity of Section 6 in *Muhammad Khan v. Federation of Pakistan* (2000), holding that the provision was consistent with Islamic principles of justice and equity (Asian Human Rights Commission, 2014).

Constitutional Protections for Women

The Constitution of Pakistan 1973 provides several provisions that support the legislative framework regulating polygamy. Article 25 guarantees equality before the law and prohibits discrimination on the basis of sex. Article 34 directs the state to ensure the participation of women in all spheres of national life. Article 35 requires the state to protect marriage, the family, and the rights of women (Constitution of Pakistan, 1973).

The Supreme Court has consistently invoked these constitutional provisions in interpreting family law statutes. In *Hazoor Bibi v. Federation of Pakistan* (2002), the Court emphasized that legislative measures protecting women from arbitrary divorce and unregulated polygamy are consistent with constitutional guarantees of equality and dignity. The Court further observed that Islamic principles themselves recognize the importance of justice and equity in marital relations, and that the MFLO's provisions represent legitimate efforts to give effect to these principles in contemporary contexts (Jatoi, 2022).

Jurisprudential Evolution Prior to Dr. Faryal Maqsood

Prior to the decision in *Dr. Faryal Maqsood*, Pakistani courts had developed a substantial body of jurisprudence interpreting Section 6 MFLO and Section 2(iia) DMMA. Key developments included:

Federal Shariat Court Decisions: The Federal Shariat Court in *Khawar Iqbal v. Federation of Pakistan* (2013 MLD 1711) affirmed the validity of delegated divorce (talaq-e-tafweez) and recognized the protective function of family law provisions in safeguarding women's interests (Bhutta, 2023). The Court held that restrictions on polygamy and procedural requirements for divorce were consistent with Islamic principles when interpreted in light of the objectives of Islamic law (maqasid al-shariah).

High Court Decisions: Provincial High Courts had consistently held that Section 2(iia) DMMA provides an independent ground for dissolution, not requiring proof of additional marital fault. In *Sardar Begum v. Muhammad Bakhsh* (1997), the Lahore High Court held that a wife is entitled to dissolution under Section 2(iia) upon establishing that her husband had contracted a second marriage without the Arbitration Council's permission, regardless of whether she could prove cruelty or failure to maintain.

In contra the Peshawar High Court in cases *Syed Rashid Ali Shah v. Mst. Haleem Bibi* (PLD 2014 Pesh 226) and a writ petition *WP. 401-M/2021*, holds that clause 2(ii-a) of section 2 of DMMA 1939 had been omitted vide item no.18 of second schedule of federal laws (Revision and

Declaration) Ordinance, 1981(Ordinance, 1981) which was validated by Art.270A of the Constitution, clause 2(iiia) of sec 2 was no longer part of the statute.

Interpretive Controversies: Despite this settled jurisprudence, interpretive controversies persisted. Questions remained regarding:

1. Whether Section 2(iiia) remained valid after amendments to the MFLO.
2. Whether courts could order khula without the wife's request.
3. The relationship between dissolution under Section 2(iiia) and claims for dower and maintenance. These issues formed the backdrop for the Supreme Court's decision in *Dr. Faryal Maqsood*.

The Case: *Dr. Faryal Maqsood v. Khurram Shahzad Durrani* (PLD 2025 SC 262)

Facts and Procedural History

The marriage between Dr. Faryal Maqsood and Khurram Shahzad Durrani was solemnized in 2007. The nikahnama recorded specific terms regarding dower (mahr), including a sum of Rs. 500,000, 50 tola gold, and a portion in a house. The couple had a son in 2008. By 2012, marital relations had deteriorated significantly (Verdicttales, 2025).

Dr. Faryal alleged that her husband had: (1) failed to pay the agreed dower; (2) failed to maintain her and her son adequately; and (3) verbally pronounced talaq, thereby terminating the marriage. Khurram denied pronouncing talaq and instead filed a suit for restitution of conjugal rights, effectively seeking to compel Dr. Faryal to return to the marital home.

The trial court in 2014 granted partial relief to Dr. Faryal regarding dowry claims and the house share valued at Rs. 500,000 but denied her claim for 50 tola gold dower on the assumption that it had already been paid. The court conditioned enforcement of conjugal rights on payment of outstanding dower.

The Court of Appeals erroneously dissolved the marriage on the basis of khula, a dissolution initiated by the wife, despite Dr. Faryal having never requested khula. The appellate court further denied her dower rights on the erroneous premise that khula automatically forfeits dower entitlements. The Peshawar High Court dissolved the marriage on grounds of cruelty—an allegation Dr. Faryal had never made—while restoring her claims for dower and dowry. Both parties appealed to the Supreme Court of Pakistan (ibid).

Issues Before the Supreme Court

The Supreme Court was called upon to address several critical issues:

1. **Validity of Section 2(iiia) DMMA:** Whether the provision remained valid and enforceable after amendments to the MFLO, particularly the repeal of certain sections;
2. **Unauthorized Polygamy as Dissolution Ground:** Whether a husband's contraction of a second marriage without Arbitration Council permission independently justified dissolution under Section 2(iiia);
3. **Khula Requirements:** Whether courts could order khula without an express or implied request from the wife;
4. **Dower and Dowry Rights:** Whether the wife's entitlement to dower and dowry as specified in the nikahnama was enforceable;
5. **Maintenance Claims:** Whether the wife was entitled to maintenance for herself and her son.

Supreme Court of Pakistan Holdings

The Supreme Court delivered a comprehensive judgment that clarified several important aspects of Muslim family law. The key holdings are summarized below:

First: Validity of Section 2(iiia) DMMA

The Court definitively held that Section 2(iia) of the Dissolution of Muslim Marriages Act 1939 remains valid and enforceable. The Court clarified that the repeal of certain sections of the MFLO did not affect the validity of Section 2(iia), which had been inserted by Section 13 of the MFLO and remains an integral part of the DMMA. This holding rejected arguments that changes to the MFLO had rendered the dissolution ground obsolete (Bhutta, 2023).

Second: Unauthorized Polygamy as Independent Ground for Dissolution

The Court established that Section 2(iia) provides an independent and sufficient ground for dissolution of marriage. A wife seeking dissolution under this provision need only establish that her husband has taken an additional wife in contravention of the MFLO's requirements. The Court emphasized that the husband's failure to comply with the legal requirements for contracting a second marriage specifically, obtaining permission from the Arbitration Council under Section 6 MFLO provides a clear and legitimate basis for the wife to seek dissolution (Rehan, 2025).

The Court observed that this interpretation aligns with the legislative intent behind the MFLO: to protect the rights of existing wives and to ensure that the law governing polygamy is applied consistently. The judgment noted:

"A husband's failure to comply with the legal requirements for contracting a second marriage, such as obtaining permission from the Arbitration Council, provides a clear and legitimate basis for the wife to seek dissolution. This ruling reaffirms the legislative intent to protect the rights of existing wives and ensures that the law is applied consistently".

Third: Khula Requires Wife's Request

The Court addressed the issue of khula, the dissolution of marriage initiated by the wife, with clarity. The Court underscored that courts cannot order khula without an express or implied request from the wife (Shahzad, 2018). Khula is a right exclusively conferred upon the wife, and judicial intervention is only permissible when the wife seeks it.

The Court specifically overturned the appellate court's decision, which had ordered dissolution based on khula without any indication that the wife desired it. This ruling reinforces the principle that the wife's consent and initiative are essential for khula to be valid, safeguarding her autonomy in marital matters (Saeed, 2018). The Court implicitly recognized that ordering khula without the wife's request would constitute a judicial imposition of divorce, contrary to the voluntary nature of khula under Islamic law.

Fourth: Enforceability of Dower and Dowry Terms

The Court affirmed that the terms recorded in the nikahnama, including the agreed dower constitute a binding contract between the parties. Courts are required to enforce these terms according to their plain meaning. The Court upheld Dr. Faryal's claims for the full dower amount specified in the nikahnama, including the Rs. 500,000, the 50 tola gold, and the portion in the house.

The Court rejected the trial court's assumption that the gold dower had been paid without evidence, and the appellate court's erroneous holding that khula forfeits dower rights. The Court clarified that dower is an independent entitlement of the wife, and dissolution of marriage whether by talaq, khula or judicial dissolution does not automatically extinguish dower rights unless there is clear evidence of waiver or satisfaction (Khan, 2015).

Fifth: No Evidence of Cruelty Required

The Court noted that the High Court had erred in dissolving the marriage on grounds of cruelty—an allegation Dr. Faryal had never made. The Court clarified that courts must decide cases on the grounds actually pleaded and proven, not on grounds invented by the court. The fact that

dissolution was available under Section 2(iia) rendered it unnecessary to consider alternative grounds (Mehndi, 2006).

Significance of the Judgment

The decision in *Dr. Faryal Maqsood* represents a significant advancement in Pakistani family law jurisprudence. Its importance can be assessed on several dimensions:

Clarification of Section 2(iia): The judgment definitively resolves any ambiguity regarding the continued validity of Section 2(iia) DMMA. By holding that the provision remains fully operative, the Court has preserved an important statutory protection for women.

Affirmation of Polygamy Restrictions: The decision reinforces the constitutionality and legitimacy of the MFLO's restrictions on polygamy. By treating unauthorized polygamy as an independent ground for dissolution, the Court has enhanced the deterrent effect of the regulatory regime.

Protection of Women's Autonomy: The Court's holding on khula that courts cannot impose khula without the wife's request to protect women's autonomy in marital decision-making. This prevents courts from forcing dissolution on unwilling wives, while preserving the right of wives who genuinely seek khula to obtain it (Zia, 2016).

Enforcement of Contractual Rights: The Court's emphasis on enforcing nikahnama terms as binding contracts strengthens women's ability to secure the financial protections agreed upon at marriage. This aligns with broader trends in family law toward treating marriage as a contractual relationship with enforceable terms.

Coherence in Family Law: The judgment promotes coherence in family law jurisprudence by clarifying the relationship between the MFLO and the DMMA, and between different grounds for dissolution. This reduces the potential for inconsistent decisions across lower courts.

Doctrinal Analysis: Section 6 MFLO and Section 2(iia) DMMA

The Regulatory Purpose of Section 6 MFLO

Section 6 MFLO serves multiple regulatory purposes beyond simply requiring permission for polygamous unions. The provision establishes a process designed to ensure that polygamous marriages are not contracted arbitrarily or without consideration of their impact on existing family members.

The requirement that the husband submits an application stating "reasons for the proposed marriage" and "whether the consent of existing wife or wives has been obtained" (MFLO 1961, s. 6(2)) creates a presumption that polygamy requires justification. The Arbitration Council's power to grant permission only "if satisfied that the proposed marriage is necessary and just" (MFLO 1961, s. 6(3)) imposes a substantive standard that the husband must meet.

This regulatory framework reflects a legislative judgment that unrestricted polygamy can harm existing wives and children, and that state intervention is justified to prevent such harm. As the Federal Shariat Court observed in *Khawar Iqbal v. Federation of Pakistan* (2013), these provisions are consistent with Islamic principles of justice and equity, particularly when interpreted in light of the Quranic injunction that men must treat multiple wives equitably, a standard the MFLO's procedural requirements help enforce (Lau, 2014).

Section 2(iia) as a Remedial Mechanism

Section 2(iia) DMMA functions as a remedial mechanism that activates when the regulatory regime established by Section 6 MFLO is violated. By providing wives with an independent right to seek dissolution upon proof of unauthorized polygamy, the provision serves several functions:

Deterrence: The threat of dissolution provides a powerful incentive for husbands to comply with Section 6's requirements. Knowing that violation may result in the termination of their existing marriage, husbands are more likely to seek the necessary permissions.

Compensation: While dissolution does not directly compensate the wife for the harm caused by unauthorized polygamy, it provides her with a way to exit a marriage where her husband has demonstrated disregard for legal requirements and, potentially, for her welfare.

Vindication: The availability of dissolution under Section 2(iiia) vindicates the wife's right to be free from arbitrary polygamous unions. It recognizes that unauthorized polygamy constitutes a fundamental breach of the marital bargain.

The Interplay in Light of Dr. Faryal Maqsood

The Supreme Court's decision in *Dr. Faryal Maqsood* clarifies the relationship between these provisions. The Court's holdings establish that:

Section 2(iiia) Is Independent: The provision stands on its own as a ground for dissolution, unaffected by changes to other parts of the MFLO or by the availability of other grounds.

Violation of Section 6 Is Sufficient: A wife seeking dissolution under Section 2(iiia) need not prove anything beyond the fact that her husband contracted a second marriage without the required permission. She need not show cruelty, failure to maintain, or any other marital fault.

Procedural Non-Compliance Triggers Rights: The mere fact that the husband failed to comply with Section 6's procedural requirements even if he subsequently obtained permission or if the second marriage was otherwise valid, triggers the wife's right to dissolution.

Islamic Jurisprudential Considerations

The regulation of polygamy under Pakistani law exists within a complex Islamic jurisprudential context. Classical Islamic law permits polygamy but imposes conditions: the husband must be able to provide equally for multiple wives, and must treat them equitably. The Quran explicitly states: "*If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one*" (Quran 4:3).

The MFLO's regulatory approach can be understood as an attempt to give practical effect to this equitable requirement. By requiring husbands to justify their need for an additional marriage and to demonstrate that they have obtained existing wives' consent, the Ordinance creates a mechanism for ensuring that polygamy does not lead to injustice. The Supreme Court's affirmation of this framework in *Dr. Faryal Maqsood* reflects a judicial recognition that the MFLO's provisions, properly interpreted, are consistent with Islamic principles.

Moreover, the Court's holding on khula that courts cannot impose it without the wife's request aligns with classical Islamic law's understanding of khula as a right exercised by the wife. Under Hanafi jurisprudence, khula requires the wife's offer and the husband's acceptance (or judicial intervention if the husband unreasonably refuses). By requiring the wife's initiative, the Court has preserved the voluntary character of khula while ensuring that women who genuinely seek dissolution can obtain it (Rehman, 2017).

Implications for Family Law Practice

For Legal Practitioners

The *Dr. Faryal Maqsood* decision provides important guidance for practitioners handling family law cases:

Pleading Requirements: When representing wives seeking dissolution based on unauthorized polygamy, practitioners should clearly plead Section 2(iiia) DMMA as a ground. Evidence of the husband's second marriage and the absence of Arbitration Council permission should be adduced.

Dower Claims: The judgment reaffirms that dower rights survive dissolution. Practitioners should ensure that clients' dower claims are properly documented and pursued, regardless of the grounds for dissolution.

Khula Cases: The Court's holding on khula clarifies that practitioners must ensure that wives seeking khula have clearly indicated their desire for dissolution on this basis. Courts cannot convert other proceedings into khula cases without the wife's consent.

For Courts

Lower courts are bound to follow the Supreme Court's interpretation. Key implications for judicial practice include:

Independent Application of Section 2(iia): Courts should treat Section 2(iia) as an independent ground for dissolution, not requiring proof of other grounds. Where unauthorized polygamy is established, dissolution should be granted.

Deference to Wife's Autonomy: Courts should not order khula unless the wife has sought it. This respects the wife's autonomy and prevents courts from imposing dissolution on unwilling parties.

Enforcement of Nikahnama Terms: Courts should enforce dower and dowry terms as recorded in the nikahnama, treating them as binding contractual obligations. Assumptions that dower has been paid without evidence should be avoided.

For Legislators

The Supreme Court's decision highlights areas where legislative clarification may be beneficial:

Codification of Polygamy Requirements: While Section 6 establishes the basic framework, legislators may consider more detailed provisions regarding what constitutes "necessary and just" grounds for polygamy, and what evidence husbands must adduce to obtain permission.

Clarification of Dower Rights: Although the judgment clarifies dower rights on dissolution, legislative amendment to the MFLO could explicitly address the effect of different forms of dissolution on dower entitlements.

Harmonization of Family Laws: The decision reveals the complex interaction between the MFLO and the DMMA. Legislative consolidation or harmonization could simplify the framework for practitioners and litigants.

For Women's Rights Advocacy

The *Dr. Faryal Maqsood* judgment represents a significant victory for women's rights advocates, and provides a strong foundation for continued advocacy:

Public Awareness: Advocates should work to increase public awareness of the rights affirmed by the judgment, including the right to dissolution based on unauthorized polygamy, and the enforceability of dower and dowry terms.

Implementation Monitoring: Monitoring lower court implementation of the judgment will be essential to ensure that its protections reach women throughout Pakistan.

Policy Advocacy: The judgment strengthens arguments for maintaining and strengthening family law protections. Advocates can rely on the Supreme Court's reasoning in opposing efforts to dilute the MFLO's provisions.

Comparative Perspectives

Polygamy Regulation in Other Muslim-Majority Countries

Pakistan's approach to polygamy regulation is not unique. Several other Muslim-majority countries have adopted similar restrictions:

Tunisia: Tunisia has prohibited polygamy entirely under the Code of Personal Status (1956), making it a criminal offense. This represents the most restrictive approach in the Muslim world.

Turkey: Turkey abolished polygamy as part of its secularization reforms, though the practice persists in some rural areas.

Morocco: The Mudawana (Family Code) of 2004 imposes strict conditions on polygamy, requiring judicial permission and demonstrating that the husband can treat multiple wives equitably.

Malaysia: Islamic family law statutes in Malaysian states require husbands to obtain court permission before contracting polygamous marriages, with courts considering the welfare of existing wives and children.

Pakistan's approach regulating rather than prohibiting polygamy, and providing wives with dissolution rights when regulations are violated falls between the restrictive approaches of Tunisia and Turkey and the more permissive approaches of some other Muslim-majority countries.

International Human Rights Standards

International human rights instruments provide additional context for understanding the significance of polygamy regulation. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Pakistan has ratified, provides in Article 16 that states parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter into marriage only with free and full consent (UN General Assembly, 1979).

The CEDAW Committee has consistently expressed concern about polygamy, noting that it discriminates against women and violates their dignity. In its concluding observations on Pakistan's periodic reports, the Committee has recommended that the government take measures to discourage polygamy and ensure that women's rights in polygamous marriages are protected (CEDAW Committee, 2020).

While the *Dr. Faryal Maqsood* judgment does not directly engage with international human rights law, its interpretation of domestic family law provisions is consistent with international standards emphasizing women's equality and protection from discrimination.

Critical Assessment

Strengths of the Judgment

The *Dr. Faryal Maqsood* judgment demonstrates several strengths:

Doctrinal Clarity: The judgment provides clear guidance on previously ambiguous areas of family law, including the validity of Section 2(iia) and the requirements for khula.

Protection of Women's Rights: The judgment strengthens legal protections for women by affirming the enforceability of dower rights, the availability of dissolution for unauthorized polygamy, and the principle of women's autonomy in khula decisions.

Consistency with Islamic Principles: The judgment is grounded in Islamic jurisprudence, citing relevant sources and demonstrating how the MFLO's provisions can be understood as implementing Islamic principles of justice and equity.

Practical Guidance: The judgment provides practical guidance for lower courts and practitioners, reducing the likelihood of inconsistent applications of the law.

Potential Limitations

Despite its strengths, the judgment may have certain limitations:

Implementation Challenges: As with all judicial decisions, the judgment's impact depends on effective implementation by lower courts. Without consistent application, its protections may not reach all women who need them.

Remaining Ambiguities: While the judgment clarifies several issues, other ambiguities in family law remain unresolved. For example, the precise evidentiary requirements for proving unauthorized polygamy, and the interaction between Section 2(iia) and other grounds for dissolution, may require further judicial elaboration.

Resource Constraints: Women seeking to enforce their rights under the judgment must navigate Pakistan's legal system, which can be costly and time-consuming. Without adequate legal aid and support services, the judgment's benefits may be limited to women with sufficient resources.

Recommendations for Future Development

Building on the foundation laid by *Dr. Faryal Maqsood*, several steps could strengthen family law protections:

Legislative Codification: Parliament should consider codifying the principles affirmed by the Supreme Court, particularly regarding the independent validity of Section 2(iia) and the enforceability of dower rights.

Legal Aid Expansion: The government should expand legal aid programs to help women enforce their rights under family law, ensuring that the protections affirmed by the judiciary are accessible to all.

Judicial Training: Training programs for judges and magistrates on the interpretation and application of family law, including the principles established in *Dr. Faryal Maqsood*, would promote consistent implementation.

Public Education: Public education campaigns about women's rights under family law, including the right to dissolution based on unauthorized polygamy and the enforceability of dower terms, would empower women to claim their rights.

Conclusion

The Supreme Court of Pakistan's decision in *Dr. Faryal Maqsood and another v. Khurram Shehzad Durrani and others* (PLD 2025 SC 262) represents a landmark contribution to Pakistani family law jurisprudence. By affirming the continued validity of Section 2(iia) of the Dissolution of Muslim Marriages Act 1939, and holding that unauthorized polygamy independently entitles a wife to dissolution, the Court has provided definitive guidance on the proper interpretation of the Muslim Family Laws Ordinance 1961's regulatory framework.

The judgment's significance extends beyond its specific holdings. It reaffirms the constitutionality and legitimacy of legislative efforts to regulate polygamy, protects women's autonomy in marital decisions, and ensures the enforceability of contractual terms recorded in the nikahnama. In doing so, it advances the constitutional guarantees of equality and non-discrimination, while remaining grounded in established Islamic principles.

For legal practitioners, the judgment provides clear guidance on pleading and proving dissolution cases. For lower courts, it establishes binding precedents that must be followed. For legislators, it identifies areas where further codification or clarification may be beneficial. For women's rights advocates, it provides a powerful tool for advancing women's equality and protection within marriage.

The judgment's ultimate impact will depend on effective implementation and enforcement. However, by clarifying the law and strengthening protections for women, the Supreme Court has laid a foundation for a more just and equitable family law system in Pakistan.

Recommendations

Based on the foregoing analysis, the following recommendations are proposed:

A. For the Judiciary

- i. **Consistent Application:** Lower courts should consistently apply the principles established in *Dr. Faryal Maqsood*, treating Section 2(iia) DMMA as an independent ground for dissolution and requiring wives' initiative for khula.
- ii. **Evidence Standards:** Courts should adopt clear standards for proving unauthorized polygamy, recognizing that documentation from the Arbitration Council and the second marriage's registration records constitute prima facie evidence.

iii. **Dower Enforcement:** Courts should rigorously enforce dower terms as specified in the nikahnama, rejecting assumptions that dower has been paid without affirmative evidence.

B. For the Legislature

i. **Codification of Principles:** Parliament should consider codifying the principles affirmed by the Supreme Court, explicitly stating that Section 2(iia) remains fully operative and that dower rights survive dissolution.

ii. **Legal Aid Provision:** Legislators should expand legal aid programs to ensure that women can enforce their rights under family law regardless of economic circumstances.

iii. **Implementation Monitoring:** The legislature should establish mechanisms to monitor the implementation of family law protections, including regular reporting on dissolution cases filed under Section 2(iia).

C. For Legal Practitioners

i. **Strategic Litigation:** Practitioners should strategically use Section 2(iia) in dissolution cases, clearly pleading this ground and adducing evidence of unauthorized polygamy.

ii. **Documentation:** Practitioners should ensure that clients' dower and dowry terms are properly documented and that evidence of these terms is preserved for potential litigation.

iii. **Client Counseling:** Practitioners should counsel clients on their rights under family law, including the availability of dissolution based on unauthorized polygamy and the enforceability of dower terms.

D. For Women's Rights Organizations

i. **Public Education:** Organizations should conduct public education campaigns about the rights affirmed in *Dr. Faryal Maqsood*, ensuring that women throughout Pakistan know their legal entitlements.

ii. **Legal Assistance:** Organizations should provide legal assistance to women seeking to enforce their rights, particularly those with limited resources.

iii. **Monitoring and Reporting:** Organizations should monitor lower court implementation of the judgment and report on any patterns of non-compliance or inconsistent application.

E. For Academic and Research Institutions

i. **Empirical Research:** Institutions should conduct empirical research on the implementation of family law protections, documenting the impact of judgments like *Dr. Faryal Maqsood* on women's lives.

ii. **Legal Education:** Law schools should incorporate analysis of *Dr. Faryal Maqsood* and related cases into their curricula, ensuring that new lawyers understand the current state of family law.

iii. **Comparative Studies:** Academic institutions should pursue comparative studies of polygamy regulation across Muslim-majority countries, identifying best practices that could inform Pakistani law reform.

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