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Subject :- Constitution Develpment

Topic :- Miss Asma jilani V/S Govt

Department :- LAW

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Cours Code :- Constitutional Development in Pakistan (Law 421)

Topic

Asma Jilani Case

Introduction:

Asma jalani Case is the one of thes important Cases of the history which Proved landmark in the Constitution history of Pakistan Such as State vs Dosso.

In this Case the imposition of Martial law by General Yahya Khan and assumption of the office of chief Martial law administrator by him was challenged.

Asma jilani challeged this martial law against General Yahya Khan.

Facts of the Case.

Detention of Malik Ghulam Jilani and Altaf Gauhar under martial law.

Malik Ghulam a leader of the Awami league and Altaf Gauhar a civil Servent and editor of the newspaper Dawn.

Malik was critical of President Yahya Khan military action in East Pakistan in 1970.

In his letter to President Yahya Khan on April 7 1971 he expressed his opposition to use of force in East Pakistan and urged for a Peaceful resolution to the crisis.

As a result both were arrested and detained.

I

First writ By Miss Asma.

Mis Asma D/o malik Ghulam jilani a 18 Years young girl filed writ in the Lahore High court for the release of her father.

The Petitions argued that detention was unlawful and unconstitutional and and violated malik Ghulam Fundamental rights.

II

Second writ by Zarina Gohar

Zarina Gohar wife of malik Ghulam filed anothe writ in the Sindh high Court for the release of her husband Altaf Gohar.

Both Appeal were filed under the Artical 98 of constitution of Pakistan 1962

High Court Dismissed Both Petition

The high court held that they had no jurisdiction because Clause 2 of the Jurisdiction of Court (Removal of Doubts) order No 3 of 1969 barred the Court from questioning the validity of any act done under martial law. Regulation No 78 of 1971 According to it any action or order by Army Chief or martial law authority cannot be challenged in any court.

Appeal in Supreme Court

After the dismissal of petition Asma filed a petition in Supreme Court.

Another Prominent lawyer A.K Brohi was representing Asma wife Zarina while Attorney Yahya Bakhtiar appeared on behalf of the government

Verdict of Supreme Court

- Rejected the Kelsen theory

A five members Bench of the Supreme Court headed by Justice Hamoodur Rehman unanimously rejected the Kelsen theory.

- Rejected the Principle laid down in State Vs Dosso Case.
- Declared Martial law illegal.

SC stated that martial law imposed by General Yahya Khan was illegal and declared him a usurper Thus Martial Law regulation No 78 was of ono legal effect