LAHORE LEADS UNIVERSITY

Assignment OF

Constitution Development of Pakistan :

Topic: Asma gellani vs govt of Punjab Case

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Asma Jilani (Gellani) vs Government of Punjab (1972) — one of the most important constitutional cases in Pakistan's history.

1. **Background of the Case**

The case was filed by Asma Jilani, daughter of Malik Ghulam Jilani, who was detained under the martial law regime of General Yahya Khan.

Another similar petition was filed by Mrs. Zarina Gauhar, whose husband was also detained.

Both petitions were heard together by the Supreme Court of Pakistan.

📌 2. The Core Issue

The main question before the Supreme Court was:

- Was General Yahya Khan's martial law and his takeover of the government legal or not?

This involved deciding whether his actions fell under the doctrine of State Necessity or whether they were completely unconstitutional.

📌 3. Important Facts

General Yahya Khan imposed martial law in 1969 after Ayub Khan resigned.

He dissolved assemblies and became the Chief Martial Law Administrator (CMLA).

He detained political leaders, including Malik Ghulam Jilani.

Asma Jilani argued that:

Martial law was unconstitutional in peacetime.

Detention of her father had no legal basis.

Yahya Khan was a "usurper" who illegally seized power.

📌 4. Questions Considered by the Court

The Supreme Court examined:

1. Was Martial Law justified?
2. Was the takeover of power according to the Constitution?
3. Was detaining people under the Martial Law Regulations legal?
4. Did the court earlier wrongly validate martial law under the Dosso case (1958)?

📌 5. Supreme Court's Landmark Ruling

(A) Yahya Khan declared a "usurper"

Court declared that General Yahya Khan seized power illegally.

He was labelled a “usurper”, meaning someone who unlawfully takes control of the state.

(B) Martial Law declared unconstitutional

Martial law cannot be imposed in peacetime unless:

There is an open rebellion,

War,

Or extreme internal disorder.

Yahya’s martial law had no justification, so it was void and illegal.

(C) Dosso Case Overruled

The court overturned its previous 1958 judgment in the Dosso case, which had legitimized martial law.

The new judgment stated:

A successful revolution cannot create legality.

Courts cannot validate unconstitutional takeovers.

(D) Detentions declared illegal

The detention of Asma Jilani’s father and others was declared unlawful.

They were ordered to be released immediately.

📌 6. Key Legal Principles from the Judgment

1. Supremacy of the Constitution

No individual can suspend or abrogate the Constitution by claiming necessity.

2. Martial Law is exceptional

It is valid only during actual war or insurrection, not for political reasons.

3. Rule of Law

The government must operate under law and cannot arbitrarily arrest or detain citizens.

4. Limits on Military Power

Army cannot take over civilian rule except under extreme, constitutionally recognized emergency situations.

📌 7. Significance of the Case

A. Major victory for civil liberties

Unlawful detentions were struck down.

B. Strengthened Democracy

No military ruler after Yahya could claim legitimacy based on the Dosso doctrine.

C. Checked the doctrine of necessity

Supreme Court restricted the misuse of “State Necessity.”

D. Restored judicial authority

Judiciary showed independence and corrected past mistakes.

📌 8. Final Outcome

Asma Jilani won the case.

Martial law of Yahya Khan was held unconstitutional.

His actions were invalid.

Detention orders under martial law were set aside.