Topic: Asma Jillani vs. Govt of Pakistan (1972)

Subject: Constitutional Developments

Semester: 7th-B

Department: Law

Roll No: F22- 1832

Submitted by: Salman Rasool Ghuman

Submitted to: Prof. Sadia Sattar

Asma Jillani vs. Government of Pakistan (1972): A Landmark in Constitutional Developments in Punjab

Introduction

The case of *Asma Jillani vs. Government of Pakistan* (PLD 1972 SC 139) is regarded as one of the most transformative decisions in the constitutional history of Pakistan. While its scope was national, the judgment had significant implications for provincial governance, constitutionalism, and administrative functioning in **Punjab**. It redefined the legal position of martial law, strengthened constitutional supremacy, and laid the foundation for provincial autonomy and rule of law within the federating units, including Punjab.

Background of the Case

The petitions were filed by **Asma Jillani**, daughter of Malik Ghulam Jilani, and **Zahoor Elahi**, a political leader from Punjab. Both detainees had been arrested under martial law orders issued by General Yahya Khan. Punjab, being the most populous and politically active province, was deeply affected by martial law regulations, restrictions on political movements, and suspension of constitutional rights. The case emerged at a time when the country was recovering from the 1971 crisis, and a return to constitutional order was urgently needed.

Legal Issues Before the Court

The Supreme Court was confronted with crucial constitutional questions, including:

1. Whether General Yahya Khan's martial law regime had any legal or constitutional validity.

2. Whether the detentions made under martial law regulations in Punjab and other provinces were lawful.

3. Whether the earlier judgment in *State vs. Dosso* (1958), which endorsed military takeovers, was still good law.

4. What remedies were available to citizens whose fundamental rights had been violated under an unconstitutional regime.

Judgment of the Supreme Court

Chief Justice Hamoodur Rahman delivered a historic judgment declaring **General Yahya Khan a usurper** and holding that his martial law regime was unconstitutional. The Court explicitly overruled the *Dosso* judgment and rejected the doctrine of revolutionary legality. It held that a

successful coup could not become lawful merely because it was effective in practice.

The Court further declared that all martial law orders, including those issued in Punjab, were **illegal and void ab initio**. However, to prevent chaos in provincial and national administration, the Court temporarily validated past acts under a limited doctrine of *condonation*. This approach struck a balance between maintaining order and upholding constitutional supremacy.

Impact on Constitutional Development in Punjab

The judgment had a profound effect on Punjab's constitutional and political landscape:

1. Restoration of Fundamental Rights

Citizens in Punjab regained essential freedoms such as liberty, political participation, and protection against arbitrary detention.

2. Strengthening Provincial Autonomy

By declaring martial law unconstitutional, the decision reinforced the authority of elected provincial governments, allowing Punjab to operate within constitutional limits rather than under military decrees.

3. Limiting Military Intervention in Provincial Affairs

The ruling served as a deterrent against future unconstitutional interference in Punjab's political processes.

4. Reviving Democratic Structures

Local and provincial institutions in Punjab were revived with renewed legitimacy after years of authoritarian restrictions.

Conclusion

The *Asma Jillani* case is a cornerstone in Pakistan's constitutional evolution and holds special significance for the **development of constitutional governance in Punjab**. It restored the supremacy of the Constitution, revalidated fundamental rights, and strengthened the democratic framework within the province. The decision remains a vital reference in understanding the limits of state power and the centrality of constitutional rule in Punjab and across Pakistan.