Asma Jilani v. Government of the Punjab (PLD 1972 SC 139)

Historical Background

In 1969, General Yahya Khan imposed Martial Law in Pakistan after the resignation of President Ayub Khan. He styled himself as Chief Martial Law Administrator (CMLA) and assumed absolute power. Political instability, constitutional breakdown, and lack of democratic institutions led to several detentions under Martial Law Regulations (MLRs).

Among those detained were Malik Ghulam Jilani (father of Asma Jilani) and Khan Abdul Wali Khan—both political figures held without trial. Their families filed habeas corpus petitions directly before the Supreme Court under Article 98 of the 1962 Constitution, challenging the legality of the detentions and the entire Martial Law regime.

Parties and Petitions

• **Petitioners:** Asma Jilani (daughter of Ghulam Jilani) and Zarina Gauhar (on behalf of Wali Khan).
• **Respondents:** Government of Punjab, Government of Pakistan, and Military Authorities.

Core Legal Questions

1. Was the Martial Law imposed by Yahya Khan constitutionally valid?
2. Did the Military Government constitute a lawful authority capable of detaining citizens?
3. Should the doctrine of revolution (validated earlier in State v. Dosso) still apply?
4. Were the detentions of Ghulam Jilani and Wali Khan legal?

Judgment & Holding

The Supreme Court delivered a historic judgment declaring General Yahya Khan a **usurper**. It held that the imposition of Martial Law was unconstitutional and that Pakistan was not an occupied territory where military rule could replace civil authority. The Court ordered that the detentions of the petitioners' relatives were illegal.

Key Reasoning (Ratio Decidendi)

1. Overruling of State v. Dosso:
The Court rejected the Kelsenian doctrine used earlier to validate military coups. Chief Justice Hamoodur Rahman held that the judiciary cannot endorse unconstitutional takeovers merely because they are successful in practice.

2. Supremacy of the Constitution:
The Constitution remains the supreme law. No authority, including the Military, can override it. The Court emphasized that a 'revolutionary legality' has no place in Pakistan's constitutional framework.

3. Martial Law not justified:
Martial Law can only be used in cases of actual warfare or invasion. Pakistan was neither an occupied territory nor in a situation allowing such a measure.

4. Acts of a Usurper:
The Court held that Yahya Khan acted without legal authority. His rule did not create any new legal order.

Significance of the Judgment

• Restored the principle that the Constitution is supreme.
• Ended blind judicial acceptance of military rule.
• Provided a moral and legal basis for restoring civilian government.
• Set a foundation for later constitutional developments, including the 1973 Constitution.

Impact on Constitutional Law

The decision marked a turning point in Pakistan's legal history. It strengthened judicial independence and reaffirmed the Court's role as the guardian of fundamental rights. Even though future judgments occasionally validated military interventions, Asma Jilani remains a symbol of constitutional supremacy.

Conclusion

Asma Jilani v. Government of Punjab is regarded as one of the most courageous judgments ever delivered by the Supreme Court of Pakistan. It rejected military dictatorship, restored constitutional rule, and became a cornerstone of judicial integrity. It remains essential reading for understanding constitutionalism in Pakistan.

Prepared for academic use — summarizing the main facts, issues, reasoning, and significance of PLD 1972 SC 139.