

Q1. Write short note on any two of the following cases;

i) State v Dosso (PLD 1958 SC (Pak) 533)

ii) Federation of Pakistan v Moulvi Tamizuddin Khan (PLD 1955 FC 240)

iii) Sindh High Court Bar Association v Federation of Pakistan (PLD 2010 SC 1161)

iv) Nawaz Sharif v Federation of Pakistan. (PLD 1993 SC 473)

(i) STATE V DOSSO (PLD 1958 SC (PAK) 533)

The judiciary has a pivotal role in the interpretation of the statutes and development of law.

After annulment of the constitution of 1956 and dismissal of the central and provincial cabinets and Legislatures and imposition of Martial law and take over of the entire administrative and Legislative machinery by the chief Martial Law Administrative an order known as the Laws Order 1958, was promulgated.

It is a simple case of murder committed by a person named, Dosso of Balochistan. He was convicted under the tribal system of justice by Loya Jirga as enumerated Frontier Crimes Regulation, but his relatives approached to the Lahore high court which repealed the decision of Loya Jirga,

Later on, on the appeal of Federal Govt, Supreme Court reversed the decision of Lahore High court.

LEGITIMIZATION OF MARTIAL LAW.

The case got prominence, because it indirectly questioned the legitimization of Martial law imposed by Iskandar Mirza on 7th oct, 1958.

Facts:

END OF 1956 CONSTITUTION

The historic event took place in the history of Pakistan in 1958 and the first constitution 1956, came to an end.

ARREST OF DOSSO:

Dosso and other were convicted under the Section 11 of FCR 1901, and handed over to Loya Jirga.

FILED PETITION :

The family of Dosso filed a petition against the proceedings of council of elders regarding Dosso case in Lahore High Court.

DECISION OF LAHORE HIGH COURT:

The High Court decided the case in favour of Dosso and declared FCR repugnant to 1956 constitution.

PROMULGATION OF LAW ORDER 1958:

On October 7th 1958 the President of Pakistan Iskandar Mirza declared Martial Law in the country and made AYUB KHAN as Chief Martial Law Administrator. The central and provincial legislatures were dissolved with the abrogation of the 1956 Constitution.

JUDGEMENT OF THE SUPREME COURT:

The Supreme Court decided the case unanimously against the verdict of Lahore High Court.

MAIN POINTS

ENCOURAGED MILITARY INTERRUPTION IN POLITICS:

The verdict encouraged the subsequent military interventions in the politics of Pakistan, which occurred three times. These interventions potentially damaged the democratization in Pakistan.

NEW LEGAL ORDER:

The Supreme Court held that the Laws Order 1958 was the NEW LEGAL ORDER and the validity of laws and the correctness in the judicial decisions would be determined according to it.

LEGALISATION OF 1958 MARTIAL LAW

In the judgment held that 1958 Martial Law imposition is a kind of revolution (peaceful revolution) which is not resisted or opposed by the common people.

DOWN INDEPENDENT POWER OF JUDICIARY

The verdict was a serious blow to the independence of judiciary. The judiciary was bound to render its services under the new legal order of Laws.

ABSTAIN OF APPELLATE POWER:

The decision also took away the power of the courts to hear appeals against the actions of federal Govt.

BLACK LAW:

The judgement revalidated the British Imperial legacy, the curse, i.e. FCR; popularly known as black law, in the tribal areas of Frontier and Balochistan.

NO JURISDICTION OF COURTS

Once again the judiciary bowed down in front of strong executive in this case.

RESTORED FCR:

The Supreme Court also held that as the 1956 constitution was abrogated therefore FCR 1901 was still in force in accordance with the Laws Order, 1958.

STOUGE FOR CIVILIZED WORLD:

The judgement provided a laughing stock for civilized world on Pakistan; Because of the recognition of ML on the basis of Hans Kelson outdated theory.

DISADVANTAGE FROM CONSTITUTION:

From this judgement , constitution and promulgated after so much efforts, and a long struggle of 11 years.

BREAK DEMOCRATIC PROCESS:

The verdict halted the democratic process of Pakistan which had recently been on the road after the promulgation of 1st constitution of Pakistan.

END

Because of this law Order 1958, the Frontier Crime Resolution was still in force and the judgement given by the court approved the Kelson's theory.

(ii) Maulvi Tamizuddin Khan vs Federation of Pakistan

(PLD 1955 FC 240)

There have been a lot of cases in history of Islamic Republic of Pakistan

Maulvi Tamizuddin Khan vs Federation of Pakistan is one of them

Bench of Supreme Court

1. Chief Justice : Muhammad Munir.
2. Justice: S.A Rahman.
3. Justice: S.M Akram.
4. Justice: Muhammad Sharif.
5. Justice: A.R Cornelius.

On the 24th October ,1954, Pakistani constitutional Assembly was dissolved by the Governor General by a proclamation and a reconstituted council of minister was setup.

The dismissal was legally challenged by **Maulvi Tamizuddin Khan**, the president of the assembly.

FACTS

1. **Dissolution Of The Constituent Assembly.**
2. **Governor General Dissolved Cabinet In 1953.**
3. **Reconstitution Of The Council Of Ministers.**
4. **Action Of Maulvi Tameez-Ud-Din.**
5. **Writ Petition.**
6. **Number Of Writs Filed.**
7. **Writ Of Mandamus.**

According to **Section 233-A**, of the Government of **India Act 1935** by which the **Chief Court of Sind** praying that a writ in nature of **Mandamus** be issued against the **Federation of Pakistan** and the members of the reconstituted council of Minister's restraining them from implementing the aforesaid proclamation and to prohibit them for interfering with the exercise of **Maulvi Tamizuddin Khan**, the President of the Constituent Assembly and a representative from East Bengal, challenged the **Governor General's** actions in the **Sindh High Court**, where the dissolution was ruled as ultra vires.

ARGUMENTS OF THE COUNCIL OF MINISTERS

Sec 223-A which was inserted in the Government of India Act 1935 according g to this an amendment was not a valid piece of legislation since it did not receive the assent of the Governor-General , reference of this section , The council of Ministers of federation was argued that the Assembly was rightfully dissolved and the chief court had no jurisdiction to issue the writs

.THE CHIEF COURT .

The **Chief Court** did not agree with this contention and held that the Acts of the Constituent Assembly, when it did not function as the Federal Legislature did not require the assent of the Governor-General and in view of this finding issued the writs prayed for.

ON THE APPEAL THE FEDERAL COURT.

The Federal Court of Pakistan (now the Supreme Court of Pakistan) ruled in favor of the Governor General of Pakistan's dismissal of the 1st Constituent Assembly of Pakistan.

The constituent Assembly when it functions under sub-section (1) of section 8 of the latter section the Governor-General is necessary to all Legislations by the Legislature of the Dominion.

JUDJEMENT OF THE COURT

The Federal Court led by **Chief Justice Muhammad Munir** ruled in support of the Governor General.

The **Court Suspended the decision of the High Court** and held the Governor General, and not the Constituent Assembly, to be the sovereign authority

The court opined that royal assent can only be given by the Governor General as Pakistan was still a dominion and hence not a fully independent country.

According To The Section 223-A Of Government Of India Act 1935

The chief court of the Sind assumed jurisdiction to issue the writs did not receive such assent, it was not yet law and therefore "The Chief Court" had no jurisdiction to issue the writs.

CONCLUSION:

The section 223-A of Government of India Act of 1935 in question was not applied to this case because the governor general had not assent to it. The dissolution of the Constituent Assembly was held right and it dismissed the writ petition.

The Federal Court decided the case in the favour of federation and the Council of Ministers

END

Q7. Discuss briefly the facts and principles laid down in Begum Nusrat Bhutto vs. Chief of Army Staff & Federation of Pakistan case (PLD 1977 SC 657)

Judiciary plays a very important role in the interpretation of the statutes and laws. The judiciary has a pivotal role in the development of law.

It develops law by giving judgments which become precedents, So precedents may be regarded as source of law. In Pakistan too, the superior courts gave judgements which became precedents.

There have been lot of important and leading cases in the history of Pakistan. Begum Nusrat Bhutto v/s Chief of Army Staff and Federation of Pakistan case is one of them.

Bench of Supreme Court.

Chief Justice : Anwar-ul-Haq.

1. Justice : Waheed-ud-Din Ahmed.
2. Justice : Muhammad Haleem .
3. Justice : Safdar Shah.
4. Justice : Dorab Patel
5. Justice : Muhammad Akram.
6. Justice : Naseem Hassan Shah.
7. Justice : Qaisar Khan.

Facts

Under Article 184(3) of the constitution of Pakistan the Islamic Republic of Pakistan, the petition was filed to challenge the detention of Mr. Zulfikar Ali Bhutto and ten others Leaders of PPP .

The

They were detained under martial Law order no.12 of 1977. The petition was filed against Chief of Army Staff and Federation of Pakistan.

ARGUMENTS BY YAHYA BAKHTIYAR ADVOGATE ON BEHALF OF PETITIONER

ALLEGATION OF OFFICIAL INTERFERENCE WITH ELECTION OF 19

On the evening of 17th September 1977 in a public statement was made by the Chief of Army Staff in which he levied unfair allegation against PPP Government.

ACTION TAKEN IN MALAFIDE MANNER:

Arguments By Yahya Bakhtiyar Adcocate is that the action was taken in the Malafide manner , the purpose of which was to prevent the party from taking part in the Fourth Coming Election.

NO AUTHORITY TO IMPOSE MARTIAL LAW:

Arguments By Yahya Bakhtiyar Adcocate is that Chief of Army Staff had no authority to impose Martial Law in country.

ARREST OF THE PPP LEADER WAS HIGHLY MALAFIDE:

It was further argued that the arrest and detention of top Leaders PPP Leader was highly discriminatory and malafide.

VOIATION OF ARTICLE 9,10,17,25 OF THE CONSTITUTION OF PAKISTAN 1973

The order of detention were in voilation of fundamental rights specially Article 9,10,17,25 of the constitution of Pakistan 1973

ARGUMENTS A.K BROHI ON THE BEHALF OF FEDERATION:

Objection Against Petition.

Petition Against Chief of Army Staff that the petition was directed against the Chief of Army Staff that the detention order were passed by Chief Martial Law Administrator.

NO VIOLATION OF ARTICLE 9,10,17,25 OF THE CONSTITUTION OF PAKISTAN 1973:

That the petitioner is not aggrieved person as she does not allege any violation Of Article 9,10,17,25 Of The Constitution Of Pakistan 1973 but only those of detenus.

NO JURISDICTION TO COURT TO GRANT RELIEF:

That the court had no jurisdicton to grant any relief because of prohibition contained in Article 4,6 Law in Order 1977.

SUSPENDED FUNDAMENTAL RIGHTS (ARTICLE 2(3) OF LAW ORDER 1977):

That under Article 2(3) of Law Order 1977, the right to enforce the fundamental rights was suspended.

NEW LEGAL ORDER.

That old legal Order was displaced by the new legal order.

NECESSITY FOR IMPOSITON OF MARTIAL LAW.

There was unconstitutional and illegal governance of court by detenus and terminate on the imposition of Martial Law. There were apprehensions of civil war in the country.

DECISION OF THE SUPREME COURT

RECTIFICATION OF OBJECTION.

It is clear that objection is only in the nature of technicality. The Chief Of Army Staff is also CMLA and objection could be rectified by adding word CMLA to the description of respondents as stated in the petition.

KELSEN'S THEORY:

The theory of Kelsen's revolutions legality can have no application to a situation where the breach of continuity is admitted to be of purely temporary nature and for a specified limited purpose.

FAILURE TO MAINTAIN LAW AND ORDER .

The Prime Minister faced difficulty to maintain law and order. There were political crises in the country leading to constitutional breakdown. A situation had arisen for which the constitution provided no solution. It was in these circumstances that Chief of Army Staff General Muhammad Zia-ul-Haq intervened to save the country from chaos and bloodshed to safeguard the integrity of Pakistan and to separate warring factions, which had brought the country to the brink of disaster.

EXTRA CONSTITUTIONAL STEP.

It was an extra constitutional step but obviously dictated by the highest consideration of state necessity and welfare of people, the declaration of Martial Law was welcomed by almost all sections of the population which heaved a sigh of relief after having suffered extreme hardship during the unprecedented disturbance spread over a period of nearly four months.

REASON OF THIS STEP.

Chief Martial Law Administrator has stepped in for a temporary period and for the purpose of arranging a fair election.

JURISDICTION OF ORDER:

The Chief Martial Law Administrator was justified in providing in Article 2(3) of Law Order 1977 that the right to enforce fundamental rights shall be suspended.

CONCLUSION:

The conclusion of this case is that Martial Law was enforced due to State necessity and for the welfare of people. The Supreme Court gave its decision in favour of the Federation.

END

Q6. Discuss the facts and elaborate the principles laid down by the Supreme Court in Syed Zafer Ali Shah's case? (PLD 2000 SC 869)

SYED ZAFAR ALI SHAH GENERAL PERVEZ MUSHARRAF, CHIEF EXECUTIVE OF PAKISTAN (PLD2000 SC 869).

- Proclamation of Emergency by Chief Executive of Pakistan dated 14-10-1999— Constitution of Pakistan 1973

FACTS & THE PRINCIPLES LAID DOWN BY THE SUPREME COURT IN SYED ZAFER ALI SHAH'S CASE

On 12th May 2000:

Nawaz Sharif's government is taken over by Gen Musharraf on 12th October 1999, Proclamation of Emergency of the 14th October and Provisional Constitution Order No. 1 of 1999 as amended, were challenged before the Supreme Court under Article 184 (3) of the Constitution through several petitions.

On 12th October, 1999 a situation arose for which the Constitution provided no solution and the intervention by the Armed Forces through an extra-Constitutional measure became inevitable.

JUSTICE IRSHAD HASSAN KHAN:

The Chief Justice Irshad Hasan Khan, issued these orders when the advocate Zafar Ali Shah and Chaudhry Farooq claimed that there was no charge against their client.

In the first week of March 2000, the Chief Justice of the Supreme Court, Justice Irshad Hassan Khan asked Attorney General, Aziz A. Munshi, to provide a list of those suspended parliamentarians against whom corruption cases were initiated by the National Accountability Bureau (NAB).

After that fourth military coup, the intelligentsia of Pakistan again started looking towards the Supreme Court of Pakistan for remedy.

The army should not be allowed to take over power after every 10 years and start blaming the politicians for all crimes.

The Prime Minister should not be held for removing the chief of army staff as he was empowered by the Constitution to do so.

GENERAL JEHANGIR KARAMAT:

It is said that the former CAOS Gen Jehangir Karamat was rightly shown the outer door (claiming that he did not know why it was done by his client Nawaz Sharif), but the Prime Minister was justified in doing so.

12-MEMBER BENCH:

Presiding over a 12-member bench seized of the seven petitions challenging the military takeover, the chief justice directed the Attorney General to provide details of the expenditure on holding elections, including the expenses made by the candidates on their election campaigns.

THE BENCH:

The bench, which had given approval of military action consisted of 12 judges.

1. The Chief Justice Irshad Hasan Khan
2. Justice Mohammad Bashir Jahangir
3. Justice Sheikh Ijaz Nisar
4. Justice Abdul Rehman Khan
5. Justice Sheikh Riaz Ahmad
6. Justice Chaudhry Mohammad Arif
7. Justice Munir A. Sheikh
8. Justice Rashid Aziz Khan
9. Justice Nazim Hussain Siddiqui
10. Justice Iftikhar Mohammad Chaudhry
11. Justice Qazi Mohammad Farooq
12. Justice Rana Bhagwant's

ANNOUNCEMENT OF COURT:

The Court announced to decide the issue of maintainability and merits of the case simultaneously and finally, on 12th May 2000, validated the military take over putting their guns on the shoulders of 'doctrine of necessity' again, like his first champion Justice Munir Ahmed.

PROCLAMATION OF EMERGENCY AND PCO:

The Courts had been originally established under the 1973 Constitution, and have continued in their functions in spite of the Proclamation of Emergency and PCO No. 1 of 1999 and other legislative instruments issued by the Chief Executive.

That the 1973 Constitution still remains the supreme law of the land subject to the condition that certain parts thereof have been held abeyance o account of State necessity.

The previous Proclamation of Emergency of 28th May, 1998 was issued under Article 232(1) of the Constitution whereas the present Emergency of 14th October, 1999 was proclaimed Constitutional step.

NATIONAL ACCOUNTABILITY BUREAU ORDINANCE, 1999:

That the validity of the National Accountability Bureau Ordinance, 1999 will be examined separately in appropriate proceedings at appropriate stage.

ARTICLE 209 OF THE CONSTITUTION:

That the Judges of the superior Courts are also subject to accountability in accordance with the methodology laid down in Article 209 of the Constitution.

General Pervez Musharraf, the Chief of the Army Staff and the Chairman, Joint Chiefs of Staff Committee is a holder of Constitutional post.

That the current electoral rolls are outdated. Fresh elections cannot be held without updating the electoral rolls. The learned Attorney- General states that as per report of the Chief Election Commissioner this process will take two years.

PERIOD ALLOWED TO THE CHIEF EXECUTIVE:

Three years period is allowed to the Chief Executive with effect from the date of the Army take-over i.e. 12th October, 1999 for achieving his declared objectives.

That the Chief Executive shall appoint a date, not later than 90 days before the expiry of the aforesaid period of three years, for holding of general elections to the National Assembly and the provincial Assemblies and the Senate of Pakistan.

END

Q.8 How many amendments have been made in the constitution of 1973? Give brief details of any three amendments?

AMENDMENTS IN THE CONSTITUTION OF 1973

There is total 26th amendments have been made in the constitution of 1973.

12TH AMENDMENT

1. TRIAL COURT FOR 3 YEARS 1991:

- (a) The proceedings of the Special Courts for Speedy Trial are regulated by an Ordinance promulgated by President Ghulam Ishaq Khan in August 1991.
- (b) The 12th Constitutional Amendment adopted by the Parliament of Pakistan in July 1991 provides for the establishment of Special Courts for Speedy Trial.
- (c) 11 Special Courts for Speedy Trial were set up in Pakistan. They began to hear cases from 31 August.
- (d) On 10 September the first death sentence was reportedly passed by a Special Court for Speedy Trial in Rawalpindi.
- (e) The trial leading up to this sentence had taken only three days.

18TH AMENDMENT

2. EIGHTEENTH AMENDMENT OF THE CONSTITUTION OF PAKISTAN

The **Eighteenth Amendment of the Constitution of Pakistan** was passed by the National Assembly of Pakistan.

DATE OF THE EIGHTEENTH AMENDMENT:

On April 8, 2010, removing the power of the President of Pakistan to dissolve the Parliament unilaterally, turning Pakistan from a semi-presidential to a parliamentary republic, and renaming North-West Frontier Province to Khyber Pakhtunkhwa.

The bill reversed many infringements on the Constitution of Pakistan over several decades by its military rulers.

The package was intended to counter the sweeping powers amassed by the presidency under former presidents General Pervez Musharraf and General Muhammad Zia-ul-Haq and to ease political instability in Pakistan.

AMENDMENT BILL:

On the bill on April 19, 2010, the amendment bill was passed by the Senate of Pakistan on April 15, 2010 and it became an act of parliament when President Asif Ali Zardari put his signature.

25TH AMENDMENT

3. Merges Federally Administered Tribal Areas with Khyber Pakhtunkhwa. 31 May 2018.

On Thursday President Mamnoon Hussain gave his formal assent to the recently-passed 25th Constitution Amendment Bill, paving the way for the much-delayed merger of the Federally Administered Tribal Areas with Khyber Pakhtunkhwa province.

SPECIAL CEREMONY:

The bill, already approved by both houses of Parliament as well as the KP Assembly with rare political consensus, was signed by the president at a special ceremony attended by KP Governor, Sartaj Aziz, Barrister Zafarullah Khan and Retired LT General Nasser Khan Janjua, Iqbal Zafar Jhagra

BILL (ACT OF THE PARLIAMENT):

On Tuesday after receiving, it from the Ministry of Law and Justice after its passage by the KP Assembly on May 28, the bill which has now become an act of parliament, was forwarded to the Presidency by Senate Chairman Sadiq Sanjrani.

AFTER THE AMENDMENT:

After signing this bill, President Mamnoon Hussain felicitated the people of Fata and said that tribal people would now enjoy the same constitutional rights as being enjoyed by other citizens of Islamic Republic of Pakistan.

END

Q3. Write short note on the following?

i) Imposition of Martial Law 1958

ii) Imposition of Martial Law 1977

IMPOSITION OF MARTIAL LAW 1977

Elections were held on March 7, 1977. The Pakistan People's Party won these elections, but was accused by their opponents, Pakistan National Alliance, of rigging the elections. On March 14, 1977, the Alliance started a series of nationwide protests. Talks between the Alliance and Bhutto government were held in June 1977 and an agreement was reached, but it could not be implemented.

Fresh elections were announced for October 15, 1977. But on July 5, 1977, the Chief of Army Staff, General Muhammad Zia-ul-Haq, imposed Martial Law and the elections were postponed. General Zia-ul-Haq announced holding of elections within 90 days.

A conference of political leaders was held in February 1978, but a year later, in 1979, General Zia-ul-Haq declared political parties to be defunct and certain political leaders were disqualified.

Under General Zia's Martial Law, there was steady economic growth favoring the private sector, and efforts were made to Islamize the political, legal and economic structures. Pakistan gained the status of Most Favored Nation from the United States following the Soviet invasion of Afghanistan in December 1979. Vast amounts of military equipment and aid were donated to Pakistan to help the four million Afghan refugees who crossed into Baluchistan and North West Frontier Province.

On February 6, 1981, Movement for Restoration of Democracy was established to return democracy to Pakistan. A provisional Constitution was enforced on March 23, 1981, as the Constitution of 1973 had been suspended with the imposition of Martial Law.

CONCLUSION

On March 20, 1985, Junejo fulfilled his promise of lifting the Martial Law and the restoration of the fundamental rights, after the nomination of Muhammad Khan Junejo as Prime Minister of

Pakistan but at the price of enforcement of the Eighth Amendment and the validation of the Revival of the Constitutional Order.

IMPOSITION OF MARTIAL LAW 1958

On October 7, President Iskander Mirza declared martial law in Pakistan.

He abrogated the constitution of 1956, describing it as "unworkable" and full of "dangerous compromises.

He dismissed the government of Sir Feroz Khan Noon, dissolved the National Assembly of Pakistan and the provincial legislatures. Mirza also proceeded to outlaw all political parties.

He appointed General Ayub Khan, the Commander-in-Chief of the Pakistani army as the Chief Martial Law Administrator and nominated him to become the new Prime Minister of Pakistan, charged with administering the country the new constitution was followed by political turmoil in Pakistan, which saw a succession of four prime ministers - Chaudhry Muhammad Ali, Huseyn Shaheed Suhrawardy, Ibrahim Ismail Chundrigar and Sir Feroz Khan Noon - in a period of two years.

There was already a precedent in Governor General Malik Ghulam Muhammad dismissing prime ministers and ruling by decree, and many viewed Mirza as manipulating the constitution and instigating ousters of governments.

The One Unit scheme amalgamating the provinces of Pakistan into two wings - West Pakistan and East Pakistan - was politically controversial and proving difficult to administer.

END