Assignment: _____ Date: _____

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Section:
(A)

Subject:
Constitutional Developments

Topic:
Miss Asma jilani vs The Government of Punjab

Cource: Code:
Constitutional Developments in Pakistan (Law 421)

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Case Title:-

Miss, Asma Jilani vs The Government of Punjab and another (PLD 1972 SC 139) Also known as: The Asma Jilani Case

Court:-

Supreme court of Pakistan

Bench (Judges)

Chief Justice Hamoodur Rahman (C.J)
Justice Yaqub Ali
Justice Anwarul Haq
Justice Salahuddin Ahmad
Justice Hamdur Rahman

Legal History:-

it's one of the most important constitutional cases in Pakistan's Legal History

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Date of Decision

1972

Background of the case:-

After the military coup of 25march 1969 General Agha Muhammad Yahya Khan took over power from President Ayub Khan and imposed martial law throughout Pakistan. He declared himself the Chief martial Law Administrator (CMLA) and later the president of Pakistan. suspending the constitution of 1962.

During this period, Miss Asma Jilani (daughter of Malik Ghulam Jilani, a political leader) and Begum Zarina Gauhar (Mother of Altaf Gauhar, a civil servant and journalist filed petitions for habeas corpus in the Supreme Court, challenging in the detention of their relatives under martial Law regulations

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:Legal Issues:-

1- whether General Yahya Khans takeover of the government and the imposition of martial law was legally valid.
2- whether the constitution of 1962 was lawfully abrogated.
3- whether the detention orders issued under martial law were valid and Law full.

4- whether the detention orders issued under martial law, whether Yahya Khan could be considered a lawful authority under Pakistan's legal and constitutional framework.

:Arguments:- Presented:-

Petitioners' Arguments (Asma Jilani and Zarina Gauhar)

- The military takeover as was unconstitutional and illegal.

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- The constitution of 1962 was still in force since it was never validly suspended.
- Yahya Khan's regim was a "usurper govt" with no legal validity.

The detentions of their relatives were unlawful and violated fundamental rights.

Respondents' Arguments (Govt of Punjab)

Argued that Yahya Khans' actions were justified under the doctrine of the necessity citing the Dosso Cas (PLD 1958 Sc 533)

- Claimed that the govt acted in the interest of state stability and security.

Judgment (Decision)

Main Findings:-

Yahy Khan declared "Usurper" The supreme court held at that General Yahya Khan

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assumption of power was illegal and unconstitutional. He was not a lawful authority, but, usurper.

2. Martial law invalid.

The imposition of martial law by Yahya Khan was unlawful and without any constitutional saction.

3- Dosso case overruled.

The court overruled the earlier precedent set in state vs. Dosso (PLD 1958 SC 533) which had validated military coups under the "Doctrine of Necessity"

Chief justice Hamoodur Rahman stated that Dosso was "wrongly decided" and had no legal fandation.

4- Constitution restored

The 1962 constitution was considered to have remained in force untill the new 1973, constitution.

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5. Detention Orders void.

The detentions of Malik Ghulam Jilani and Altaf Gauhar were declared illegal, and they were ordered to be released.

Key Doctrines of Necessity:

The court rejected the misuse of the doctrine of necessity declaring that no unconstitutional act can be justified simply by claiming it was necessary for the state.

Rule of Law:-

The court strongly emphasized that no one is above the constitution - not even the military.

Supremacy of the constitution.-

The Constitution is the supreme law of the land any deviation force is unlaw

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Significance:-

1. Land mark decision in constitutional law.

2. End of military justification

3. Foundation for democracy

4. Judical independence

Conclusion:-

In Asma Jilani vs Government of Punjab (1972)

The supreme court of Pakistan declared, General Yahya Khan's regime illegal martial law invalid and detentions under it unlawful.

it remains on the most celebrated decions in Pakistan constitutional history. marking a turning point toward constitutionalism and judicial independence.

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