

## DECLARATION

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## **CERTIFICATION**

This is to certify that the thesis “The Judicial Review in UK, USA and Bangladesh: A Comparative Study” is done by Amena Khatun in partial fulfillment of the requirement for the degree of LL.B. (Honours) from Stamford University Bangladesh. The thesis has been carried out under my guidance and is a record of the bona fide work carried out successfully.

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4. *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation*, [1948] 1 KB 22.
5. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-9 (1936).
6. *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 -408 (1932).
7. *Cannock Chase District v. Kelly*, [1978] 1 WLR 1.
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11. *Council of Civil Service Unions v. Minister for Civil Service*, (1985) AC 374.
12. *Dr. Mohiuddin Farooque v. Bangladesh*, 49 DLR, (AD), (1997), 24.
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14. *Inland Revenue Commissioners v. National Federation of Small Businesses*, [1982] AC 617.
15. *Kaki Mokhlesur Rahman*, 26, DLR, (SC), 44.
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33. *R v. Secretary of State for the Environment ex parte Ostler*, [1976] 3 All ER 90.
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35. *Smith v. East Elloe Rural District Council*, [1956] AC 736.
36. *United States v. Locke*, 471 U.S. 84, 96, (1985).
37. *Vaman Rao v. Union of India*, AIR 1961 SC 1602.

## **ABSTRACT**

Judicial Review is an important legal process through which the court examines the way in which the legislature and the public bodies exercise their powers. The result of judicial review is to determine whether in making a decision or taking an action the legislature and a public body have acted within their power. In this thesis a brief discussion is made on its origin, grounds and how the concept of judicial review is working in countries like Bangladesh and the USA where the constitutions are supreme and in the UK where the parliament is supreme. An initiative has been taken by making a comparative study as to the concept of judicial review is working among these three countries. From this comparison, I have found that the existing system of judicial review is well enough in Bangladesh. But for better application of judicial review the judiciary should be separated and independent from the Executive body entirely. Because, if the control of the higher rests in the hand of the executive then there will always remain an uncertainty as to how far the judiciary will be able to exercise the power of judicial review effectively and independently.