JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 622/2025

Bushra Hussain

Versus

Chairman, Arbitration Council, etc.

Petitioner by	**:**	Barrister Sara Seerat and Mr. Muhammad Asim, Advocates.
Respondent No. 1 by	**:**	Mr. Abid Hussain Ch. Advocate.
Respondent No. 2 by	**:**	Mr. Kamran Amjad Kayani, Advocate.
Date of Decision	**:**	26.05.2025.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the order dated 12.06.2024, passed by Respondent No. 1, whereby her application for cancellation of effectiveness of Talaq certificate issued by Chairman of Arbitration Council has been turned down.

2. Learned counsel for the petitioner contends that petitioner and Respondent No. 2 belong to Shia Sect and their divorce is to be regulated in accordance with Section 7 (1) of Muslim Family Laws Ordinance 1961, amended by the Act of 2021 dated 03.12.2021, whereby, procedure for Talaq of parties belong to *Fiqah-e-Jafria* has been explained separately. Learned counsel further contends that this section requires the pronouncement of *seegah jaat talaq* (صیغہ جات طلاق) (Arabic expressions) to pronounce Talaq in accordance with Shia law which was not done in this

case, and the certificate of effectiveness of divorce has also not been issued in accordance with the requirement laid down in Section 7 of the Muslim Family Laws Ordinance 1961. Learned counsel further contends that the Talaq notice/divorce dated 18.12.2021, specifically refers to the words in Urdu, "بمطابق فقہ جعفریہ صیغہ طلاق شرعی بھی جاری کر دیے جائیں گے". Furthermore, the matter could not be concluded without establishing presence of two Muslim witnesses and fulfilling other legal requirements for effectiveness of divorce, especially in absence of the *seegah jaat* (صیغہ جات) which were not pronounced by the respondent No.2 as a fundamental requirement in *Fiqah-e-Jafria* for pronouncement of Talaq. Learned counsel for petitioner further contends that the petitioner was ousted from the premises by the respondent No.2 and she went to her parents' house and even filed a suit before the family judge Sargodha for maintenance, whereby a compromise was effected between the parties and the petitioner withdrew her suit for maintenance and started living with the respondent No.2 from 02.11.2022, till her second desertion i.e. 03.06.2023. Therefore, the certificate of effectiveness of divorce, which was issued by Chairman Arbitration Council is illegal, as the parties had resumed their relationship, though respondent No.2 has not disclosed the fact of resumption of the relationship of the parties.

3. Notice has been issued to the respondents, whereby, the Chairman Arbitration Council has submitted the original record of all the proceedings along with the report and respondent No. 2 also put

appearance and opposed the maintainability of this petition primarily on the ground that a divorce certificate was issued by the Chairman, Arbitration Council after fulfilment of all the requirements. Therefore, the same could not be challenged.

4. Argument heard, record perused.

5. Perusal of record reflects that the petitioner and respondent No.2 were married to each other in accordance with *Fiqah-e-Jafria* on 02.02 2020, wherein, the petitioner was deserted from house as per her own stance along with the minor on 11.10.2021 and she moved to her parents' in Sargodha, where she filed a suit for maintenance on 11.01.2022. However, in the meanwhile, the respondent No.2 processed the case for issuance of effectiveness of divorce certificate and as per record of the Chairman Arbitration Council, the Arbitration Council has processed the case whereby, Arsalan Abdullah, respondent No.2, personally appeared before the Chairman Arbitration Council on 23.02.2022 and verifies the *Talaq* and recorded a statement that there is no chance of reconciliation between the parties. However, no one turned up on behalf of Bushra Hussain, the present petitioner, and as per record of the Arbitration Council, the matter was fixed for 16.03.2022, but only respondent No.2 put appearance and again reiterated his stance for non-reconciliation.

6. Another notice was issued to the petitioner and finally a notice has been published in newspaper for 22.04.2022. However, as per the report placed on record by the Arbitration Council the Council finally issued the certificate for effectiveness of divorce on 11.05.2024. It has also been

highlighted in the report that there is no provision of law, which empowered the Chairman Arbitration Council to set aside the certificate or cancel the certificate for effectiveness of divorce.

7. While considering all these aspects, there is no cavil to the proposition that the ***Muslim Family Laws Ordinance 1961***, regulates the procedures and processes of *Talaq* irrespective of any particular sect. In Section 7 of ***Muslim Family Ordinance, 1969*** an amendment, through the Act No. XXIX of 2021 by way of Muslim Family Laws (Second Amendment Act 2021, was added whereby a proviso has been inserted which is reproduced as under:-

> ***"Amendment of section 7, Ordinance VIII of 1961.- In the Muslim Family Laws Ordinance, 1961 (VIII of 1961), in section 7,-***
> ***(i) in sub-section (1), for the full-stop, occurring at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-***
> ***"Provided that where the parties belong to Fiqah-eJafria,-***
>
> ***(a) the man may voluntarily and with his free will pronounce himself or through duly authorized attorney (Vakil) Talaq uttering in literal Arabic words (seegha) in the physical presence of at least two qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat, 1984 (P.O.No.1 of 1984);***
>
> ***(b) the pronouncement of Talaq shall be ineffective if it is done jokingly or under anger, intoxication, insanity, duress or coercion of any kind and from any corner whatsoever; and***
>
> ***(c)) in case of dispute, with reference to paragraph (a) or (b) arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the "Mujtahid-e-Alam" and the decision of Mujtahid-e-Alam shall have a status of an Award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (x of 1940).***
>
> ***Explanation.- The expression "Mujtahid-e-Alam" (Faqih-e-Azam) means a juris-consult/religious scholar / doctor of Shia school of thought well versed with Shariat having international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of Muitahid-e-Alam having aforesaid qualification.***
>
> ***[(1A) As enshrined in Article 227 of the Constitution of the Islamic Republic of Pakistan, the divorce and matters connected therewith or ancillary thereto shall be decided according to the personal law interpreted by Fiqah-e-Jafria (Shia school of thought).]***
> ***(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may***

> ***extend to one year or with fine which may extend to five thousand rupees or with both.***
> ***(3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.***
> ***(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.***
> ***(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section [(3)) or the pregnancy, whichever be later, ends.***
> ***(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from re-marrying the same husband, without an intervening marriage with a third person unless such termination is for the third time so effective."***

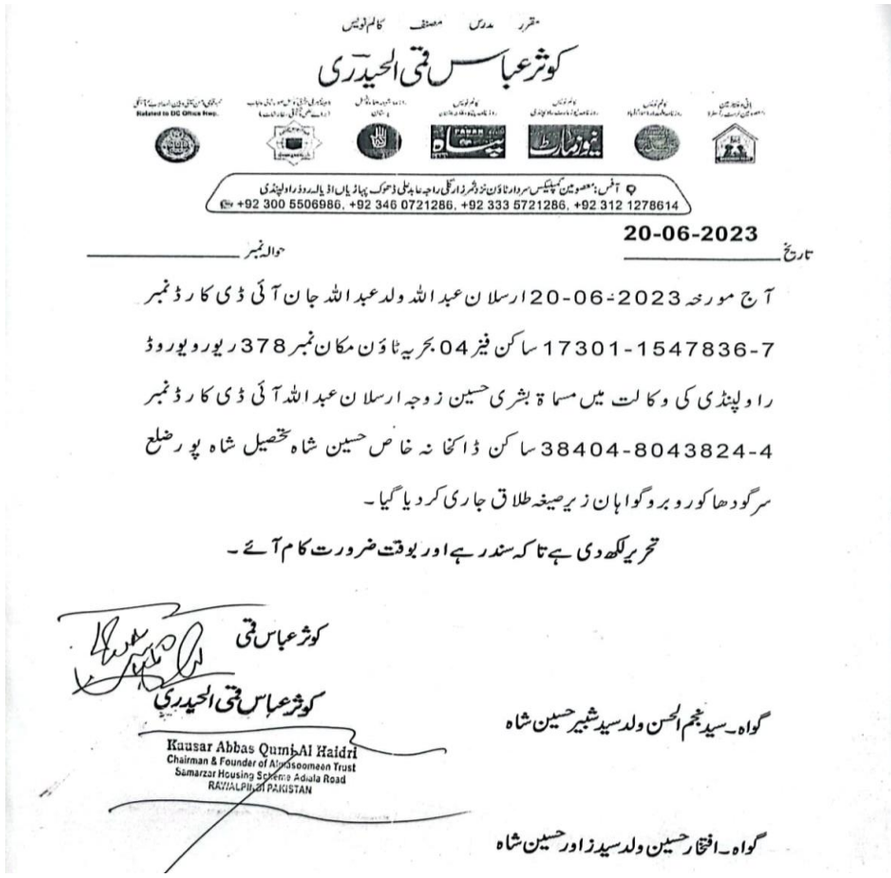
8. From the plain reading of the above proviso, it is confirmed that any person who belongs to *Fiqah-e-Jafria* can voluntarily with his own free will pronounce Talaq, himself or through duly authorized attorney/Vakeel, uttering literal Arabic words *seegah jaat* (صیغہ جات) in the physical presence of at least two witnesses, qualifying the requirement of sub-clause 1 of Article 17 of ***Qanun-e-Shahadat Order 1984*** and without following the said procedure of proviso, the *Talaq* effectiveness certificate could not be issued.

09. In this case, the admitted position available on record has been considered in the light of the *Talaq Nama*; the divorce deed available with the Chairman Arbitration Council, wherein, the first notice of Talaq in writing was executed and issued by Arsalan Abdullah Respondent No. 2 on 13.10.2021, where-after, second *Talaq* notice was issued on 20.11.2021 and the third notice was issued on 18.12.2021. A specific note has been given at the end of the third talaq: -

نوٹ: اصل طلاق نامہ و نقل نوٹس زیر دفعہ 7 بنام مصالحتی عدالت مسماۃ بشریٰ حسین کو مرسل ہے۔اور بمطابق فقہ جعفریہ صیغہ طلاق شرعی بھی جاری کر دیئے جائیں گے۔

10. The above referred phrase outrightly confirms that the literal Arabic pronouncement of required *Seegha jaat* (درکار صیغہ جات) has not been pronounced even on the third *Talaq*. Therefore, as per *Fiqah-e-Jafria*, the Talaq was not effective and this aspect has been fortified with the view rendered in ***PLD 2023 Lahore 38 (Syed Sajid Hussain Abidi Vs. Iram Shehzadi Abidi and others), 1984 CLC 1961 (Mst. Maryam Bano Vs. Hussain Ali and another), PLD 2025 Lahore 18 (Syed Zouzab Imran Kazmi Vs. Syeda Iffat Bukhari and 2 others), 2006 YLR 1753 (Mst. Saira Shaukat through Special Attorney Vs. District Collector ICT, Islamabad and 2 others), PLD 1965 West Pakistan Karachi 185 (The State Vs. Syedda Salma Begum and another)***.

11. All the judgments cited by both sides are clear in the requirement of Shia law whereby the effectiveness of *Talaq* could only be declared subject to pronouncement of *Seegha Jaat* (صیغہ جات) directly or through representative/Vakeel in presence of female or her representative /Vakeel, or otherwise, whereafter, divorce will become effective. Such exercise could be undertaken in respect of a case even with the retrospective effect, as held in Syed Sajid Hussain Abidi case *Supra*. However, when the learned counsel for respondent No.2 has been confronted as to whether the *Seegha Jaat* (صیغہ جات) have been pronounced by respondent No.2 accordingly in Arabic terms, the learned counsel has produced a certificate dated 20.06.2023, contents of which are as under: -



مقرر مدرس مصنف کالم نویس

کوثر عباس قمی الحیدری

آفس: معصومین کمپلیکس سرداراباد ٹاؤن نزد شہزاد گلی راجہ بازار پیر ودھائی راولپنڈی
+92 300 5506986, +92 346 0721286, +92 333 5721286, +92 312 1278614

تاریخ 20-06-2023 حوالہ نمبر _____

آج مورخہ 20-06-2023 ارسلان عبداللہ ولد عبداللہ جان آئی ڈی کارڈ نمبر 17301-1547836-7 ساکن فیز 04 بحریہ ٹاؤن مکان نمبر 378 ریورویو روڈ راولپنڈی کی وکالت میں مسماۃ بشری حسین زوجہ ارسلان عبداللہ آئی ڈی کارڈ نمبر 38404-8043824-4 ساکن ڈاکخانہ خاص حسین شاہ تحصیل شاہ پور ضلع سرگودھا کو روبرو گواہان زیر صیغہ طلاق جاری کر دیا گیا۔

تحریر لکھ دی ہے تا کہ سند رہے اور بوقت ضرورت کام آئے۔

کوثر عباس قمی

کوثر عباس قمی الحیدری

Kausar Abbas Qumi Al Haidri
Chairman & Founder of Ahlesoomeen Trust
Samarzar Housing Scheme Adiala Road
RAWALPINDI PAKISTAN

گواہ۔ سید نجم الحسن ولد سید شبیر حسین شاہ

گواہ۔ افتخار حسین ولد سید زاور حسین شاہ

12. The above-mentioned certificate clearly discloses that the *Seegha Jaat* were issued on 20.06.2023 to Mst. Bushra Hussain, the present petitioner, on behalf of respondent No.2, through Mr. Kausar Abbas Kummi in presence of two witnesses namely Syed Najmul Hassan and Iftikhar Hussain. The document has been placed on record and resultantly this Court is of the view that on the day of pronouncing the *Seegha Jaat* (صیغہ جات) in Arabic, the *Talaq* becomes effective. Therefore, the primary question is whether the original *Talaq* certificate will remain in filed and effective or not without pronouncement of *Seegha Jaat*. The answer is negative, as the *Talaq* certificate was issued without verifying the pronouncement of *Seegha Jaat* (صیغہ جات), which is a mandatory requirement in cases where parties belong to the Fiqa Jafferia.

13. I have also gone through the words used by the legislature in the Amendment Act, 2021, wherein phrase ***"voluntarily"*** and ***"with his free will"*** are used; to pronounce talaq by himself or through duly authorized attorney/Vakeel uttering in literal Arabic words (*Seegha Jaat* صیغہ جات).

14. Learned counsel for respondent No.1 contends that the word ***"may"*** is used in the proviso (a) of section 7 of MFLO 1961, which signifies the discretion of the man and it is not mandatory rather permissive. But this Court is not in agreement with this interpretation. No doubt ordinarily the word ***"may"*** refer a discretion but if the whole context is considered as to what was the purpose of the legislature behind incorporating this amendment with reference to *Fiqah-e-Jafriya* through a proviso in Subsection 1 of Section 7 of Muslim Family Laws Ordinance, 1961, the entire concept of "**may"** as to discretion stands negated. There are certain rules of statutory interpretation which courts apply while interpreting a statute or a provision of statute, however, it is settled position that there is no absolute or settled test which can determine whether a statute is 'discretionary' or 'mandatory'. It is the duty of the court to take into consideration the intent of the legislature and the whole scope of the statute to determine whether it is 'permissive' or 'mandatory' in nature as held in ***2001 SCMR 1001 (Ghulam Hassan Versus Jamshaid Ali)*** **and** ***2011 SCMR 420 (Syed Zia Haider Rizvi Versus Deputy Commissioner Of Wealth Tax, Lahore).***

15. The word "may" make a provision "enabling" and it gives the discretion to the authority or court to exercise its power but it is usually construed as 'permissive' and not 'mandatory'. I have gone through the Principles of Interpretation laid down by Lord Cairns in **Julius Vs. Lord Bishop of Oxford,** (1874-80) All ER Rep. 43 where Lord Cairns enunciated Principles of Statutory Interpretation in the following words:-

> *"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise the power when called upon to do so.*
> *Where a power is deposited with a public officer for the purpose of being used for the benefit of persons specifically pointed out with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised.*
> *The* ***enabling words are construed as compulsory*** *whenever the object of the power is to effectuate a legal right"*

16. Relying on the above reasoning of Lord Cairns, the word "may' used in proviso to section 7 proviso being an enabling word would be given meaning of a compulsion that it must be followed. When the ordinary dictionary meaning of a provision of law leads to absurd interpretation and contradicts the purpose of the law; in such situation the language of the text can be modified to meet the intention of the legislature. Such modifications are done by changing the meaning of the word or ignoring it altogether. This exceptional interpretation is required when a careless word is used by an ignorant draftsperson which goes against the intention of the whole statute. Such instances are indeed

exceptional and courts are reluctant to substitute or add a word in a statute (R. Vs. Trafford (1850) QB 200.) but courts may depart from the literal rule when required to avoid absurdity.

Maxwell on The Interpretation of Statutes (12th Edition page 234) says that:

> *"In ordinary usage, "may" is permissive and "must" is imperative, and, in accordance with such usage, the word "may" in a statute will not generally be held to be mandatory. In* ***some cases, how-ever, it has been held that expressions such as "may," or "shall have power," or "shall be lawful," have to say the least a compulsory force****, and so their meaning has been modified by judicial exposition." (underlined for emphasis)*

17. Similarly, I have also gone through **Crawford on The Construction of Statutes[1] (1940 edition, pages 519 to 522)** which states that :

"*Mandatory and directory are permissive words.*

> *Ordinarily, the words 'shall' and 'must' are mandatory, and the word 'may ' is directory, although they are often used interchangeably in legislation. This use without regard to their literal meaning generally makes it necessary for the courts to resort to construction in order to discover the real intention of the legislature. Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and natural meaning. If such a meaning, however, leads to absurdity, or great inconvenience or for some other reason is clearly contrary to the obvious intention of the legislature, then words which ordinarily are mandatory in their nature will be construed as directory or vice versa. In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words ' shall' and 'must' to be directory, they should be given that meaning.* ***Similarly, under the same circumstances, the word ' may ' should be given a mandatory meaning, especially where the statute concerns the rights and interests of the public****, or where third* ***persons have claim de jure*** *that a power shall be exercised or whenever something is directed to be done for*

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[1] Earl T. Crawford, The Construction of Statutes, (1940) accessed on 27-05-2025 available at https://archive.org/details/in.ernet.dli.2015.275901/mode/1up?view=theater

the sake of justice or the public good, or is necessary to sustain the statute's constitutionality.

18. Keeping in view the above definitions and instances of interpreting statutory provisions as per the intent of the legislature it is settled now that the word ***"may"*** permit the Court to consider it in sense of ***"shall"*** or ***"must"***. If the "may" used in proviso to section 7 is not made "mandatory" it would frustrate the entire intent of the proviso added by 2021 Amendment in MFLO 1961. Thus, the word "may" is to be considered with reference to the whole text and the legislature has used the word ***"may"*** in the proviso which is an exception of a general rule in order to protect the rights of those parties, who belong to *Fiqah-e-Jafria* and this Court does not agree with the contention that word ***"may"*** should not be considered as a compulsion with the meaning of ***"must"***. This Court further considers it appropriate to issue a clear directive, placing a serious duty and obligation upon the Chairman of the Arbitration Council, particularly in cases governed by *Fiqah-e-Jafria*, to adhere to the principles ensuring the effectiveness of divorce, and to adopt the following procedure as a future guideline:-

(i) Whenever any person who belongs to *Fiqah-e-Jafria* files a divorce deed before the Chairman Arbitration Council, the arbitration council shall follow the procedure provided in section 7 of Muslim Family Laws Ordinance, 1961 (second amendment Act 2021) and ensure that the man / husband shall pronounce the *Seegha Jaat* (صیغہ جات طلاق) in Arabic before the Chairman Arbitration Council to his wife in

presence of two witnesses qualifying the requirement of Clause 1 of Article 17 of Qanun-e-Shahadat Order, 1984.

(ii) If the requirement of presence of two witnesses or the *Seegha Jaat* (صیغہ جات) pronouncement has not been conducted before the arbitration council, the husband may file certificate verifying the facts that *Seegha Jaat* have been pronounced before any religious scholar accordingly, however, no certificate for effectiveness of talaq shall be issued without verification of *Seegha Jaat*.

(iii) Chairman Arbitration Council can also direct the person/husband to call a Vakeel or the religious scholar along with two witnesses for declaration that those *Seegha Jaat* (صیغہ جات) have been pronounced before them and to that extent a certificate shall be issued by referring that the relevant *Seegha Jaat* (صیغہ جات) in Arabic have been pronounced and issued therefore, these two requirements must be fulfilled by the Chairman, Arbitration Council.

19. While considering the above discussion, instant writ petition is ***ALLOWED*** and the Chairman, Arbitration Council is directed to issue the amended certificate for effectiveness of divorce effective from 20.06.2023, to the petitioner/Bushra Hussain confirming the Talaq in accordance with the *Fiqah-e-Jafria*, while considering the certificate issued by Kausar Abbas Qummi, who has pronounced the *Seegha Jaat* (صیغہ جات) in this case.

20. It is also pertinent to mentioned here that during the course of hearing, both the sides have presented the Code of Muslim Family Laws Book published by M. Mahmood of Pakistan Law Times Publication. But surprisingly, the amendment in the Muslim Family Laws Ordinance 1961, through the Amendment Act of 2021 has been published and notified

in Section 7 of the West Pakistan Family Court Act, 1964, which is a law for institution of suits before the Family Court. Therefore, such mistake which is causing misrepresentation reflects the negligence of the publisher who printed the proviso of Section 7 of Muslim Family Laws Ordinance, 1961 in Section 7 of Family Court Act, 1964. Therefore, office is directed to transmit copy of this judgment to the Pakistan Law Times Publication of Mr. M. Mahmood and all other such publishers who have misprinted or wrongly printed the amendment in Family Court Act, 1964 instead of Muslim Family Laws Ordinance, 1961, to correct the same accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE

*Khurram**

Approved for reporting.