CONSTITUTIONAL

DEVELOPMENT

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ASMA GILLANI CASE

A Landmark Case in Pakistan's Constitutional History
Asma Jilani v. Government of the Punjab, commonly known as the Asma Jilani case, is a landmark judgment in Pakistan's constitutional history. The case, decided in 1972, marked a significant shift in the country's constitutional jurisprudence, reaffirming the supremacy of the Constitution and limiting the power of military regimes.

Background
In 1971, General Yahya Khan imposed martial law in Pakistan, dissolving the National and Provincial Assemblies, and abrogating the 1962 Constitution. Malik Ghulam Jilani, a prominent politician and father of Asma

Jilani, was detained under Martial Law Regulation No. 78 of 1971. Asma Jilani filed a writ petition in the Lahore High Court, challenging her father's detention.

High Court Decision
The Lahore High Court dismissed the petition, citing the Jurisdiction of Courts (Removal of Doubts) Order, 1969, which barred courts from questioning martial law orders. The court held that it had no jurisdiction to review the detention order.

Supreme Court Decision
Asma Jilani appealed to the Supreme Court, which overturned the High Court's decision. The Supreme Court, led by Chief Justice Hamoodur Rahman, held that:

1. *Martial Law is not Superior to the Constitution*: The court declared that martial law is not above the Constitution and that the imposition of martial law by General Yahya Khan was unconstitutional.
2. *Constitutional Supremacy*: The court reaffirmed the supremacy of the Constitution, emphasizing that no one, including the military, is above the law.
3. *Invalidation of Martial Law Orders*: The court invalidated the Jurisdiction of Courts (Removal of Doubts) Order, 1969, and Martial Law Regulation No. 78 of 1971, declaring Malik Ghulam Jilani's detention illegal.

Impact of the Judgment

The Asma Jilani case has had a profound impact on Pakistan's constitutional development:

1. *Constitutional Supremacy*: The judgment reaffirmed the supremacy of the Constitution, limiting the power of military regimes and promoting constitutional governance.
2. *Judicial Review*: The case established the principle of judicial review, empowering courts to scrutinize executive actions, including martial law orders.
3. *Protection of Fundamental Rights*: The judgment has been cited in numerous cases to protect fundamental rights, including the right to life, liberty, and due process.

Critique and Controversies

While the Asma Jilani case is celebrated for its contribution to Pakistan's constitutional jurisprudence, it has also been subject to criticism:

1. *Limited Impact*: Some argue that the judgment had limited impact, as General Yahya Khan's regime did not comply with the court's decision.
2. *Future Martial Laws*: The judgment did not prevent future martial laws, as subsequent military regimes have continued to abrogate the Constitution.

3. *Judicial Activism*: Some critics argue that the Supreme Court overstepped its authority, engaging in judicial activism rather than adhering to its constitutional role.

Conclusion
The Asma Jilani case remains a landmark judgment in Pakistan's constitutional history, reaffirming the supremacy of the Constitution and limiting the power of military regimes. While the case has had a lasting impact on Pakistan's constitutional development, it also highlights the ongoing challenges to constitutional governance in the country.

Recommendations
1. *Strengthening Constitutional Governance*: Pakistan's policymakers should strengthen constitutional governance, ensuring that all institutions, including the military, are accountable to the Constitution.
2. *Protecting Fundamental Rights*: The judiciary should continue to protect fundamental rights, citing the Asma Jilani case as a precedent.
3. *Promoting Constitutional Awareness*: There is a need to promote constitutional awareness among the public, highlighting the importance of the Constitution and the Asma Jilani case.

References

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