

LLB –Part 2

Constitutional Law 2 (Paper-I)

Preface

Constitution of Pakistan 1973 Part 1

Q # 1 What do you mean by Fundamental Rights	2
Q # 2 Qualification of election and impeachment of president	6
Q # 3 Powers and functions of the president prescribed in the constitution of Pakistan 1973	9
Q # 4 Kinds of emergency under the constitution of Pakistan 1973. Discuss article 232	12
Q # 5 Composition, qualification of members, election, power and functions of Senate	15
Q # 6 Composition, qualification of members, election, power and functions of National Assembly	18
Q # 7 Jurisdiction of Supreme Court of Pakistan and procedure for appointment of its judges ..	22

Constitutional history of Pakistan Part 2

Q # 1 Salient features of Indian Independence Act 1962.	25
Q # 2 Salient features of Indian Independence Act 1935.....	28
Q # 3 Salient features of Indian Independence Act 1947.	32

Leading Constitutional Cases Part 3

Q # 1 Facts issues and principles laid down by the Supreme Court of Pakistan in Asma Jilani Vs Govt. of the Punjab (PLD 1972 139).	35
Q # 2 Nusrat Bhutto V/s Chief of Army Staff case 1977	38
Q # 3 The Dosso Case	41

Constitution of Pakistan 1973

Q 1. What do you mean by Fundamental Rights? Discuss them in details.

1) Introduction

- Fundamental rights are the basic rights of the citizens of the state. In the Islamic Republic Pakistan's constitution of 1973 the list of fundamental rights has been given it has also been clarified that any objectionable law under fundamental rights will be considered null and void because every democratic state recognizes fundamental rights for its citizen.

2) Definition of Fundamental Rights

- Fundamental rights are those rights which have been legally recognized by the supreme court of the Pakistan and are listed in the bill of rights in order to protect citizen from government violation.

3) Fundamental rights in the constitution

- Following are the fundamental rights which have been listed under the Pakistan' constitution 1973.

i. Security of person

- According to the Pakistan's constitution 1973, No person shall be deprived of liberty and life.

ii. Prohibition of slavery and forced labour

- According to the Pakistan's constitution 1973, slavery is forbidden and all forms of forced labour are prohibited. No child below the age of fourteen years shall be engaged in any factory or mine

iii. Protection against retrospective (old) punishment

- According to the Pakistan's constitution 1973, law is not authorized to punish a person for an act or an omission that was not an offense at the time of act or omission.

iv. Protection against double punishment

- According to the Pakistan's constitution 1973, law is not authorized to punish a person for any offense more than once as well as offender will not be compelled to give witness against himself.

v. Protection of family

- According to the Pakistan's constitution 1973, the State shall protect the marriage, the family, the mother and the child of the citizen.

- vi. Freedom of Movement**
 - According to the Pakistan's constitution 1973, every citizen of Pakistan has freedom of movement through Pakistan reasonable restrictions have been imposed by law for the benefit of public.
- vii. Freedom of association**
 - According to the Pakistan's constitution 1973, every citizen of Pakistan has right of form associations or unions but formation of associations should be within the limits.
- viii. Freedom of peaceful assembly**
 - According to the Pakistan's constitution 1973, every citizen has the right to make peaceful assembly without weapons, and reasonable restrictions have been imposed by law for the benefit of public.
- ix. Freedom of trade, Business and profession**
 - According to the Pakistan's constitution 1973, every citizen has a right to adopt any lawful profession, and can establish any lawful business.
- x. Freedom of speech**
 - According to the Pakistan's constitution 1973, every citizen has a right of freedom of speech and expression but reasonable restrictions have been imposed by law for the benefit of public and state.
- xi. Freedom of religion**
 - According to the Pakistan's constitution 1973, every citizen has a right to promote, practice and spread his religion.
- xii. Protection against religious taxes**
 - No person shall be compelled to pay any special tax for promotion of any religion other than his own.
- xiii. Right to establish religious institution**
 - Every religious community has a right to educate its followers and has a right to establish its own educational institutions.
- xiv. Political freedom**
 - According to the Pakistan's constitution 1973, every citizen of Pakistan has a right to be member of any political party but public servant can't take part.

- xv. Safeguards in case of arrest and detentions**
- Every person who is arrested and kept in custody shall be brought before a magistrate within a period of twenty-four hours after such arrest
- xvi. Equality of citizen**
- According to the Pakistan's constitution 1973, all citizens including women and children are equal in the eyes of law and are entitled with equal rights
- xvii. Freedom of property rights**
- According to the Pakistan's constitution 1973 provides protection to the properties of the citizens and no one can deprive them from their own properties.
- xviii. Right of access to public places**
- According to the Pakistan's constitution 1973 every citizen has a right to access places of public entertainment, there will be no restriction against any citizen on the basis of race, religion, caste, sex, residence or place of birth.
- xix. Right to job**
- According to the Pakistan's constitution 1973, every citizen has a right to get job without any problem.
- xx. Right of language and culture**
- According to the Pakistan's constitution 1973, national language of Pakistan is Urdu but any section of citizen having different language script or culture has a right of preserve and promotes the same and establishes institution for the purpose.
- xxi. Right of fair trial**
- According to the Pakistan's constitution 1973, every person is entitled to fair trial and due process. Under the law everyone who is charged with a criminal offence is presumed innocent until proved guilty.
- xxii. Right of education**
- According to the Pakistan's constitution 1973, right of education.—The State shall provide free and compulsory education to all children of the age of five to sixteen years
- xxiii. Right of information**
- According to the Pakistan's constitution 1973, every citizen has a right to have access to information in all matters of public importance without an issue.

4) Can fundamental rights be suspended

- During a national emergency, when state in itself in danger a many fundamental rights can be suspended because fundamental rights have no real meaning but the Right of Life and Personal Liberty cannot be suspended according to the original Constitution

5) Difference between fundamental rights and ordinary rights

1) As to source

- Fundamental rights are available under the constitution.
- Ordinary rights are provided by the ordinary law.

2) As to scope

- Fundamental rights have wider scope
- Ordinary rights have less scope

3) As to enforceability

- Fundamental rights are enforceable even against the government.
- Ordinary rights are not enforceable against the government

6) Conclusion

- To conclude, I can say that fundamental rights are part of the constitutional law. There can be no democratic constitution without it as a many fundamental rights have been given in this constitution which are protecting people to get them violate by government.
- Fundamental rights cannot be suspended without applying constitutional methods.

Q 2. Describe the qualification of election and impeachment of president prescribed in the constitution of Pakistan?

1) Introduction

The constitution of Pakistan 1973 is partly parliamentary and partly presidential in its nature. The president of the Pakistan runs the business of the state while the prime minister represents the unity of the Islamic republic of Pakistan. In the existing parliamentary system of government, President of Pakistan is considered ceremonial head of the state

2) Office of the president of Pakistan under the constitution of 1973

According to the constitution of Pakistan 1973, president is the constitutional head of the state. He is only constitutional head because responsibility for administration is in the hands of prime minister.

3) Qualifications for the election of president

Following are the qualifications of the office of president. Details are as under.

i. Muslim

- The candidate for the post of president must be a Muslim by faith.

ii. Citizenship

- The candidate for the post of president must be a citizen of the Pakistan.

iii. Age

The candidate for the post of president must not be less than 45 year of age.

iv. Office of profit

- The candidate for the post of president should not hold any office of profit in Pakistan

v. Mentally and physically fit

- The candidate for the post of president must be mentally and physically fit.

vi. Qualified to be Elected as member of N.A

- The candidate for the post of president is a person who should be qualified to be elected as a member of National Assembly.

4) Mode of election

Under the constitution of Pakistan 1973, a president is elected by the:-

- Members of both houses of Parliament (Senate and national assembly)
- Members of all the provincial assembly

5) Re-election

- Under the constitution of Pakistan 1973, a person holding office as president shall be eligible for re-election of the president.

6) Procedure for the election of the president

- The president of Pakistan is elected in joint session of Parliament but now provincial assemblies have also been included in the election procedure of the president.

i. Nomination of candidate

- On the fixed day any member of any houses will nominate a candidate and will inform to chairman about nomination. The nominations paper will be signed by the proposer. The candidate's willingness certificate will also be filled. After examination of the nomination papers chief election commissioner will announce the name of candidate.

ii. Voting in Parliament

- The speaker will summons the joint sitting of Parliament's two houses on the request of election commissioner. The election will be held under secret ballot. All members will be given ballot papers and their names will be entered into counter full of the ballot book. The members will cast their votes by putting mark on the ballot papers.

iii. Counting of votes

- After voting process, parliament will count the votes casted in provincial assemblies in favour of each candidate after completion of counting the result of each candidate is announced on the basis of simple majority by adding the votes of parliament. The candidate who secures the majority is declared successful.

iv. Oath for the office of president

- Before entering into office the candidate shall take oath for the office of president before chief justice of Pakistan.

7) Term of office

- Under the constitution of Pakistan 1973, tenure of the office of president is five years from onward when he enters in his office.

8) Resign of president

- Under the constitution of Pakistan 1973, the president can resign before the completion of the tenure of his office. He can resign from office by writing addressed to the speaker.

9) Restrictions

- Under the constitution of Pakistan 1973, the president will not hold any office of profit.
- President shall not remain a candidate of an assembly if he is elected as president, his seat from assembly automatically will be vacant on the day he enters in his office.

10) Acting president

- Under the constitution of Pakistan 1973, if the post of president gets vacant after his resignation, dismissal, illness, long leave or due to foreign tour, in this case the chairman of the senate will be acting president of Pakistan.

11) Impeachment of the president

- An impeachment can be moved in the parliament when there is an allegation of violation of the constitution or corruption, or he becomes unable to perform his duties due to mentally and physically unfitness. According to the procedure, no less than one-half members of each houses may send a written notice to the speaker or chairman. A copy of impeachment along with the list of allegation is sent to the president
- On the receipt of the notice speaker, summon the joint session of the parliament within seven to fourteen days and the president is given full opportunity to defend the allegation. After hearing in the parliament of the two third majorities of the two houses cast votes in favour of the resolution then president has to leave the post.

12) Ground for removal of president

- Under the following grounds the president of the Pakistan can be removed from his office.
 - Physical incapacity
 - Mental incapacity
 - Violation of the constitution
 - Gross misconduct

13) Conclusion

- To conclude I can say that in the constitution of 1973 parliamentary system of government was introduced in the country. President is the head of the state. He is elected by the parliament so his election is indirect. His tenure of office is five years but he can resign from his office. The procedure his election is difficult and complicated.

Q 3. Describe the powers and functions of the president prescribed in the constitution of Pakistan 1973?

1) Introduction

The constitution of Pakistan 1973 is partly parliamentary and partly presidential in its nature. The president of the Pakistan runs the business of the state while the prime minister represents the unity of the Islamic republic of Pakistan. In the existing parliamentary system of government, President of Pakistan is considered ceremonial head of the state

2) Constitutional position of President

The president is only a constitutional head of the state. The constitution declares that the president shall act in accordance with the advice of the prime minister.

3) Modes of exercising power

Following are the modes of using of power of president of the Pakistan

- 1) By his own discretion
- 2) On the advice of Prime Minister

4) Powers and functions of the president

Following are the different powers of the president. Details are as under.

1. Legislative powers

I. Summoning of parliament

- The president has power to summon one or both houses of parliament in a joint sitting to meet at any time and place as he thinks fit.

II. Address the parliament

- The president can address one or both houses of the parliament and can demand the attendance of all members of parliament.

III. Right to speak in Parliament

- The president has a right to speak in Parliament.

IV. Dissolution of National Assembly

- The president has power to dissolve the National Assembly on the advice of Prime Minister and assembly will be dissolved within the 48 hours after the advice

V. Promulgation of ordinance

- The president has powers to promulgate the ordinances within the Pakistan.

VI. Power of referendum

- The president has power to hold referendum if there is matter of national importance

VII. Appointment of care takers of cabinet

- The president has power to appoint the care-takers of the cabinet.

2. Judicial powers

I. Appointment of chief justice of Supreme Court

- The chief justice of the Pakistan is appointed by the president of Pakistan.

II. Appointment of Chief justice of high court

- The chief justice of the Pakistan is appointed by the president of Pakistan.

III. Appointment of additional judges of high court

- All the additional judges of the high court are appointed by the president of Pakistan.

IV. Fixation of salaries of judges

- The salaries and other allowance of the judges are fixed by the president of Pakistan.

V. Transfer of judges

- The president can transfer the judge of one high court to another high court in the country.

VI. Power of pardon

- The president of the Pakistan has special powers to pardon the offenders who have been punished by the courts.

3. Foreign powers

I. Settlement of matters

- The president of the Pakistan has power to settle the foreign affairs.

II. Appointment of ambassadors

- All the ambassadors are appointed by the president of Pakistan.

III. Appointment of representatives in United States

- All representatives in United States are appointed by the president of the Pakistan.

4. Executive powers

I. Proclamation of emergency

- The president has power to proclaim emergency in the country.

II. Appointment of governors

- All the governors of the provinces are appointed by the president of Pakistan.

III. Appointment of attorney general of Pakistan

- Attorney general of Pakistan is appointed by the president of the Pakistan.

IV. Chief election commissioner

- Chief election commissioner is appointed by the president of the Pakistan.

V. Members of council of Islamic ideology

- Members of council of common interest are appointed by the president of the Pakistan

VI. Members of council of common interest

- Members of council of common interest are appointed by the president of the Pakistan

VII. Members of national economic council

- Members of council national economic council are appointed by the president of the Pakistan

5. Military powers

I. Declaration of war

- The president of Islamic republic of Pakistan has power to declare the war.

II. Settlement of peace

- The president of the Pakistan is responsible for the settlement of the peace within the country and he plays pivotal role in this regard.

III. Appoint of chiefs of army staff

- Chief of Army Staff, Chief of Navy, and chief of Air force are appointed by the President of the Pakistan.

IV. Send army to other country for peace

- President has power to send army for the help of other countries and in United States.

5) Conclusion

- To conclude I can say that in the constitution of 1973 parliamentary system of government was introduced in the country. President is the head of the state. He is elected by the parliament so his election is indirect. His tenure of office is five years but he can resign from his office. The procedure his election is difficult and complicated

Q 4. Discuss various kinds of emergency under the constitution of Pakistan 1973. Discuss article 232 in this regard.

1) Introduction

- The president of Pakistan can proclaim emergency in the whole country or in any province or any part of it and president can make rules and regulations accordingly. Under the constitution of Pakistan the president is only the person who can declare emergency.

2) Relevant provisions

- Article 232 to 237 constitution of Pakistan.

3) Definition of emergency

- An emergency is a situation which includes 'some impending danger to the life of the nation in which a government is empowered to perform actions that it would normally not be allowed to preserve the nation such as suspension of fundamental rights etc.

4) Power of proclamation the emergency

- A proclamation of emergency is issued by the president. Only the president is judge of the situation and decides that whether proclamation to be issue or not.

5) Armed forces under an emergency

- Under Pakistan constitutional act of Pakistan, The Constitution does not envisage any situation where the Armed Forces can act without any direction by the Federal Government of Pakistan.

6) Kinds of emergency

Following are the kinds of emergency, details are as under:

1. Emergency due to war, external or internal disturbance.

- When there exists a serious emergency due to which the security of Pakistan or any part of it is threatened by war or external violence or internal disturbance , in this case the president can declare the state of emergency

➤ Suspension of fundamental rights

- During the emergency, the fundamental rights can be suspended and the president is empowered to declare that the powers of court for the enforcement of such suspended rights shall be snatched during proclamation are enforced.

2. Emergency due to the breakdown of constitution machinery

- In case the president is satisfied with the report of the Governor concerned that a situation has arisen in which the gov't of the province cannot be carried on in accordance with the provisions of the constitution. He can proclaim an emergency.

1. Effect

- Federal executive or federal legislature shall take over functions of provincial executive and legislature.

2. Duration of Emergency:

- The duration of emergency will be effected for the period of six months.

3. Extension in period:

- The president can extend the period of emergency for two months more.

4. Enforcement of laws

- Laws made by the federal executive and federal legislature shall cease after six months of proclamation of emergency.

Case Law

P.L.D 1997 lah 38

No constitution breakdown had been shown to exist in the province but resignations of some ministers and Advisors from the provincial cabinet were shown on the record. Such circumstances could be considered to constitute a situation in which the Govt. of the province could not run in accordance with the constitution and proclamation under Article 204 was not justified.

3. Financial emergency.

- If the President is satisfied that a situation has been arisen due to which the economic life, financial stability of Pakistan, or any part of it, is in danger, the president can proclaim emergency after consultation with the Governor of the Provinces, and when such a Proclamation is in force, the executive authority of the Federation shall ask to follow the directions which have been issued for the interest of the economic life, financial stability or credit of Pakistan or any part of it.
 - When a Proclamation is in force the President can issue directions for the reduction of the salaries and allowances of all or any class of persons serving in connection with the affairs of the Federation or Province.

7) Revocation of proclamation

- The proclamation of emergency declared by the president can be cancelled by a subsequent proclamation issued by president.

8) Authenticity of proclamation

- The validity of proclamation of an emergency issued under this article shall not be challenged in any court.

Case Law

It was held that president's power to issue proclamation or revoke proclamation of emergency is not liable to judicial review.

9) Parliament may make law of indemnity

- However parliament can pass a law indemnifying any person who is serving under federal or provincial Government, for any act which is done in connection with the maintenance or restoration of order in any part in Pakistan.

10) Conclusion

- To conclude I can say that the emergency provisions would come into operation in the case of war, internal, external disturbance, failure of constitutional machinery in a province and financial and economic instability. The president of Pakistan is empowered to declare the state of emergency. He can also revoke the emergency by subsequent order.

Q 5. Senate is an upper house of legislature in bicameral parliament of Pakistan. Discuss in detail its composition, qualification of members, election, power and functions.

1) Introduction

- The senate is the upper house of the parliament. Article 50 says that there shall be a majlis-e-shura (Parliament) consisting of the president and the two houses namely National assembly and the senate. Under the Pakistan's present constitution senate is a permanent legislative institution. Senate as a legislative body collects equal representatives from all the four provincials regardless of their size and population

2) Relevant provision

- Article 59,60 and 61

3) Composition of senate

The senate shall consist of 100 members of whom:

- Fourteen shall be elected by the members from each provincial assembly. Eight shall be elected by members the federal administered Tribal Areas in the national assembly.
- Four shall be elected from federal capital in such a manner as the president may, by order prescribe.
- Four women and four members by each provincial assembly to represent ulema, technocrats, and other professional.
- Four non-muslims , one from each province, shall be elected by the members of each provincial assembly (18th Amendment)

4) Qualification for the members

Following are the qualification of the member of senate.

i. Muslim

- The candidate must be a Muslim by faith.

ii. Citizenship

- The candidate must be a citizen of the Pakistan.

iii. Age

- The candidate must not be less than 30 year of age.

iv. Office of profit

- The candidate should not hold any office of profit in Pakistan

v. Bankrupt

- The candidate should not be bankrupt.

vi. Mentally and physically fit

- The candidate must be mentally and physically fit.

5) Procedure for election

- According to the procedure defined by the Election Commission of Pakistan. Under Article 59 of the Constitution, Pakistan's each province sends 23 members to the Senate including 14 on general seats, four technocrats, four women and one minority member. The National Assembly elects four members including two on general seats, while one each for women and technocrats.

6) Term of the senate

- The term of a Senate consists of six years but Senate holds elections after every three years when one half of the members of the senate retire after completion of their tenure.

7) Restrictions

- The senator cannot become member of both houses at a same time and he has to resign in one house.

8) Privileges of members of senate

Members of the senate have following privileges:

i. Freedom of speech

- All the senators have full freedom of speech in the house.

ii. Not answerable to any court

- All the senators are not liable to any proceeding in any court for anything said in the house.

iii. Salary and allowances

- All the senators of the senate are paid salary and allowances.

iv. Accommodation

- Accommodation to all the senators is given for free.

9) Voting and quorum

- The quorum of the senate shall be one fourth **(25 %)** of the membership and all decisions shall be made with the vote of majority.

10) Summoning and prorogation of session

- The president of Islamic republic of Pakistan shall summon the senate in order to meet at any time and place as he thinks fit and may also prorogate the same.

11) Chairman and Deputy Chairman of the Senate

- The senate shall elect any member as chairman and deputy chairman from amongst. They shall take oath of their office. The chairman and deputy chairman can be removed from their office by passing a resolution with the majority vote of total membership of the senate.
- **Vacancy in the office**
The office of the chairman and the deputy chairman may become vacant if,
 - He resigns from his office
 - He ceases to be member of the senate
 - He is removed from the office

12) Powers and functions of senate

Following are the powers and functions of the senate.

1) Legislation

- The senate takes part in law making process. It is most important duty of the parliament. The senate has power to pass a bill or reject the bill.

2) Administrative

- The senate keeps and watches on the administrative affair within the country as well as all important appointments are made by the senate.

3) Judicial

- The senate has power to make rules for regulating its procedure and conduct of its business.

4) Electoral

- The senate performs electoral functions in many ways for example election of the president Islamic republic of Pakistan.

5) Amendments in the constitution

- The senate has power to amend the constitution.

6) Removal of grievances of people

- The senate removes the grievances of the people and discusses their problems.

13) Dissolution

- Under the Pakistan constitution 1973 the senate shall not be subject to dissolution.

14) Conclusion

- To conclude I can say that the senate is upper house of the parliament. It is consisted on 104 members. It is a continuous body. The session of the senate is presided by the chairman and under the constitution of the Pakistan 1973 , senate cannot be dissolved at any cost.

Q 6. National Assembly is lower house of legislature in bicameral parliament of Pakistan. Discuss in detail its composition, qualification of members, election, power and functions and procedure to enact law.

1) Introduction

- Under the Pakistan constitution 1973, National assembly is the lower house of parliament. It is more powerful institution in law making and financial matter. National assembly of Pakistan is more powerful than senate.
- There shall be three hundred and forty-two (342) seats for members in the National Assembly, including seats reserved for women and non-Muslims.

2) Parliament under the constitution of 1973

- Parliament is an authoritative institution. It can enact any type of law. It is a symbol of the people sovereignty. Parliament in Pakistan which known as “Majlis-e-Shura” consists of the president and two houses known as National assembly and the Senate.

3) position of national assembly

The national Assembly has been given more powers than the powers granted to the senate.

Following are the reasons which make National Assembly superior than senate.

- National Assembly is elected on the basis direct, free and secret vote.
- All members are answerable to the National Assembly not to the Senate.
- National Assembly is entitled to vote upon the demand for grants of money.
- Money bill are introduced only in the National Assembly.

4) Condition for voters

Following are the conditions for voter.

- Voter should be citizen of Pakistan
- Voter should be not less than 18 years of age
- Voter should be sound minded
- Voter's name should exist in the electoral roll

5) Qualification for member of National assembly

Following are the qualification of the member of senate.

i. Muslim

- The candidate must be a Muslim by faith.

ii. Citizenship

- The candidate must be a citizen of the Pakistan.

iii. Age

- The candidate must not be less than 25 year of age.

iv. Office of profit

- The candidate should not hold any office of profit in Pakistan

v. Name in electoral roll

Candidate's name should be in electoral roll.

vi. Mentally and physically fit

- The candidate must be mentally and physically fit.

6) Method for election of National Assembly

- The members of National Assembly are elected by direct method of election.

7) Term of National Assembly

- The term of National Assembly is five years, the term of five years shall start from the day of its first meeting and shall dissolve at the expiration of its term.

8) Quorum

- The quorum is one-fourth (1/4) membership of the assembly.

9) Summoning and prorogating of the session

- National Assembly shall be summoned and prerogative by the president of Pakistan.

10) Dissolution of national assembly

- National Assembly can be dissolved by the President of Pakistan on the advice of Prime Minister but the prime minister cannot give advice when resolution of vote of no confidence is under process in the house.

11) Powers and function of National Assembly

1. Legislation

- The primary function of the National assembly is an enactment of law and it can enact any type of law after enactment is forward to senate and If it is passed by the senate than it is forwarded to president for approval.

2. Amendment in the constitution

- National Assembly has power to amend constitution by the two third (66%) majority votes of its total membership.

3. Administrative

- National Assembly has full control over Administration. It controls the leader of the house and ministers. Following methods are adopted to control the administration.

1. Questions

- The members of the National Assembly can put questions to the ministers of the concerned department.

2. Resolution

- National Assembly can pass a resolution to express its view over any important matter related to administrative affairs.

3. Vote of No-confidence

- National Assembly can pass a vote of No-confidence against the Prime Minister.

4. Criticism to policies

- National Assembly can criticize the policies of the Federal Government.

5. Vote of censure (Disapproval)

- Besides criticism and questions the assembly can vote of censure (Disapproval) against administrative acts.

4. Financial affairs

1) Preparation of budget

- The budget is prepared under the supervision of the National Assembly.

2) Approval of taxes

- The National Assembly gives approval for imposition of all taxes.

3) Approval of expenditures

- The National Assembly gives approval to the expenditures.

4) Money bill originate in National Assembly

- All money bills always originate in the National Assembly.

5) Power to criticize and discuss the budget

- National Assembly has power to criticize and discuss the budget when it is prepared.

5. Electoral functions

1. Election of P.M

- The National Assembly elects its leader mean Prime Minister

2. Election of President

- The National Assembly elects the president of Islamic Republic of Pakistan.

3. Election of speaker and deputy speaker

- The National Assembly its own speaker and deputy speaker.

6. Judicial powers

1) Determination of organization of judiciary

- The National Assembly determines the organization of the judiciary and number of judges.

2) Impeachment of president

- The National Assembly is empowered to proceed impeachment against the president.

3) Emergency powers and functions

- The National Assembly can declare an emergency in the country. When there exists a grave danger to security of Pakistan. This is infect power of president in emergency. National Assembly can make laws in this regard.

12) Conclusion

- TO conclude I can says that. The Parliament is the supreme institution of the country. It is a law making body. It consists of two houses National Assembly and the senate. National Assembly is directly elected by the people. The term of National assembly is five years, it can be dissolved by the president. The leader of the National Assembly is prime minister. National assembly in Pakistan is more powerful than Senate.

Q 7. Describe the jurisdiction of Supreme Court of Pakistan. What is the procedure for appointment of its judges?

1) Introduction

- The Supreme Court is the highest court of Pakistan. It is both a constitutional and ordinary court of law. All decisions of Supreme Court of Pakistan are binding to all the courts of Pakistan. The Principle seat of Supreme Court is in Islamabad.
- In its modern composition, the Supreme Court is incorporated of Chief Justice of Pakistan, sixteen justices and two on ad-hoc whose appointment is confirmed by the President with the approval of Prime Minister of Pakistan.

2) Relevant provisions

- Article 176 to 191

3) Composition of Supreme Court

- The Constitution of Islamic Republic of Pakistan under Article 176 throws light on the number of Judges of the Supreme Court of Pakistan shall be determined by an Act of Parliament. In the light of this provision “The Supreme Court (Number of Judges) Act, 1997” has determined that the number of the Judges of the Supreme Court of Pakistan other than the Chief Justice shall be sixteen. A person with five years’ experience as a Judge of High Court or 15 years’ experience as advocate of High Court is eligible to be appointed as a Judge of the Supreme Court. The Chief Justice of Pakistan and each of other judges of the Supreme Court shall be appointed by the President in accordance with Article 175A, inserted through 18th and 19th Constitutional amendments.

4) Chief Justice of Supreme Court

- The Chief Justice of Pakistan (initials as CJP) is the head of the court system of Pakistan (the judicature branch of government) and the chief judge of the Supreme Court of Pakistan. The Chief Justice is one of the most senior of 17 Senior Justices of the Supreme Court of Pakistan. From 1947 until 1960, the chief justice and justices were known as Federal Judge.

5) Qualifications for judges

Following are the qualifications of a person to be elected as a judge of Supreme Court of Pakistan.

- Person should be a citizen of Pakistan.
- He is serving as judge in High Court for at least five (5) years.
- He is serving as an advocate in High Court for at least fifteen (15) years.

6) Oath of office

- Before entering in the office the Chief Justice shall take oath of his office before the president of Pakistan and other judges shall take oath of their office before the Chief Justice of Pakistan.

7) Appointments of judges

- The chief justice shall be appointed by the president while the other judges shall be appointed by the chief justice after consultation with the president.

8) Retiring age

- The age of retirement for the judge of the Supreme Court of Pakistan is 65 years.

9) Acting chief justice

- In the absence of Chief Justice the president of the Pakistan appoints the senior most judge to act as Chief Justice.

10) Ad-hoc judge

- The chief justice of Pakistan may request the president of Pakistan to appoint the number of judges on temporary basis in the Supreme Court. Judge appointed on ad-hoc shall have the same powers and jurisdiction as the other judges of Supreme Court have.

11) Powers and functions of Supreme Court

Following are the powers and functions of the Supreme Court of Pakistan.

1. Appellate jurisdiction

- Appellate jurisdiction is the power of the Supreme Court to review and change the decisions of lower courts after submission the appeal by application.

2. Original jurisdiction

- The original jurisdiction of a court is the power to hear a case for the first time and court enforces the fundamental rights by original jurisdiction.

3. Advisory jurisdiction

- The President may seek the opinion of the Supreme Court on any question of law or fact of public importance after receiving an opinion president thinks whether it is useful or not.

4. Suo motu Jurisdiction

- The Supreme Court has power for Suo Motu jurisdiction, under this jurisdiction the court takes notice of the matter by itself and starts judicial proceedings.

5. Revision power

- The Supreme Court has power to review the judgment of any order made by it because it is a careful examination of the matter in order to correct or improve its decision.

6. Protection of the fundamental rights

- One of the greatest functions of the Supreme Court of Pakistan is to protect the fundamental rights of the citizens of the Pakistan.

7. To issue directions

- According to Article 187 the Supreme Court has power to issue such directions which are necessary for the administration of justice in any case which is pending before it.

8. Rules and regulations

- The Supreme Court has power to enact different rules and regulations in order to run its own business and keep the judges under control.

9. Interpretation of the constitution

- The Supreme Court has power to interpret the constitution of the Islamic Republic of Pakistan. Supreme Court makes complex laws understandable by interpreting them.

10. Guardian of the constitution

- The Supreme is the Guardian of the constitution and it explains and elaborates its constitutional status within the country.

11. Transfer of cases

- The Supreme Court of Pakistan has power to transfer any case, appeal or other proceeding pending before it in any high court and from any high court to any other high court.

12) Binding effect of decision of supreme court

- The decisions of the Supreme Court of Pakistan have binding effect on the subordinate courts of Pakistan.

13) Conclusion

- To conclude I can say that the Supreme Court of Pakistan is the highest court of the Pakistan. It consists of chief Justice and other justice who are appointed by the President of Pakistan on temporary and permanent basis after verification of their eligibility criteria for selection on the seats.

Part 2 Constitutional history of Pakistan

Q.1: Discuss salient features of Indian Independence Act 1962.

1) Introduction

The 1962 constitution was drafted by a team appointed by Ayub Khan. All work was done secretly and then all of sudden constitution was enforced in the country. The Constitution of 1962 consisted of 250 Articles, which were divided into 12 Parts and three Schedules. It advocated presidential form of government with absolute powers vested in the President

2) Definition of constitution

A constitution is a set of fundamental principles according to which a state is governed

3) Constitution of 1962

The constitution of 1962 was enforced on June 8, 1962. This constitution was forcibly given to the people

4) Salient Features Of 1962 Constitution

Following are the salient features of the constitution 1962.

1. Written Constitution

- The constitution of 1962 consists of 250 sections and 3 schedules. It was in written form.

2. Democratic Islamic Republic

- Pakistan was declared Democratic Islamic Republic.

3. Islamic Ideology Council

- The constitution of 1962 provided the idea of the establishment of Islamic ideology Council.

4. Federal State

- The constitution of 1962 established a Federation of Pakistan with two provinces of East Pakistan and West Pakistan.

5. Rigid Constitution

- The constitution of 1962 was a rigid constitution. The method of amendment was very difficult. Any amendment to this constitution required not only at least 2/3 (66 %) majority of Parliament but also authentication from President.

6. Fundamental Rights

- The constitution of 1962 grants certain fundamental rights to the citizens of Pakistan. These are basic human rights which cannot be taken away even by legislation in normal circumstances.

7. Referendum

- The constitution of 1962 has introduced a new institution of referendum.

8. Indirect Election

- Under the constitution of 1962 the method of direct election by adult Franchise has been abolished and method of indirect Election was adopted.

9. Emergency Provisions

- The president had the power to proclaim the emergency when the integrity or the sovereignty of Pakistan was threatened.

10. Presidential Form of Government

- The constitution of 1962 provides presidential form of Government in the country.

11. Powers of President

- Under constitution of 1962, President was really powerful. He could exercise all the executive authority. All ministers were accountable to him alone. President not only appoints provincial Governors, but also appoints all executive officials. President also possessed certain legislative, military and judicial powers. Even he had power to issue an ordinance and to veto legislation.

12. Office of Profit

- Constitution of 1962 provided some restrictions against office of President. For instance, President was not allowed to hold any office of profit in the services of Pakistan.

13. Preamble

- The objective resolution of 1949 was included as a preamble in the constitution of 1962.

14. Uni-Cameral legislature

- The constitution of 1962 adopted single house parliament known as National Assembly. Its term was 5 years, which was fixed. The members *were* elected on the basis of parity of representation between East and West wing. The proceedings of the Assembly might not be challenged in any court of law.

15. Basic Democracies

- The new system of basic democracies was introduced in the constitution of 1962. The Elected Basic Democrats member's constitution an Electoral College who elected the president.

16. Independence of Judiciary

- The 1962 constitution gave many powers to the Judiciary and it recognized independence of Judiciary. Judges of the superior courts were appointed by the President and were ensured security of service. They could be removed on the inquiry report submitted by the Supreme Judicial Council on the ground of misbehavior or physical or mental inability to perform their duties

17. Rights of Minorities

- Minorities were given right and these rights were also protected by the constitution.

18. Islamic way of Life

- The shariah was declared under this declaration it was said that Islamic way of life shall be adopted.

19. Principles of Policy

- The principles of policy were incorporated in the constitution 1962.

20. National Language

- Urdu and Bangle were declared two national languages of Pakistan.

21. Elimination of non-Islamic practice

- All those practices which were contrary to Islamic teaching such as gambling, prostitution, intimidation and adultery would be eliminated from the society.

5). Demise

The second martial law was imposed on 26 March 1969, when President Ayub Khan abrogated the Constitution of 1962 and handed over power to the Army Commander-in-Chief, General Agha Mohammad Yahya Khan. On assuming the presidency, General Yahya Khan decided to abolish the one-unit system on public demands in West Pakistan and ordered general elections on the principle of one man one vote.

6) Conclusion

To conclude I can say that; the constitution of 1962 introduced a very important change in the governmental system of Pakistan. It had provide presidential form Govt. the method of election was indirect. it adopted principles of policy but this constitution was failed because it was against the wishes of the people.

Part.2. Q.2: Discuss salient features of Indian Independence Act 1935.

1) Introduction

- The Government of India Act 1935 was the last constitution of British India. It lasted until 1947, when British India was split into Pakistan and India. The act. Detailed document was provided with 321 sections and 10 schedules. The govt of India act 1935 was very lengthy and it was a comprehensive written constitution given to India and it has no preamble and it came into force on 1st April 1937.

2) Historical background

- **In March 1933 British Govt** issued a document named **“White Paper”**. It contained two important things.

- 1 New Indian constitution would be diarchy at the center.
- 2 Set up of responsible govt in the provinces.

In April 1933 The Joint Select Committee of the British Parliament examined the **“White Paper”** and submitted its report in **December 1934**. A joint committee continued the process of consultation until Govt of India act has enacted.

3 Importance of India Act

- Constitutional history of Pakistan starts with the Government of India act 1935. Under **Independence Act sec (8)**. It was adopted as interim constitution of Pakistan with some amendments. It has also been a source of Constitutional making in Pakistan.

4 Objectives of India act 1935

Following were the main objectives of the Indian Act 1935.

- Establishment of a Federation
- Provincial Autonomy
- Separation of Burma from India

5 Salient feature of Govt of India Act 1935

Following are the salient feature of Govt of India act 1935.

1) Provincial autonomy

- Eleven provinces were granted provincial autonomy. Provincial Autonomy is such a system in which the government of the provinces is independent from any external influence and does not rely under federal influence.

2) All India federation

- Under this act it was proposed that All Indian Federation to be established consisting of 11 governors of Provinces and 5 Chief Commissioner of 5 provinces.

3) Methods of accession (Consent)

- Under this act it was proposed that the state could join the federation and after this accession the state would become a unit of the federation.

4) Abolishment of unitary form of government

- The govt act of India 1935 has abolished the unitary form of government which had been working in India since the regulation act.

5) Position of secretary of state

- Secretary of the state had no powers to interfere in the administrative matters of the state.

6) Position, powers and functions of Governors

Following are the powers and functions of governors.

- The governor was charged with responsibilities for the peace and order.
- Governor was entitled to act on the advice of ministers.
- He was given veto power with regard to legislation.
- He was entitled to issue ordinance for six months
- In case of constitutional break down he was authorized to dissolve the legislative assembly.

7) Bicameral legislature

- Bicameral legislature is the practice of having two legislative chambers. The relationship between the two chambers of a bicameral legislature can vary. In some cases, they have equal power, and in others, one chamber is clearly superior to the other. It is commonplace in most federal systems to have a bicameral legislature.

8) Provincial legislature

- The act of 1935 attempted to make each province “Mistress in her won house”

9) Rigidity

- The govt act of India 1935 was rigid. Only the British government alone was given the power to amend the act.

10) Separation of powers

- The principle of separation of powers was adopted and three legislative lists were made.
 - Federal legislative list
 - Provincial legislative list
 - Concurrent legislative list

11) Establishment of new institution

- Under the Government of India act 1935, new institutions like Federal court, Federal Railway Authority, Reserve Bank of India and public service commission were established.

12) Creation of new provinces

- Sindh and Orissa were created as new provinces.

13) Lengthy

- The Government of India Act 1935 was lengthy. It was the longest bill ever passed by the British Parliament. The reason for this length was parliament's lack of trust of Indian politicians and people.

14) List of subjects

- Three lists of subject were drawn up.
 - Federal list
 - Provincial list
 - Concurrent list

6 Defects of Govt of India act 1935

Following are the defects of Government of India Act 1935.

i. Undemocratic

- This act was undemocratic because it was against the spirit of true democracy.

ii. Discretionary powers of the Governor

- The powers of the governors were frustrated as well as other all executive and provincial legislatures were powerless officials.

iii. No preamble

- The Government of India Act 1935 contained no preamble.

iv. Indirect election of Federal assembly

- Indirect election of federal assembly was a defect of this act.
- v. **No control of Indian govt over Army**
 - Under this Act, Indians has no absolute control over Army.
- vi. **Restricted powers of provincial legislature**
 - Under the Government of India Act 1935, the powers of provincial legislature were very restricted.
- vii. **No control of federal legislature over executive and Governors**
 - Federal legislature had no control over executive and governors.
- viii. **No enforcement of the federal part of act**
 - Government of India Act was passed in 1935. Only the part relating to provinces came into force in 1937. It is also a defect of the Act that no attempt was made to enforce the federal part of the Act.
- ix. **Privileged position of Indian states**
 - Under Government of India Act 1935, Indian states were given a privileged position. The representation given to them both in the council of the state and federal assembly was more than what was due to them.
- x. **Complicated statute**
 - The Government of India act 1935 was a complicated. It has been most complicated instrument in the whole history of constitutional development.
- xi. **No bill of Rights**
 - The Government of India Act 1935 contained no bill of rights in it.

7 Conclusion

- The Government of India act 1935 was the outcome of a long constitutional history. It is also a product of the three elaborate sessions of round table conference held in London. It is an important act because it is one of the foundation stones of the present Indo Pak. Muhammad Ali Jinnah said the Government of India act 1935 basically faulty and unworkable. This act failed to solve Hindu Muslim problems.

Part.2. Q.3: Discuss salient features of Indian Independence Act 1947.

1) Introduction

- The Indian Independence Act 1947 is an Act of the Parliament of the United Kingdom that partitioned British India into the two new independent countries such as India and Pakistan. The Act received the royal assent on 18 July 1947, and Pakistan came into being on 14 August and India came into being on 15 August.
- Lord Mountbatten reached India on March 24, 1947. As soon as he reached, he declared that he will complete the work of transfer of power into the Indian hands within the next few months and he held consultations with the Indian leaders for this purpose in the meanwhile the Indian Independence Bill was presented before British Parliament on July 4, 1947 and was passed by Parliament on July 18, 1947.

2) Indian Independence Act 1947

- Two states were established in accordance with the Indian Independence Act 1947 which was passed by the British Parliament. The new states were fully authorized to form their own constitution and constituent assemblies within their countries.

3) 3 June Plan

- This is also known as the Mountbatten Plan. The British government proposed a plan announced on 3 June 1947 that included following plans:
 - Plan of Partition of India would accepted by the British Government
 - The status of Independent governments would be given to dominion

4) Salient features

Salient features of Indian independence act are as under

1. Partition of India

- On 15th August 1947, after the partition of India, two independent kingdoms. India and Pakistan would be established.
- Eastern Bengal, Western Punjab, Sindh and North-West Frontier Province would be included in Pakistan.

2. Legislature supremacy

- Indian independence act 1947 provides for legislature supremacy of the two dominions. It was not obligatory on both the nations to accept the membership of the British Commonwealth of Nations. The choice was left to India and Pakistan.

3. Cessation (End) of British Rules:

- It was approved that all the prevailing rules and regulations of the British Government would be abolished and both of the countries are entitled to rule on their countries under established rules of their own.

4. Two constitutional assemblies:

- Indian independence act provided two constitutional assemblies for two dominions. All powers would be vested in the constituent assembly of each dominion.

5. Right to remain member of British common wealth:

- Under the Indian independence act the dominions were given full rights to decide whether they want to remain with the British commonwealth of nations or not. No restrictions were imposed on them.

6. Interim constitution

- Till the framing of the new constitution each of the dominions and all the provinces would be governed in accordance with the government of India act 1935.

7. End of the right of the king to veto

- The right of king to veto laws or to reserve laws for his pleasure was given up. This right was given to the Governor General.

8. End of the title "Emperor of India"

- The title "Emperor of India" would be dropped from the king of England.

9. Option for Armed and civil servants

- All the civil and army servants were given full option to join either of dominions.

10. Termination of the Suzerainty of the crown

- It provided that for termination of suzerainty (Jageer) of the crown over the Indian states. All treaties, agreements, exercisable by his majesty with regards to the states and their rulers would be laps from 15th August 1947.

11. End of the office of the secretary of states

- The office of the secretary of the states for India would be abolished and his work would be taken over by the secretary of the state for common wealth affairs.

12. Office of Governor general:

- It provided that for each of the new dominions there shall be a Governor general who shall be appointed by his majesty and shall represent majesty for the purpose of the Government of the dominions.

13. Right of dominion state:

- The rulers of dominion states were given option to join either of the dominion keeping in view the majority of their population.

14. Right to amend the Govt. of India act of 1935:

- Under the independence act each dominion was authorized to amend the government of India act 1935.

15. Agreement with the Tribes:

- Agreement with the tribes of the north-western frontier of India was to be negotiated by successor dominion.

5) Conclusion:

- To Conclude I can say that; Indian independence act provides partition for India and present state of Islamic republic of Pakistan was created under this act. After Pakistan establishment, the govt. of India act of 1935 was adopted as Interim constitution till the enactment of new law.

Leading constitutional cases

Part.3. Q.1: Discuss in detail the facts issues and principles laid down by the Supreme Court of Pakistan in Asma Jilani Vs Govt. of the Punjab (PLD 1972 139).

1) Introduction

- Asma Jilani case is one of the important cases in the history of Pakistan. It paved the way for the restoration of the democracy in the country. The detentions of Malik Ghulam Jilani and Altaf Gohar were challenged in the court. The second round of Martial Law which begins under General Yahya Khan was abrogated under extensive conflict against Ayub Khan who called the Army to take over the government.

2) Facts of the case

- The two appeals, one filed by Miss Asma Jilani in the Punjab High Court for the release of her father Malik Ghulam Jilani, and by Mrs Zarina Gohar in the Sindh High Court for the release of her husband Altaf Gohar, under Article 98 of the Constitution of Pakistan 1962. The detention of Malik Ghulam Jilani and Altaf Gohar had been made under the Martial Law Regulation No.78 of 1971. So the detention of these persons was challenged in Lahore and Karachi High Court respectively.
- Supreme Court further held that neither Yahya Khan was a victor nor Pakistan was an occupied territory and declared him a "Usurper (Ghasab)". All his actions were also declared illegal. When Asma Jilani's judgment was released, Yahya Khan was not in power, but now it was Bhutto's Martial Law and Bhutto was the chief Martial Law Administrator and the president.

3) Arguments of Petitioner

- Daughter of Ghulam Jilani challenged the order on the following grounds in Lahore High Court.
 - Martial Law Administrator has no such authority.
 - The detention is illegal.

4) Arguments by respondent

- Punjab government presented the following arguments.
 - Detention is legal
 - Martial Law Administration has authority to pass such order of detention.

5) Decision of the high courts

Following are the decisions of the courts. Details are as under.

1. Lahore High Court

- Lahore High Court relying on the decision of the case of State Vs Dosso Holding the jurisdiction of courts (Removal of doubts) order 1969 as valid and stated that is out of from the jurisdiction of the court

2. Sindh high court

- Sindh High Court also dismissed the petition of Altaf Gohar and held that it had no jurisdiction to grant relief against Martial Law order for same reasons as given by the Lahore High Court.

6) Appeal in the Supreme Court

Both of the petitioners appealed to the Supreme Court on the grounds given below.

- Dosso has no application in the said case.
- Army cannot interfere in the fundamental rights of the people.
- Chief of Army Staff is under an obligation and he is bound to safeguard the constitution.
- Laws of the state are not annulled because of proclamation of the Martial Law.

7) Decision of Supreme Court

- Writ was admitted and detention was declared illegal and following remarks were given by the Supreme Court in this regard.
 - No action harmful to the life, liberty, body, reputation or property of a person shall be taken except in accordance with law
 - No person shall be prevented from, or be delayed in, doing that which is not prohibited by law
 - No person shall be compelled to do that which the law does not require him to do.

8) Rules laid down in the judgment

Following rules were laid down.

- Dossow case has no application.
- Martial Law Regulation no 78 is invalid.
- Because of proclamation of Martial Law. Law prevailed in the country are not annulled.

- Martial Law Administrator has no authority to pass order of detention of Ghulam Jilani and other.
- Dosso's case observations were incorrect.
- Kelson's theory was not internationally accepted.
- Sovereignty of entire world belongs to ALLAH.
- Imposition of the Martial Law does not confer any power to commander of the armed force to annul the constitution.

9) Impacts of the case

- The decision of the court was not completely in the favour of Asma Jilani but it has broader impact that it has weaken the concept of dictatorship in an Islamic State and it opened a new window for the fresh air of democracy in Pakistan. Furthermore, this decision also disregarded the law of necessity by discrediting imposition of Martial Law in any situation.

10) Conclusion

- Asma Jilani's case proved a landmark in the history of Pakistani judiciary. Pakistan Supreme Court overruled state v.s dosso. Before the pronouncement of the judgment in this case Yahha Khan resigned and Zulfiqar Ali Bhutto became president under the interim constitution. However the judgment created a huge and it was widely welcomed by the people.

Part.3. Q.2: Discuss Nusrat Bhutto V/s Chief of Army Staff case 1977.

1) Introduction

- A petition by Begum Nusrat Bhutto, under Article 184 (3) of the 1973 Constitution of the Islamic Republic of Pakistan, sought to challenge the detention of Mr. Zulfikar Ali Bhutto, former Prime Minister of Pakistan, and the other leaders of the Pakistan People's Party. This petition was heard by a bench of nine judges of the Supreme Court. Case was decided in favour of the federation on November 10, 1977. The Supreme Court unanimously validated the imposition of Martial Law under the doctrine of necessity.

2) Imposition of Martial Law

- In the early hours of 5th of July, 1977, Armed forces took over the state administration. Army Chief General Muhammad Ziaul Haq proclaimed the Martial Law.

Following steps were also taken.

- Fundamental rights were suspended.
 - Chief of Army Staff took the charge of Administration.
 - Some Articles of 1973 constitution were suspended.
 - National and Provincial Assemblies were dissolved.
 - All political activities were banned till further order Zulfikar Ali Bhutto and some political leaders of P.P.P were arrested
- Keeping in view above mentioned detention of Zulfikar Ali Bhutto , Begum Nusrat Bhutto challenged the detention of her husband and other leader under Article 184 (3) in the original jurisdiction of the Supreme Court

3) Facts of the case

Following are the facts of case of Begum Nusrat Bhutto vs. Chief of Army Staff

1. Allegation of Official Interference with Elections of 1977

- Opposition parties alleged that there was official interference with elections of 1977 in favour of ruling party of Prime Minister Zulfikar Ali Bhutto.

2. Anti-Bhutto Movement

- Opposition parties never accepted results of elections of 1977. Therefore, they started anti-Bhutto movement.

3. Imposition of Martial Law

- Prime Minister Zulfikar Ali Bhutto's dialogues with opposition leaders failed to stop military interference, and eventually General Zia-ul-Haq dismissed this government and imposed martial law.

4. Arrest of Zulfiqar Ali Bhutto

- With imposition of martial law, Zulfiqar Ali Bhutto was arrested as well as some other leaders were also arrested.

5. Release of Zulfiqar Ali Bhutto

- After some days, military government released Zulfiqar Ali Bhutto

6. Re-arrest of Zulfiqar Ali Bhutto

- After his release, Zulfiqar Ali Bhutto started public campaign, and this campaign caused not only his re-arrest, but also arrest of his colleagues

7. Case filed

- Against re-arrest of Zulfiqar Ali Bhutto, Begum Nusrat Bhutto filed this case against Chief of Army Staff

4) Arguments of petitioner

Following were the arguments of Yahiya Bakhtiar the counsel of Nusrat Bhutto.

- Under the constitution of 1973 the Chief of Army Staff has no Authority to Impose the Martial Law.
- Detention of Mr. Bhutto and other leader was without lawful authority and illegal.
- Proclamation of Martial Law is act of high treason under Article 6 of the constitution of 1973.
- Detention order has resulted in open violation of the fundamental rights as provided by the constitution.

5) Arguments of Federation and COAS

Respondents chief of Army Staff and Federation of Pakistan presented the arguments as under.

- Under the constitution of 1973 Supreme Court has no jurisdiction to entertain this petition.
- The change of 5th July, 1977 did not amount to usurpation of state power by the chief of Army staff.
- Chief of Army staff is not usurper (Ghasib) who had illegally attained the charge as a result of huge rigging in election
- The purpose of Chief of Army Staff was to hold the fair elections in the country.
- The democratic institution shall be restored soon.
- The arrested persons were under protective custody.

6) Decision of Supreme Court

- Supreme Court of Pakistan dismissed the petition of Nusrat Bhutto and validated the arrest of Zulfiqar Ali Bhutto. So the case was decided in favour of federation of Pakistan and chief of Army Staff. Chief Martial Law Administrator has stepped in for a temporary period and for purpose of arranging fair election because the Prime Minister failed to maintain

law and order. There was political crisis in country leading to constitutional breakdown these were those circumstances keeping in view the Chief of Army Staff General Muhammad Zia-ul-Haq interfered to save country from disorder and bloodshed.

7) Rules laid down in the case

Following are the rules which were laid down in the report.

- Chief of Army staff is not a usurper.
- Dismissal of Bhutto from power was declared as valid in the name of state necessity.
- Doctrine of necessity is not of western jurists.
- Doctrine of necessity has Islamic origin having been based on and deducted from various verses of Holy Quran
- The welfare of people is supreme law
- Martial Law government had acquired the powers under the doctrine of necessity
- The extra constitutional steps taken by the armed forces of Pakistan were justified.
- Chief of Army Staff, his powers by means of extra constitutional steps is entitled to perform all such acts and promulgate all legislative instruments as falling within the scope of the law of necessity.

8) Conclusion

- Keeping in view above discussion, it is concluded that the Supreme Court held valid laws continuance in force order 1977. Chief justice concluded in this case that the extra constitutional step taken by the armed forces of Pakistan was justified and validated the Martial Law on the basis of special facts and circumstance of the case i.e., break-down of Constitutional machinery or law and order.

Part.3. Q.3: Discuss in detail the Dosso Case.

1) Introduction

- State v/s Dosso is a simple case of murder committed by a person named, Dosso in Balochistan. He was convicted under the tribal system of justice by Loya Jirga as enumerated in FCR(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. The case got importance, because it indirectly questioned the legalization of Martial law imposed by Ayub Khan on 7th Oct, 1958.

2) Background of the case

- A murder took place in the Lora lai district of Balochistan by a person named as Dosso.He was arrested and was handed over to Loya Jirga. The Tribal authorities charged him under FCR, 1901. The relatives of Dosso upon this filed a writ petition in Lahore High court against the decision of Loya Jirga. Lahore high court heard the case under the constitution of 1956, and held its verdict in favor of Dosso.Lahore high court also declared FCR as an unconstitutional. The Federal Govt filed appeal against this decision in SC of Pakistan. Supreme Court decided the case in favor of the federal govt.

3) Imposition of Martial Law

By the proclamation of October 07, 1958 the constitution of 1965 was annulled.

- Central legislature and central cabinet were dissolved.
- Provincial legislature and provincial legislature were dissolved.
- The Martial Law was imposed and chief of Army Staff M.Ayun Khan took the office of Chief Martial Law Administrator.
- The Chief Law Administrator promulgated the Law (Continuance in force) order 1958.

4) Features of law

Following are the main features of Law (Continuance in force order 1958).

- All Laws which existed before imposition of Martial Law were validated.
- Chief Martial took over the control of legislative and administrative authorities.
- The Jurisdiction of the courts was restored by the chief Martial administrator.
- It had an exception constitution of 1956 was not validated by this order.
- It contained direction that Govt of the country. Thereafter to be known as Pakistan not the Islamic republic of Pakistan.
- Government shall be governed nearly in accordance with the constitution of 1956.

5) Facts of the Dosso Case

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

1. Writ by the petitioner

- The relatives of Dosso filed a petition against the proceedings of council of elders regarding Dosso case in Lahore High Court. They challenged the references and the convictions on the grounds that the relevant provision of the FCR were void being repugnant in the "Equity before Law" and the equal protection of Law" and the right to counsel embodied in Articles 5 and 7 of the 1956 Constitution.

2. Decision of the high court

- The High Court decided the case in favor of Dosso and declared FCR offensive to 1956 constitution. Article 5 and 7 of which ensured the equality of all before the law. Therefore Lahore High Court decided the proceedings of council of elders as null and void under FCR, 1901.

3. Effect of decision of Lahore High court

- The effects of this decision were that, after the declaration of FCR as offensive to the constitution; then the validity of those cases were questioned, which were decided under FCR since long before it was enacted, and especially since 1956 when the new constitution was promulgated

4. Appeal to the Supreme court

- The Federal Government of Pakistan went into an appeal in Supreme Court against the decision of the Lahore High Court. The Supreme Court decided 13th October 1958 as the date for hearing the case. But prior to that on October 7, 1958, a heavy change came in the political history of Pakistan; when 1st Martial Law was imposed in the country.

5. Decision of Supreme Court

Court held that:

- Frontier Crimes Regulation (FCR) 1901 is effective and in force.
- Victorious Revolution is an internationally recognized method of changing constitution.
- After the change courts have no jurisdiction.
- After Revolution court performs limited functions and has to within the limit of the new order.

6) Conclusion

- Dosso case is very important case in the history because it left significant effects on the development and image of Pakistan. The decision of the court was based on the Keelson's theory of legal positivism.