

# **Critical Analysis of Judicial Review**

Ms. Kajal Choudhary,

Assistant Professor, Department of Law (Lovely Professional University). Mobile number- 8527653303

## **ABSTRACT**

Judicial review is the bedrock of the judiciary. Judicial review is a process where a judiciary reviews the validity of a public body's decision or action. In other words, judicial appeals are a challenge to the way a decision was made, rather than the subsequent rights and errors. Judicial review, the authority of a country's Highest Court to investigate the acts of the government's legislative, executive, and administrative arms to decide whether such activities were legally compatible. The actions found incoherent were declared unconstitutional and thus null and void. The researcher emphasized in this paper that under judicial review the Apex Court has all the powers to declare any action or law unconstitutional. As we know, judicial review works as a shield for democracy, but when the researcher analyzes judicial review cases critically, there are some examples that are contrary to the principle of judicial review, such as reasonability and proportionality. There are number of cases where political giants are judicial review as a tool to achieve their political ends and other frivolous appeals which were/are deliberately filed to make unnecessary issue alive in public.

**Key Words:** Judicial review, court, political, administrative, constitution etc.

## **Introduction:**

Judicial review stands for the revision of an order/degree or sentence of a lower court, but in contemporary times the principle has under gone rapid reforms and the literal definition of judicial review is no longer accurate.

Legal survey is the strategy in popularity based reason under which authoritative and regulatory activities are liable to audit, and conceivable disintegration, by the legal executive. An Act must be yearly by the particular courts with legal audit control when it discovers them incapable to coexist with a more significant position authority and, for example, the provisions of a composed constitution. Legal survey is a case of the running of partition of forces in a modern legislative framework (where the legal executive is one of the organ of the three parts of the legislature). Alongside the varying perspectives on the distinctive progressive system of government standards this idea is translated diversely in various purviews, which likewise have contrasting perspectives on the diverse pecking order of legislative standards. Thus, the strategy and extent of legal audit contrasts from nation to nation and state to state.

The term legal survey is alluded as assessment of the activities of the authoritative, official and managerial parts of government by a nation's courts to guarantee or acclimate the defend ability of that activity and those activities which are not as per the constitution or illegal proclaim

invalid and void by the court through this Judicial Review .The force of court of the law to audit the exercises of the authoritative and regulatory branches is called legal audit. Legal audit is an improvement of U.S. Law, considering the nearness of a made constitution that can be changed just by established corrections. Despite the way that authorization is agreed a general supposition of authenticity, a court can strike down a law if it ignores protected or statutory benchmarks.

Thus, it is easy to say that judicial review means the judiciary observing the actions of State organs or instrumentalities and if the judiciary finds out something against constitution then declared that action void. At the same time it is difficult to define what exactly the judicial review means.

However the following definitions explain the concept of judicial review. Keeping in view the American Constitution, E.S. Corwin defined the judicial review in a narrow way as “the court has the power to testify the legality and of governing body means legislature acts which fall within its ordinary jurisdiction, either to apply or to forced or to refuse to apply if they are found to be contrary to constitutional and even court has the power to declare such acts as void”.

Dr. A.S. Anand<sup>1</sup> defined judicial review as “that which is not exclusively used in constitutional law, literally it means the reviser of the decree of an inferior Court by a superior Court.”

According to S.A. DeSmith, judicial review means a comprehensive judicial enquiry into, and examination of the action of the legislative, executive and administrative branches of government, with the specific purpose of ensuring their conformity to the specified constitutional provisions<sup>2</sup>.

Judicial Review means legal audit isn't an articulation completely utilized in established law. Strict significance of Judicial Review is correction of the pronouncement or sentence by inferior or small court by a higher court. In ordinary law, Judicial Review gives the cures of appeal, modification or revision and such, as given through the procedural rules that everyone must follow, in spite of the political standard which wins. Judicial Review has, in any case, a progressively technical greatness in open law, particularly in countries having composed constitutions. In other nations Judicial Review implies that courts have the intensity of examining the legitimacy of the administrative just as the legislative activities. The need of engaging the courts to announce a stature illegal emerges not on the grounds that the legal executive is to be made incomparable however simply because an arrangement of check and balances between the various Governmental bodies i.e. legislative and executive official from one perspective and the legal body i.e. judiciary then again gives the methods by which botches submitted by one are rectified by the other and the other way around. The capacity of the legal executive isn't to set itself contrary to the approach and legislative issues of the greater part rule. Unexpectedly, the obligation of the legal executive means the judiciary is just to offer impact to the governing body (legislative) approach of a legislation bearing in mind the arrangement of the Constitution. The legal executive means judiciary is obliged to take into and choose whether a specific rule correspond or clashes with the Constitution and form a statement in like manner<sup>3</sup>.

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<sup>1</sup> Dr. A.S. Anand, “Judicial Review - its content its reach”, 161

<sup>2</sup> S.A. Desmith, *Judicial Review of Administrative Actions*, 1959, 16

<sup>3</sup> Dr. A.S. Anand, “Judicial Review - Judicial Activism Need for caution”, 149*JILI*, Vol. 42.

The three harmonize organs of the state are legislative, the administrative official and the legal executive means judiciary. All of them are obliged by the constitution. The ministers speaking to the administrative official, the chosen applicants as individuals from Parliament speaking to the governing body and the judges of the apex courts speaking to the legal executive (judiciary) all of them have to take the pledge recommended by the Constitution in its third schedule. Every one of them pledge to hold up under obvious confidence bone-dry faithfulness to the Constitution. When it is stated, along these lines, that the legal executive is the watchman of the Constitution, it isn't suggested that the assembly and the official are not similarly to protect the Constitution. For the advancement of the country, in any case, it is basic that each of the three wings of the state work in complete amicability<sup>4</sup>.

A legal choice either derides or legitimizes a choice of the governing body or of the official. In either case the court neither supports nor censures any authoritative strategy, nor is it worried about its astuteness or practicality. Its worry is simply to decide if the enactment is in similarity with or in opposition to arrangements of the constitution. It frequently incorporates thought of the soundness of the rule. Likewise, where the court did not follow an administrative official order, court does this not in a will of fight or to affirm its predominance however in release of its duties which are guaranteed to it by constitution and by the law. In every one of these cases, the court releases its obligation as a legal guard<sup>5</sup>.

## Philosophical Aspect of Judicial Review:

Judicial Review working as a tool for protecting Democracy. Judicial Review is also shield for Individual. It keeps check on different organ of government. But thinking critically it is important to analyze the loophole in order to do the same researcher focus on the post-modernist **Paul-Michel Foucault** whose theory addressed the relationship between knowledge and power. Foucault in his theory reflects that how power works in a social life and how power forms the knowledge.

He particularly talks about sexuality and connected that from power and knowledge. He stated that our society only considered two type of sexuality male and female but nobody considered guys and transgender that time because the society and religion claims that sexuality is of two type only male and female. So what society says or religion claims was the only knowledge at that time because whole of the power was concentrated in the hands of the society which follow the religion blindly nobody cares about the individual interest. So he basically explains that how power control the knowledge and who had this power can mold the knowledge according to him.

And he also stated that power and knowledge should not be static power should not be concentrated only in the hands of the stronger section of the society.

The same way researcher shows in this research work that under judicial review the Supreme Court has all the powers and what Supreme Court declared to be considered always right. As we know that judicial review works as shield for democracy but when the researcher critically analyze the cases of judicial review then there are some example which are against the principle

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<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

of Judicial Review such as reasonableness and proportionality these examples are two judgment Aadhar<sup>6</sup> Judgment and Uphar<sup>7</sup> judgment and there critical analysis is discussed below.

Judicial Review works as a shield for democracy. But every coin has to side and judicial review which is a positive power to Supreme Court. But now its depend on the supreme court how it use this power may be its negative or positive. So here are the two examples critical analysis of two cases how Supreme Court use its power and whether the decision is against the principle of Judicial Review or not.

## Role of Judicial Review:

### Aadhar Case<sup>8</sup>:

*“It is better to be unique than the best. Because, being the best makes you the number one, but being unique makes you the only one”*

**-Hon’ble Supreme Court**

Judicial Review not always work as a tool for providing justice to the common people some time it is used for the benefit of a group of the society which is group of powerful persons. The biggest example of this is adhar judgment which fails to address the real problem of the citizen of India.

The basic problem of our Indian society is that laws have not go with the growing technology. Aadhar was predicted as a tool to overcome the gap between the society and technology and there are lots of legal questions which are concerning about fundamental and constitutionality and the rights such as privacy and data protection guaranteed by constitution which also added the issue of mass surveillance on 26 Sep. 2018 which is a remarkable date, Supreme court five-judges bench declare Aadhar project as constitutional.

And with this I analyses the court’s judgment on Aadhar and its implication on our fundamental rights and on society welfare.

## Why Do We Need Aadhar?

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<sup>6</sup>K.S. Puttaswamy v. Union of India W P (Civil) No. 494 Of 2012

<sup>7</sup> Association of victims of Uphar Tragedy v. Sushil Ansal and Another, 2017

<sup>8</sup>Justice K.S.Puttaswamy(Retd) v. Union Of India SC 1014 OF 2017

It is necessary to give the weight age to the benefits of the Aadhaar program against its downsides. It absolutely was primarily meant to necessitate approach to welfare of residents by coding a novel identity from biometric details of the person, the government maintained and manage the database. Fundamentally, Aadhaar grasps a natural ID framework for accessibility to welfare, i.e. natural citizenship. Pramod K Nayar contends that "assumes that social and political issues can be solved through technology," when the base of the issues lies somewhere else, most regularly, in broken foundation. The negligible addition of a mechanical identification proof framework can not make up for the horrifying absence of foundation, corruption, and so on.

"Another consequence also works towards biological citizenship. First, it reduces the body to a set of numbers, erasing the complicated nature of identity itself. Secondly, this same set of numbers then offers the possibility and potential for expansion to be used for different purposes. The UIDAI should be multipurpose, remember, is supposed to be multipurpose."

## **How Does Aadhaar boosts India's Problem of Exclusion?**

What amount is of true exclusion? In clinging to outfitted figure of government, the Supreme Court decided that ninety seven percent of the populace was now checked biometrically through Aadhaar venture would now prompt the disregard of the advantages right now gave to nearly the whole populace.

Therefore, an outcome against Aadhaar in favor of petitioners was untenable on this basis. In any case, as ReetikaKhera composes, the asserted advantages of wiping out defilement and guaranteeing access to welfare for all are not expose to examination on the grounds that the administration contacted quantities of obvious investment funds are in certainty lawful obligations disallowed to the recipients. Concentrating on the {Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Public Distribution Systems (PDS) and Social Security Pensions (SSP), Khera} demonstrates that a surged execution without comprehending the current issues has brought about extra agony for the impeded, especially when pervasive welfare dispensing frameworks have indicated expanding proficiency.

"The respondents did not confirm less than five percent of MGNREGA's work in the records of the government. Like the PDS, wage corruption decline predates the integration of Aadhaar. This suggests that there are other ways to reduce corruption in these programs, contrary to government rhetoric. In MGNREGA, wage corruption is dramatically reduced due to the stratification of the implementing agency (Such as panchayats) and payment agencies (banking and postal sectors). Wage corruption can continue even with payments to accounts it can take three structures: blackmail (coercively taking wages once laborers pull back it from their record), intrigue (specialists enable degenerate functionaries to "use" their activity card and record to blow up work on gather rolls and offer with them stole reserves) And deception (functioning the account of workers without their consent).

"The presentation of Aadhaar Biometric Authentication (ABBA) was expected to expand productivity. In any case, look into by Jean Drèze, Nazar Khalid, ReetikaKhera, and Anmol Somanchi displays clearly that entrance issues have been exacerbated by ABBA. No Aadhaar card implies no apportions dependent on their investigations, similar to the case in rustic

Jharkhand. What's more, the Point-of-Sales (PoS) machine—a straightforward, handheld gadget that depends on web network—which is essential to the working of ABBA, is inclined to glitches regardless of the nearness of safeguards. A PoS machine that doesn't work implies no proportions. A steady web association is likewise an uncommon event. At any rate half of the creators' families had a PoS-related issue.

The Aadhaar system has become an active obstacle rather than ensuring food security. "The imposition of ABBA on the PDS in Jharkhand appears to be a case of unprofitable pain. On the one hand, the system has led to serious problems of exclusion (especially for vulnerable groups such as widows, elderly and manual workers) as well as higher transaction costs. On the other hand, quantity fraud has failed to be reduced, which is Jharkhand's main form of PDS corruption. Nor has it helped address other critical PDS deficiencies in Jharkhand, such as the issue of missing ration card names, the identification of Antyodaya households, or the arbitrary power of private dealers".

## **Will the Aadhar Judgment put to rest the lacuna of Exclusion?**

Avoidance issue exists in light of the fact that Aadhaar has been made necessary to get to welfare administrations. Under Section 7 of the Aadhaar Act, "any administration that utilizes assets from India's Consolidated Fund still requires Aadhaar on an obligatory premise." The judgment of the Supreme Court did not end Section 7, which implies that rejection related issues are probably going to proceed. section 7 likewise enables the legislature to utilize Aadhaar data to "build up a person's identity." This fortifies the worries about the center of the Aadhaar venture as a device for mass observing.

"Gujarat, Jharkhand, Andhra Pradesh and various states reports delineate the shirking of veritable benefactors on account of issues with Aadhaar data and approval issues, similarly as mechanical and other structural dissatisfactions. This experience should have indicated the organization that unimportant assignment of "development" isn't a panacea for debasement and inefficiency in organization transport, yet a without question way to deal with stay away from the people who are socio-monetarily the most helpless."

## **Has Data Security Menace Been tended to?**

Questions about biometric data security were persistent as one data breach after another was suffered by the Aadhaar database. The only section of the Aadhaar Act struck in its judgment by the Supreme Court was Section 57, which states: "None of the provisions of this Act shall preclude the use of the Aadhaar number to establish an individual's identity for any purpose, whether by the State or any corporate body or person, in accordance with any law, for the time being or any contract to that effect."

While such data can never again be mentioned by outsiders and privately owned businesses, the destiny of the information previously gathered is as yet unsure. Moreover, since Aadhaar still must be connected to PAN and annual expense, the administration is currently the sole legitimate store of all biometric data identified with Aadhaar.

“The government has been stressing upon and continues to promote Aadhaar as a miracle remedy to stop leaks and bring accountability while putting out false beneficiaries and saving “huge amounts of public money.”

What it does not project is that the Aadhaar scheme involves collecting and controlling big data, allowing data monitoring”.

Shweta Agrawal, Subhashis Banerjee and Subodh Sharma separate the technological parts of the Aadhaar debate: for the most part, access to a computerized administration requests two sorts of information— personality and confirmation. Character might be open, yet verification is fundamentally private. Aadhaar breakdown these two measurements, which subsequently enables people to be recognized and verified without assent by means of their Aadhaar information. The creators additionally give a careful breakdown of all the manners by which Aadhaar information is tricky:

Connection of personalities crosswise over spaces: It may end up possible to pursue the person's activities over various zones of organization (AUAs) using their overall Aadhaar IDs which are genuine over these spaces. This would provoke recognizing confirmation without permission.

Wholesale fraud: This may occur through spillage of biometric and statistic information, either from the focal vault, or from a PoS or enrolment gadget.

Recognition without concurring using Aadhaar data: There might be unapproved utilization of biometrics to wrongfully distinguish individuals. Such infringement may incorporate recognizing individuals by unseemly coordinating of unique mark or iris sweeps or facial photos put away in the Aadhaar database, or utilizing the statistic information to distinguish individuals without their assent and past lawful arrangements.

Illegal tracking of individuals: People might be followed or put under observation without appropriate authorization or legitimate approval utilizing the validation and recognizable proof records and trails in the Aadhaar database, or in at least one AUA's databases. Such records will regularly likewise contain data on the exact area, time, and setting of the validation or ID and the administrations profited.

## **Is the Act Unlawful?**

The entry of the Aadhaar Bill, 2016, as a cash bill was arguably to sidestep investigation from the Rajya Sabha, bringing up issues of its sacred legitimacy. A publication clarifies:

“The decision is wrong not only because of the Constitution's spirit, but also because of the law's letter. The current Speaker, Sumitra Mahajan, has clearly overlooked Article 110(2), which is the basis for the speaker arriving at a decision on whether a bill is a money bill or not. To paraphrase, the provision states that a bill is not considered to be a bill of money merely because it provides for an increase in the collection of revenue or the disbursement of money or services. This, by the way, is also the government's argument that Aadhaar will save money.”

This view was supported by the sole differing judge, Justice D Y Chandrachud, who called the segment of the Aadhaar Act in Parliament a “secured coercion,” accentuating that the decision of Sumitra Mahajan to display it as a money bill is at risk to lawful review. While Justice

Chandrachud surrendered that living without Aadhaar was as of now incomprehensible, the sentiments of anxiety of assurance interruption, pervasive state control and evasion were issues the judgment declined to settle.

## **Uphar<sup>9</sup>Case:**

The another example of failure of Justice is the Uphar case judgment where the Supreme Court did not listen the victims and CBI. When everybody was enjoying the movie 'Border' a fight for justice began exactly twenty years before the date of judgment in 1997 when 59 lives were lost in the Uphar Cinema fire tragedy in South Delhi.

This tragedy happens during the show of Border movie and in this lots of people died and a lady lost her children in it. But our legal system literally follows the tradition of "tareekh par tareekh".

Everybody were hoping that Ansal brothers would got death imprisonment or life imprisonment. But opposite to this court imposed fine on them and only one year imprisonment awarded to them which was nothing in front of the tragedy. So the proper punishment was not provided to them and it took so long to decide it in short the justice was denied.

So, after this mishap within one month the magistrate held liable owner of uphar cinema Sushil Ansal and his brother Gopal Ansal, and Delhi Vidhyut Board and City Fire Service for this incident.

This incident happens because of Ansal brother negligence along with government authorities and because of there greed they they increased 52 seats in that cinema and block the exit gate. The CBI had investigate in the matter after filing the chargesheet they had all the evidence but court did not listen the CBI also.

This case was dragged for 20 years with the speed of tortoise after that also the judgment is not according to the natural justice principles.

In the landmark case of R v Sussex Justices, Ex Parte Mc Carthy Chief Justice Hewart wrote – "It is not only merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

With the whole heart respect for the judiciary and lawyers representing the parties when I think myself that whether the justice has done here or not? And seriously I don't have any answer to this question.

Here the researcher did not want to show the negative side of the concept but researcher just critically analyzes the concept with help of the case study and these two has been taken for study because they are somehow against the Individual dignity and in both the cases somewhere common public suffers a lot.

## **Conclusion:**

Judicial Review is not only the power exercised by the court but it also the fundamental part of the constitution and government. Sobasically, judicial review is acting as the protecting tool

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<sup>9</sup> Supra note 7

constitutionalism. But every coin has two sides and in this paper researcher highlighted the other side of the coin that the judicial review also had the dark side. Judicial review can be used in other ways also as the researcher also highlighted the other side of the judicial review through the Foucault theory that how the knowledge is controlling power and how power is controlling knowledge.