THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present
Justice Syed Hasan Azhar Rizvi
Justice Muhammad Karim Khan Agha

F.C.P.L.A. No. 536/2025
(against the order dated 17.10.2025, passed by the Lahore High Court, Lahore in W.P. No. 61396-H/2025)

Shahbaz Masih

.....Petitioner(s)

Versus

Additional Session Judge, Lahore & others

.....Respondent(s)

For the Petitioner(s)	:	Mr. Abdul Hameed Rana, ASC alongwith petitioner
For the Respondent(s)	:	Ch. Abdul Khaliq Thind, ASC alongwith respondent No.6 and Mst. Maria, daughter of the petitioner Tehseen, SHO/Inspector Muhammad Arshad, Sub-Inspector Naveed, Sub-Inspector.
Date of Hearing	:	03.02.2026

J U D G M E N T

Syed Hasan Azhar Rizvi, J.- The petitioner has filed the present petition under Article 175F(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**Constitution**'), to impugn the legality of the order dated 17.10.2025 passed by the Lahore High Court, Lahore ('**High Court**'), whereby a writ petition filed by the petitioner under Article 199 of the Constitution, challenging the order dated 09.10.2025 passed by the Additional Sessions Judge, Lahore ('**ASJ**'), was dismissed. By the said order, the ASJ dismissed the petition filed by the petitioner under section 491 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'), seeking the recovery of his daughter, the alleged *detenue*.

2. The background of the present controversy is that the petitioner lodged F.I.R. No. 5144/2025, dated 30.07.2025, under sections 363/365-B of the Pakistan Penal Code, 1860 ('**P.P.C.**'), at Police

Station Nawab Town, Lahore, regarding the alleged kidnapping of his daughter, namely *Maria Bibi*, who, according to the contents of the F.I.R., went out of the home to take breakfast on 29.07.2025 but did not return thereafter. Later on, the Investigating Officer informed him that the said criminal case had been cancelled, as his daughter had recorded her statement under section 164, Cr.P.C. to the effect that she had contracted marriage with one *Shaheryar Ahmad*, now respondent No. 6. Being aggrieved by the aforesaid situation, he, on 21.08.2025, filed a writ petition No.47873-H of 2025 under Article 199 read with Article 36 of the Constitution before the High Court for the recovery of his daughter from the alleged illegal and unlawful custody of respondent No. 6, on the ground that she is a Christian and her exact date of birth is 07.10.2012, as reflected in her birth certificate and child registration certificate (available on record). Thus, she, at the time of her alleged marriage, was only twelve years, nine months, and twenty days old, and, therefore, she, being a minor, could not have lawfully contracted marriage with anyone. The High Court dismissed this petition vide order dated 25.08.2025.

3. Alternatively, the petitioner also challenged the legality of the statement dated 31.07.2025 of his daughter, recorded under section 164, Cr.P.C., by a Magistrate, Model Town, Lahore, by filing a criminal revision petition before the Sessions Judge, Lahore. During the course of the hearing of the said revision petition, a Secretary, Union Council, appeared in person and disowned the due execution and registration of the *Nikahnama* of the petitioner's daughter with respondent No. 6 in his Union Council. On this basis, the revisional court disposed of the matter with a direction to the Investigating Officer to incorporate these facts into the investigation and to proceed strictly in accordance with the law. Based on these observations, the petitioner approached the ASJ, Lahore by filing a petition under section 491, Cr.P.C., seeking the recovery of his daughter from the alleged illegal and unlawful custody of respondent No. 6; however, the same was dismissed by him, vide order dated 09.10.2025. The relevant portion of the said order is reproduced hereunder for ease of reference:

> '3.....*According to the police record, the alleged detenue Maria Bibi on 31.07.2025 appeared before the learned Area Magistrate Model Town courts Lahore and got recorded her statement u/s 164 Cr.P.C that nobody abducted her, nor committed Zina with her and she has contracted marriage with free will with Sheharyar (respondent No. 03 of this petition). Not only this but also Mst. Maria Bibi filed a petition u/s section 22A/22B Cr.P.C before the learned Ex-officio*

> *Justice of peace Lahore by mentioning herself as wife of Shehryar. In that petition also she appeared before the learned Justice of peace and stated that nobody abducted her. In these circumstance two statements of the alleged Maria Bibi made before the courts i.e statement u/s 164 Cr.P.C recorded by the learned judicial magistrate and statement made before the learned justice of peace in petition u/s 22 A-B are present on the record.* ***In presence of the statements it cannot be inferred that Maria Bibi was in illegal custody of the respondent No.3 Shehryar.*** *Although it has been stated that in a revision petition filed against the recording of statement by the learned judicial magistrate u/s 164 Cr.P.C it has been observed by the Revisional Court that Nikka Nama of Maria Bibi with Shehriyar was unregistered and forged. However, in this petition u/s 491 Cr.P.C. such question cannot be determined or decided because being a proceedings of interim and summary nature this is within the ambit of section 491 Cr.P.C to determine the validity Nikka Nama. Morcover as mentioned above FIR regarding the incident had already been registered and* ***if Nikka Nama of the Maria Bibi was found forged or she was a minor and the petitioner was unsatisfied with the results of the investigation of that case, he has a remedy of transfer of the investigation of the case****...'*
>
> **Emphasis is supplied.**

Being aggrieved by the aforesaid order, the petitioner approached the High Court by filing Writ Petition No. 61396/H/2025; however, the same was also dismissed by the High Court through the impugned order. Hence, the present petition.

4. The learned counsel for the petitioner argued that the impugned orders of the High Court and the ASJ are illegal, resulting from misreading and non-reading of the material on record. The alleged marriage of the petitioner's daughter with respondent No. 6 is *ex facie* void, as she, being a Christian and a minor at the relevant time, could not lawfully contract marriage with the respondent No.6, a Muslim, under law, i.e., the Child Restraint Marriage Act. The purported *Nikahnama* is forged, a fact corroborated by the Secretary of the Union Council, who disowned its execution and registration. The statement of the minor recorded under section 164, Cr.P.C., cannot override documentary evidence of her age or validate an otherwise void marriage. The custody of a minor girl by a person claiming marriage under a void and unregistered *Nikahnama* amounts to illegal detention and also violates the fundamental rights guaranteed under Articles 4, 9, 25, and 36 of the Constitution; however, the courts below erred in dismissing the petitions for her recovery without considering this important aspect of the matter. Moreover, the High Court merely relied on its earlier order

without addressing subsequent developments, including the revisional court's findings regarding the invalid *Nikahnama*. It is thus prayed that the impugned orders be set aside and directions be issued for the recovery of the petitioner's minor daughter and her custody to be handed over to the petitioner in accordance with law. The petitioner also placed heavy reliance upon the judgment of the High Court reported as PLD 2025 Lah. 1.

5. The learned counsel for respondent No. 6 contends that the present petition is misconceived, frivolous, and an abuse of the process of law. The alleged *detenue* is not in unlawful custody, as she voluntarily married respondent No. 6 and recorded her statement under section 164, Cr.P.C., affirming her free will and consent. Such a statement carries significant evidentiary value, which cannot be lightly disregarded. The exact age of the girl is a disputed question of fact, which cannot be conclusively determined in summary proceedings under section 491, Cr.P.C., or constitutional jurisdiction. The petitioner's reliance on the birth certificate and Form-B is misplaced, as their genuineness can only be examined through a proper trial. Allegations regarding the execution or registration of the *Nikahnama* relate to investigation and do not justify habeas corpus relief. The revisional court only directed the Investigating Officer to record certain facts and made no finding of forgery or illegality against respondent No. 6. The proceedings under section 491, Cr.P.C., are not intended to decide matrimonial disputes or complex questions of fact. The petitioner has an adequate alternate remedy before the family court or other competent forum. The High Court rightly dismissed the writ petition by referring to its earlier order, and no jurisdictional defect, illegality, or perversity is shown in the impugned orders. It is, therefore, prayed that the present petition may be dismissed.

6. We have heard the submissions of the learned counsel for the parties and have perused the material on record, including the police file, with their assistance.

7. The gravamen of the petitioner's case is that the alleged marriage of his daughter with the respondent No. 6 is *ex facie* void and without lawful effect. According to him, she is a Christian and was, at the relevant time, a minor child; as such, she was legally incompetent to contract a valid marriage under the Child Marriage Restraint Act, 1929 (**'Act of 1929'**). Consequently, her custody with the respondent No.6 is asserted to be illegal and unlawful. Undisputedly, the petitioner and his daughter profess the Christian faith. However, the contention of the

petitioner that a Christian woman cannot lawfully marry a Muslim male is misconceived and devoid of substance, as it runs contrary to the settled principles of Islamic law, under which a Muslim male may validly contract marriage with a Christian woman (being from the *Ahl al-Kitab*). This position finds authoritative support in paragraph 259(1) of D.F. Mulla, *Principles of Islamic Law* (10th edn, Al-Qanoon Publishers) 746, wherein it is stated that a Muslim male may lawfully marry a Christian woman. For the sake of further clarity, reference may usefully be made to earlier pronouncements of the Supreme Court of Pakistan, wherein the above-noted principle was reiterated and elaborately expounded with due reference to the relevant *Qur'anic* verses as well as the *Hadiths*. Firstly, reference may be made to case of *Mrs Marina Jatoi v Nuruddin K Jatoi and others* (**PLD 1967 SC 580**), wherein the Supreme Court made the following important observations regarding a marriage between a Muslim male and a Christian female:

> *'The above examination of the relevant provisions of the British Marriage Act, 1849, the Pakistan Divorce Act, 1869 and the Pakistan Christian Marriage Act brings out that* ***a marriage between a Muslim male and a Christian female though permitted by Islam can be performed in Pakistan under Act XV of 1872 [the Christian Marriage Act, 1872] and to that extent the application of personal law stands excluded by statue.*** *Reference may be made to section 5 of the Punjab Laws Act and other similar enactments and Regulations prevailing in other parts of undivided India. It is for this reason that a Christian female is usually converted to Islam before being married to a Muslim male. Consequently a marriage between a Muslim male and a Christian female can be dissolved only under the Divorce Act and not by pronouncement of talaq under the personal law of the husband.…'*
>
> ***Emphasis supplied.***

Secondly, the Supreme Court of Pakistan in *Mst. Zainab Bibi & others v. Mst. Bilqis Bibi & others* (**PLD 1981 SC 56**), on the subject of dissolution of marriage between a Muslim male and a Christian female, observed as follows:

> *'We regret our inability to understand how this Sura can lead to the inference that Mr. Ihsanul Haq's submission is contrary to the express tent of the Holy Qur'an,* ***and on the other hand, Mr. Ihsanul Haq did not challenge the principle that a Muslim can marry a Christian lady****, but he challenged the inference which Mr. Ghias Mohammad attempted to draw from the fact that a Muslim male could marry a Christian, and the real controversy between the learned counsel was about the inference to be drawn from the principle that a Muslim male can marry a Christian. Because a Muslim male can marry a Christian, a possible and*

> *reasonable view is that a wife's renunciation of Islam for Christianity should not automatically dissolve her marriage, because her husband is free in any event to marry a Christian. But, on the other hand, although a Muslim male can marry a Christian, apostasy from Islam to any religion, including Christianity, was a crime….'*
>
> ***Emphasis supplied.***

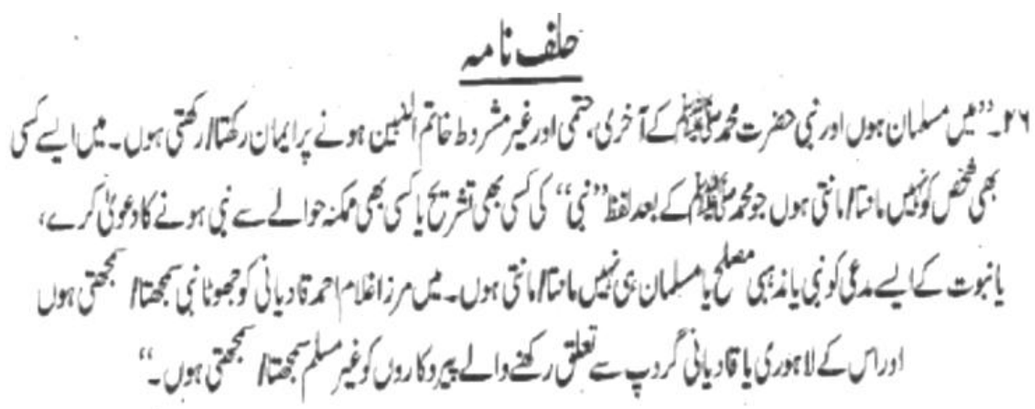
8. Before proceeding to determine the above controversy in the light of the afore-referred judgments of the Supreme Court of Pakistan, it is imperative to first clarify the precedential authority and binding force of its earlier decisions upon this Court within the framework of the prevailing constitutional dispensation. The frequent references to the judgments of the Supreme Court of Pakistan in our decisions may otherwise create the misimpression that this Court is unreservedly bound by those pronouncements in all circumstances, whereas that is not necessarily the position under the prevailing constitutional framework. Article 189 of the Constitution, which formerly accorded binding force to the judgments of the Supreme Court of Pakistan upon all courts subordinate thereto, must now be read in light of the altered constitutional architecture. Upon the establishment of this Court and the conferment upon it of final and binding authority in all matters, particularly constitutional matters, the precedential hierarchy stands constitutionally restructured. Accordingly, the binding force contemplated under Article 189 must be understood as operating subject to the overriding authority of this Court. The supremacy of constitutional adjudication now vests in this Court, and all courts, including the Supreme Court of Pakistan, are bound by its pronouncements.

9. It is further clarified that the binding force of judicial precedent is not derived from institutional seniority but from the constitutional hierarchy itself. Where the Constitution expressly vests final interpretative authority in a particular court, its pronouncements necessarily prevail over all others, including those of courts which formerly exercised such jurisdiction. Consequently, judgments of the Supreme Court of Pakistan rendered prior to the establishment of this Court do not operate as binding precedents upon this Court. They nonetheless continue to command great persuasive value, particularly when grounded in sound reasoning, reflect a consistent line of authority, and are in harmony with the text, structure, and underlying values of the Constitution. Needless to mention, the doctrine of stare decisis has not been abrogated; rather, it has been recalibrated to accord primacy to

constitutional supremacy. The judicial discipline demands that precedent be reconsidered, not ignored and disregarded in silence, and that continuity be preserved except where departure becomes a constitutional necessity. Therefore, this Court would ordinarily respect and follow our earlier constitutional jurisprudence evolved by the Supreme Court of Pakistan, unless it is established that the same is manifestly erroneous, inconsistent with the constitutional text or scheme, or incompatible with fundamental rights and contemporary constitutional values. Any departure from earlier Supreme Court precedent would be reasoned, express, and principled. The ultimate touchstone, however, remains the Constitution itself, whose meaning this Court is duty-bound to expound with finality. To sum up, the departure from earlier Supreme Court precedent may be justified only where this Court finds that such precedent:

(i) is manifestly inconsistent with the text or structure of the Constitution;
(ii) undermines or dilutes fundamental rights;
(iii) reflects judicial overreach into legislative or executive domains; or
(iv) has become incompatible with evolved constitutional values and democratic norms.
(v) Any other compelling reason which tends to advance the cause of justice.

10. From the above discussion, there remains no iota of doubt that a Muslim male can lawfully marry a Christian female. The question that now arises is whether such a marriage can be solemnized and registered under the Muslim Family Laws Ordinance, 1961 (the '**Ordinance**'). The answer to this question is clearly in the negative, as the Ordinance applies only to Muslim citizens of Pakistan (see sec. 1(2) of the Ordinance). However, with respect to this question, the learned counsel for respondent No.6, in the presence of Mst. Maria Bibi, argued that she is no longer a Christian as she had converted to Islam even before the solemnization of the marriage. The marriage, as such, was legally solemnized between two Muslims under the Ordinance. To support this contention, he *firstly* draws our attention to the affidavit (حلف نامہ) appended to the *Nikahnama* of the parties and contends that this affidavit constitutes a sufficient declaration by Mst. Maria Bibi to establish that she was a Muslim at the time of her marriage. To properly appreciate this argument, it would be advantageous to reproduce the said affidavit from the *Nikahnama* of the parties, which reads as follows:



حلف نامہ

۲۶۔ ''میں مسلمان ہوں اور نبی حضرت محمد ﷺ کے آخری، حتمی اور غیر مشروط خاتم النبیین ہونے پر ایمان رکھتا/رکھتی ہوں۔ میں ایسے کسی بھی شخص کو نہیں مانتا/مانتی ہوں جو محمد ﷺ کے بعد لفظ ''نبی'' کی کسی بھی تشریح یا کسی بھی ممکنہ حوالے سے نبی ہونے کا دعویٰ کرے، یا نبوت کے ایسے مدعی کو نبی یا مذہبی مصلح یا مسلمان ہی نہیں مانتا/مانتی ہوں۔ میں مرزا غلام احمد قادیانی کو جھوٹا نبی سمجھتا/سمجھتی ہوں اور اس کے لاہوری یا قادیانی گروپ سے تعلق رکھنے والے پیروکاروں کو غیر مسلم سمجھتا/سمجھتی ہوں۔''

We have carefully perused the contents of the above affidavit and have also considered the submissions made by the learned counsel for respondent No. 6, which have persuaded us to a considerable extent. We are, however, of the considered view that faith is a matter personal to each individual. If a person openly professes belief in or adherence to a particular faith, no further inquiry or evidence is ordinarily required to verify its genuineness. In Islam, no specific rituals are required to be performed by a non-Muslim before he or she is regarded as having renounced a previous faith and embraced Islam. What is required is a declaration to that effect and the recitation of the *Kalma*, along with belief in the Oneness of *Allah*, the Finality of the Prophethood of the Holy Prophet Muhammad (peace be upon him), and the Holy Qur'an. A true Muslim must also profess belief in the earlier Prophets, the Divine Books revealed to them, and the Day of Judgment. The above observations are further fortified by the concept of faith as authoritatively expounded by the Federal *Shariat* Court of Pakistan in *Mst. Zarina and another v. the State* (**PLD 1988 FSC 105**) and *Tariq Masih v. the State* (**2004 PCr.LJ 622**).

11. In addition to the above, Mst. Maria Bibi herself produced Certificate Serial No. 2595 dated 29.07.2025, issued by Dar-ul-Afta Ahl-e-Sunnat (دارالافتاء اہلسنّت), Lahore, to establish that she, in addition to the aforesaid affidavit, made a formal declaration of embracing Islam, duly attested by the witnesses and the head of the said institution. Undoubtedly, this certificate was issued two days after the solemnization of her marriage; however, it sufficiently verifies and confirms her earlier declaration made at the time of her marriage with respondent No. 6. The aforesaid declarations are adequate to conclude that Mst. Maria Bibi has fulfilled all the prerequisites for embracing Islam. Any further probe into the matter, or an attempt to ascertain the true nature of her prior disbelief, would amount to unwarranted intermeddling, unjustifiable on

any ground. It is not within the province of this Court, particularly in the present jurisdiction, to inquire into the genuineness or otherwise of her conversion. Moreover, it is immaterial whether the motive of Mst. Maria Bibi was a genuine spiritual transformation or merely a device to contract marriage with respondent No.6, particularly when she had unequivocally admitted the correctness of the Nikahnama while recording her statement under section 164, Cr.P.C., before a court of competent jurisdiction. It is, therefore, concluded that she, *prima facie*, is no longer a Christian by faith and, as such, her marriage was validly solemnized under the Ordinance.

12. Having addressed the foregoing aspects of the matter, we now turn to the other significant contention advanced by learned counsel for the petitioner regarding the validity of the marriage on the ground that Mst. Maira Bibi was allegedly a minor at the time of its solemnization. Before embarking upon a detailed examination of this issue, it would be apposite to observe that child marriage essentially denotes an unlawful and impermissible practice whereby boys and girls are married before attaining the legally prescribed age of majority. Girls who marry early face a greater risk of serious complications during pregnancy and childbirth. Internationally, underage marriage is considered a criminal practice as well as a human rights violation. Being so, the Act of 1929 is considered to be the first enactment on the subject, in the sub-continent, to restrain the solemnization of child marriages. The Act of 1929 is one of the few laws on the statute books that were introduced by the founder of Pakistan, *Mohammad Ali Jinnah*, while he was a member of the British India Legislative Assembly (*See Report of the Senate Standing Committee on Interior on the issue 'the Child Marriage Restraint (Amendment) Bill, 2017' moved by Senator Sehar Kamran on 21st August, 2017*). It was enacted on 01.10.1929, to restrain the solemnization of child marriages and applied to the whole of India, with effect from 01.04.1930. The Act of 1929 remains in force in Pakistan, being protected under Article 224 of the Constitution of 1956, Article 225 of the Constitution of 1962, and Article 268 of the Constitution of 1973. It applies to both Muslim and non-Muslim citizens of Pakistan. The term 'Child' was originally defined in the Act of 1929 to mean a 'person who, if a male, is under 18 years of age, and if a female, is under 14 years of age.' Subsequently, the Muslim Family Laws Ordinance 1961 (VIII of 1961), S. 12 raised the age of a girl child in the Act from 14 to 16 years to the extent of Muslim citizens.

13. After the Constitution (*Eighteenth Amendment*) Act, 2010, the Province of Sindh enacted the Sindh Child Marriage Restraint Act, 2013, which defines the term 'child' as a person, whether male or female, who is under eighteen years of age. The said Act provides for offences broadly similar to those contained in the Act of 1929, *albeit* with more severe punishments, and declares them to be cognizable, non-bailable, and non-compoundable. The Province of Punjab has formally adapted the Child Marriage Restraint Act, 1929, through the Punjab Child Marriage Restraint (Amendment) Act, 2015, with certain modifications. More recently, Parliament has enacted the Islamabad Capital Territory Child Marriage Restraint Act, 2025, for the Federal Capital Territory, while the Province of Balochistan has enacted the Balochistan Child Marriage Restraint Act, 2025, with a similar definition of child (a person under the age of eighteen years of age) as that of the Act of the Province of Sindh. However, the Province of Khyber Pakhtunkhwa has not enacted any legislation on this subject; therefore, the Act of 1929 is deemed to continue in force in the Province in view of Article 270AA(6) of the Constitution. Since the present controversy arises within the territorial limits of the Province of Punjab, it is thus to be examined and determined strictly in accordance with the legal framework provided under the Act of 1929, as applicable and adapted in the Province of Punjab.

14. The question of the legality of child marriages, particularly in the context of the prohibitions contained in the Act of 1929, has consistently engaged the attention of the then superior courts of the country after independence. Notably, for the first time, the issue of the validity of a marriage contracted by a girl below the age of sixteen years came up for consideration before a Division Bench of the High Court of West Pakistan in *Mushtaq Ahmad v. Mirza Muhammad Amin & another* (**PLD 1962 (W.P.) Karachi 442**). In that case, the petitioner sought a writ of habeas corpus for the recovery of his wife, Mst. Shagufta Parween, alleging that she was unlawfully detained by her father. His stance was that he had duly married the girl after obtaining a medical opinion assessing her age to be about eighteen years. The father of the girl, however, disputed her age and initiated criminal proceedings against him separately. The girl, nonetheless, consistently stated before the courts that she had married of her own free will and wished to live with her husband. The High Court declined to decide the controversy regarding

the age of the girl; however, it allowed the writ petition while making the following important observation:

:

> *'2. ……..It is true that a female under 16 years of age comes within the definition of child and a male above 18 years of age who contracts a child marriage is liable to be punished but there is nothing n the Child Marriage Restraint Act which affects the validity of such a marriage. The validity of the marriage in the present case must be determined according to the rule of Muhammadan Law and according to that law that marriage is valid as Mst. Shagufta Parween even according to her father was more than 15 years of age on the date of marriage and must be presumed to have attained puberty.* ***The Child Marriage Restraint Act merely punishes the male for contracting a marriage with a "child" but it does not render the marriage invalid.*** *This was so held even in a case of a Hindu marriage by the Allahabad High Court in a decision reported in Moti v. Beni (A I R 1936 All. 852). Mr. Lari, the learned counsel for Muhammad Amin, conceded this point. Now, even when the wife is a minor the Court has no power under the Guardians and Wards Act to appoint a guardian of her person unless it was of the opinion that the husband was an unfit person in that regard : (See Mulla's Commentary on Muhammadan Law, 15th edition, page 295.)'*
>
> **Emphasis supplied.**

15. A somewhat similar matter came for consideration before the Supreme Court of Pakistan in *Mst. Bakhshi v. Bashir Ahmad & another* (**PLD 1970 SC 323**). In that case, *Mst. Shamim* married *Bashir Ahmad*, and the marriage was duly registered. After an F.I.R. lodged by her mother, she was medically examined and opined to be between 16 and 17 years of age. She was later recovered by the police and handed over to her stepfather. Thereafter, her husband filed a petition under section 491, Cr.P.C. before the High Court, seeking her release from the alleged unlawful custody of her stepfather. During the proceedings before the High Court, she appeared in person and stated, '*…I am the wife of Bashir Ahmad and want to live with him. I do not want to go back to my mother.*' Consequently, the petition was allowed, and the High Court set Mst. Shamim Bibi at *liberty*. Being aggrieved, her mother, Mst. Bakhshi approached the Supreme Court by filing an appeal by special leave. However, the appeal was dismissed, with the Court making the following important observations:

> *'It was contended by the learned counsel for the appellant that although the mother may not have the custody of Mst. Shamim under the Muslim Persona: Law, the girl being under the age of 16 years-was, in view of the Child Marriage Restraint Act of 1929, incompetent to contract a marriage. It is*

> *true that the said Act does not permit the marriage of a girl below the age of 16 years, but if an girl below the age of 16 years marries in violation of that law,* ***the marriage itself does not become invalid on that score, although a adult husband contracting the marriage or the persons who have solemnized the marriage maybe held criminally liable.'***
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> **Emphasis supplied.**

16. Later on, a matter of child marriage again came before the Supreme Court of Pakistan in *Mauj Ali v. Syed Safdar Hussain Shah & Another* (**1970 SCMR 437**). In that case, *Syed Safdar Hussain Shah* (respondent before the Supreme Court) filed a petition under section 491, Cr.P.C., before the High Court for the recovery of his wife, *Mst. Musarrat*. During the proceedings, Mauj Ali (petitioner before the Supreme Court), father of Mst. Musarrat appeared before the High Court and alleged that she was below sixteen years of age, had been abducted by Safdar Hussain, and that a criminal case under sections 363/366, P.P.C., was pending against him. After hearing, the High Court concluded that Mst. Musarrat had attained puberty and had, of her own free will, entered into marriage with the respondent, Syed Safdar Hussain, and was entitled to reside with her husband. Being aggrieved, Mauj Ali approached the Supreme Court by filing a petition. However, the petition was dismissed, with the Court making the following important observations:

> '*Mr. A. G. Choudhri, learned counsel for the petitioner, has contended that the High Court should not have accepted the application filed by the respondent under section 491, Cr. P. C. Mst. Musarrat being a minor girl should have been ordered to go with her father. He further contended that as a case was pending against respondent No. 1 under sections 363/366, P. P. C., the High Court should not have entertained an application under section 491, Cr. P. C. The contention of the learned counsel has not impressed us.* ***It is not disputed that Mst. Musarrat has attained the age of puberty and she had married with respondent No. 1 of her own free will. Such a marriage is valid according to Muhammadan Law.*** *It was urged that such marriage is invalid under the Child Marriage Restraint Act and, therefore, it should not have been recognised by the High Court.* ***This contention also has no force. Since the marriage is valid under the Muhammadan Law, respondent No. 1 is the guardian of Mst. Musarrat and the High Court was perfectly justified in allowing her to go with her husband. We are satisfied that substantial justice has been done in this case. We, therefore, do not consider this as a fit case to interfere in our special jurisdiction. The petition is dismissed.'***
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> **Emphasis supplied.**

Similar observations have been made by the different High Courts in the cases: *Nasreen Bibi v. Station House Officer and others* (**2024 PCr.LJ 2058**), *Muhammad Khalid v. Magistrate 1st Class and others* (**PLD 2021 Lahore 21**), *Muhammad Azam v. the State and another* (**2018 PCr.LJ Note 175**), *Muhammad Safeer v. Additional Sessions Judge (West) Islamabad* (**PLD 2018 Islamabad 385**), *Allah Nawaz v. Station House Officer* (**PLD 2013 Lahore 243**), *Allah Bakhsh v. Safdar and others* (**2006 YLR 2936**), *Ghulam Qadir v. the Judge Family Court, Murree* (**1988 CLC 113**) and *Ghulam Hussain v. Nawaz Ali & another* (**1975 PCr.LJ 1049**).

17. In the present case, the contention of the petitioner is that his daughter is a minor child, approximately 12 years, 9 months, and 20 days of age, and that, on this ground alone, the marriage cannot legally stand. Even if, for the sake of argument, it is assumed that Mst. Maria Bibi is of the age alleged by the petitioner, her father in the instant petition; such a plea stands in stark contradiction to his earlier stance taken in the F.I.R., wherein he stated her age to be 13/14 years. Such inconsistency materially undermines the credibility of his version. Moreover, the birth registration certificate issued by the Union Council, Canal View, Lahore, bears both the date of entry and the date of issuance as 13.11.2019, whereas the Child Registration Certificate issued by the National Database and Registration Authority bears the date of issuance as 12.09.2022. Both documents (available on record) were thus obtained approximately seven and ten years, respectively, after the alleged date of birth of Mst. Maria Bibi. The learned counsel for the petitioner failed to advance any plausible explanation for such an inordinate delay in the registration and issuance of these documents. In the absence of a satisfactory explanation, the probative value of these documents is significantly diminished, particularly when delayed registration of birth is always susceptible to manipulation unless corroborated by independent and reliable evidence. It is further noted with great importance that, as per the Child Registration Certificate, there exists a gap of less than eight months between the alleged date of birth of Mst. Maria Bibi and that of her next sister, namely Sania, who is mentioned to have been born on 04.06.2013. Such proximity of dates further casts serious doubt upon the correctness of the alleged date of birth and supports the inference that the documents relied upon by the petitioner are not free from suspicion. Even otherwise, Mst. Maria Bibi had her date of birth recorded as 01.02.2007 in the *Nikahnama* and also refuted her father's stance

regarding her alleged minority. In these circumstances, these documents cannot be relied upon as the sole basis for concluding that Mst. Maria Bibi was born on 07.10.2012, as alleged by her father, particularly when she is physically present in this court and appears to be of a more advanced age.

18. In addition to the above, it has been observed that the controversy involved in the present case is somewhat identical to that which came up for consideration before the Supreme Court of Pakistan in the cases referred to hereinabove. We respectfully subscribe to the view taken by the said Court in those cases, wherein it was categorically observed that the Act of 1929 merely criminalizes the solemnization of a child marriage but does not expressly declare such a marriage to be void or voidable. It is further added that in the absence of any explicit statutory provision invalidating the marriage itself, the legal status of such a marriage remains unaffected. It is a well-settled principle of statutory interpretation that where the legislature intends to alter or abrogate a settled personal law, it must do so in clear and unequivocal terms. The statutory silence with regard to the validity of a marriage cannot be presumed to imply an intention to override established principles of Muhammadan Law, under which such a marriage is not void. To infer such an intention, when it is not borne out by the plain language of the statute, would amount to judicial legislation and reading into the law something which the legislature has consciously omitted. Since the marriage in question was solemnized by Mst. Maria Bibi with respondent No. 6 of her own free will and consent, as acknowledged by her in her statement recorded under section 164, Cr.P.C., and is valid under Muhammadan Law, the respondent No.6, being her husband, assumes the status of her lawful guardian (wali). Consequently, the High Court was fully justified in holding that her custody with her husband cannot be termed illegal or unlawful, particularly in the absence of any declaration of invalidity by a competent court of law.

19. Even otherwise, it is a matter of record that the petitioner earlier, on 21.08.2025, filed a writ petition No.47873-H of 2025 under Article 199 read with Article 36 of the Constitution for the recovery of his daughter from the alleged illegal and unlawful custody of respondent No. 6, on the same ground which was dismissed by the High Court, vide order dated 25.08.2025. The operative part of the order is reproduced hereunder for ease of reference:

> *'3. It is noticed that for the abduction of Maria, already a criminal case vide F.I.R. No.5144/2025 upon the complaint of Shahbaz Masih (petitioner) at police station District Nawab Town was registered; however, the investigation of the aforementioned case, Mst. Maria appeared before the learned Area Magistrate concerned and got recorded her statement under section 164 Cr.P.C. perusal of which unfolds that she claimed to have entered into matrimonial knot with Shehryar Ahmad (respondent No.5) with her free will and consent.* ***In this backdrop, the custody of Mst. Maria with her husband cannot be termed as illegal or unlawful****.'*
>
> ***Emphasis supplied.***

Through this order, the High Court, after taking note of the pendency of F.I.R. No. 5144/2025 relating to the alleged abduction of Mst. Maria, specifically considered her statement recorded under section 164, Cr.P.C., wherein she categorically asserted that she had entered into matrimony with respondent No. 6 of her own free will and consent. On the basis of the said voluntary statement, the High Court conclusively held that the custody of Mst. Maria, with her husband, could neither be termed illegal nor unlawful. The said finding attained finality, as the petitioner did not assail or challenge the same before any higher forum. Consequently, the determination so made operates as final between the parties on the well-known principle of *res judicata*, as laid down by the Supreme Court of Pakistan in *Pir Bakhsh v. the Chairman, Allotment Committee* (**PLD 1987 SC 145**). Insofar as the judgment of the High Court in *Azka Wahid v. Province of Punjab* (**PLD 2025 Lah. 1**), relied upon by the learned counsel for the petitioner, is concerned, the same has no relevance to the present controversy. In that case, the challenge was confined to the definition of the term 'child' on the ground that it was discriminatory, as it prescribed different minimum ages for females and males with particular reference to the other Provinces.

20. For the foregoing reasons, it is concluded that the High Court correctly understood the controversy at hand and made a well-founded decision based on the relevant law on the issue. In its thorough analysis of the applicable law and the available facts, the High Court arrived at a sound and reasoned conclusion that is both legally correct and just. Hence, no illegality, perversity, or misreading or non-reading of evidence has been found in the impugned judgments. Accordingly, leave is refused, and the petitions are dismissed.

21. Before parting with the case, we deem it appropriate to clarify that the above observations shall not prejudice or impede the

proceedings before the competent criminal court, should the prosecution in the aforementioned criminal case proceed in accordance with law.

Judge

Judge

Islamabad, the
3rd February, 2026.
APPROVED FOR REPORTING
*Ghulam Raza/**