Case Law – Asma Jillani vs Government of Punjab (PLD 1972 SC 139)

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1. Introduction

The case of Asma Jillani vs Government of Punjab (PLD 1972 SC 139) is one of the most historic constitutional judgments delivered by the Supreme Court of Pakistan. It marks a major turning point

in the legal and political history of the country. Before this case, military rule and martial law had repeatedly been justified in Pakistan under the Doctrine of Necessity. However, the Asma Jillani case challenged this tradition and questioned whether a military dictator could claim legal authority without the approval of the Constitution.

This judgment re-established that the Constitution is the supreme law and restored judicial integrity and civil liberties.

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2. Historical Background

After Ayub Khan's fall in 1969, General Yahya Khan took over, imposed martial law, suspended the Constitution, and detained political opponents including Malik Ghulam Jilani, father of Asma Jillani. His unconstitutional rule ended after the 1971 war and the creation of Bangladesh.

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3. Facts of the Case

Petitioners Asma Jillani and Zahur Elahi challenged the detention of their relatives under Yahya Khan's martial law orders, arguing:

– Yahya Khan had no constitutional authority.

– Martial law imposed by him was illegal.

– Detentions were unconstitutional.

Their petitions questioned the foundation of military rule.

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4. Legal Issues

The Court examined:

1. Whether Yahya Khan was a lawful ruler.

2. Whether martial law was constitutional.

3. Whether the military could suspend the Constitution.

4. Whether detentions under martial law were legal.

5. Whether judiciary could review a military dictator's actions.

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5. Arguments of the Parties

Petitioners:

– Yahya Khan had no authority to rule.

– Martial law imposed by an individual is unconstitutional.

– Detentions violated fundamental rights.

– Only the Constitution can govern the state.

Government:

– Martial law was justified due to national crisis.

– Doctrine of Necessity protected Yahya Khan’s actions.

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6. Judgment of the Supreme Court

The Supreme Court under Chief Justice Hamood-ur-Rehman held:

1. Yahya Khan was an "usurper."

2. Martial law imposed by him was unconstitutional.

3. All detention orders were unlawful.

4. Doctrine of Necessity was rejected.

5. Constitution is supreme and cannot be suspended by force.

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7. Key Legal Principles Set by the Court

1. No military commander can suspend or replace the Constitution.

2. Judiciary can review unconstitutional actions.

3. A ruler who takes power by force is an "usurper."

4. Fundamental rights cannot be suspended arbitrarily.

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8. Rejection of Doctrine of Necessity

The Court declared:

“No necessity can justify the violation of the Constitution.”

This restored constitutional supremacy and limited military power.

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9. Importance in Constitutional Development

– Restored constitutional supremacy

– Strengthened judiciary

– Limited military interference

– Laid foundation for Constitution of 1973

– Protected civil liberties

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10. Long-Term Impact

Even though martial law returned later, this case remains the strongest judicial condemnation of military rule. It guides courts on constitutional breakdown and judicial review.

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11. Comparison with Dosso Case (1958)

Dosso Case:

– Validated martial law

– Applied Doctrine of Necessity

– Accepted revolutionary legality

Asma Jillani Case:

– Overruled Dosso

– Declared martial law unconstitutional

– Strengthened judicial independence

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12. Critical Analysis

While the judgment strengthened constitutionalism, critics argue that military rule continued despite this decision, showing political power often outweighed legal principles. Still, scholars view it as the boldest stand against dictatorship.

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13. Conclusion

The Asma Jillani case is a landmark in Pakistan’s constitutional development. It restored faith in the legal system, strengthened democracy, and rejected the Doctrine of Necessity. Every law student must study this case.

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14. References

PLD 1972 SC 139

Constitutional Law Textbooks

Judicial Review Articles