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Subject : Constitutional Development
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Constitutional Development

Asma jilani Vs Government of Pakistan

This is the one of the most important constitutional cases in pakistan's legal and constitutional history. It play a key role in shaping pakistan constitutional development and the relationship between military rule and constitutional legality.

Kings Notes

Background: After the military coup of march 25, 1969, General Agha Muhammad Yahya Khan took over the Goverment, abrogated the 1962 Constitutional, and declared martial law.

During this period Miss Asma jilani (Daughter of Malik Gulam jilani and Begum Zaina Gauhar) filed petitions challenging the detention of their Relative under mahal law regulations.

Decision: The Supreme Court of pakistan, led by chief justice Hamoodur Rehman, delivered it judgment in 1972.

- The court declared Yahya Khan's Mashal law illegal and unconstitutional
- It held that the constitution of 1962 was never lawfully abrogated
- The court ruled that Yahya Khan wa a "usurper", and his regime

Kings Notes

was void ab initio (from the beginning.)

Key Constitutional principles Established

1. Doctrine of Necessity Rejected

Unlike State V. Dosso (1958), where the court validated martial law under the "Doctrine of Revolutionary Legality" Asma Jilani rejected that approach.

The court explicitly overruled the Dosso case, stating that no illegal seizure of power can be legitimized by succes-

2. Supremacy of the constitution

The decision reaffirmed that Sovereignty lies with the people, and the constitution represent Their will.

No individual, including The

Kings Notes

armed forces, has authority to abrogate or suspend it.

3. Rule of Law and judicial Supremacy

The court reinforced that the judiciary is the guardian of the constitution, and it has the power to strike down unconstitutional acts by any authority.

4. Recognition of De Facto Doctrine

Although Yahya Khan's rule was declared illegal, the court allowed limited validation of his administrative acts under "the de ~~facts~~ facto doctrine" to avoids chaos.

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Impact on Constitutional Development

1. End of the Dosso Precedent (1958)

The Asma Jilani case restored constitutional supremacy by rejecting the justification of coups.

2- Foundation for the 1973 constitution

The principles from this judgment directly influenced the drafting of the 1973 constitution, especially regarding

- Separation of powers
- Civilian supremacy over the military, and
- judicial review

3. Strengthening Democracy

It became a cornerstone case

Kings Notes

affirming that no military take over can be legitimized, thus shaping future constitutional jurisprudence.

• Precedent for later cases

Though later courts (e.g., in Zafar Ali Shah V. Pervez Musharraf, 2000) invoked the "doctrine of necessity" again, Asma Jilani remains a moral and legal benchmark against unconstitutional regimes.

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