

Critical Examination of the Evolution of the Doctrine of Proportionality within the Framework of Indian Administrative Law

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Abstract

The theory of Doctrine of proportionality is a legal idea that ensures governmental powers are reasonable, necessary and proportionate to their lawful purpose. This multidisciplinary research explores the history, constitutional basis and modern implementation of proportionality theory in Indian administrative law, highlighting its incorporation into Articles 14 and 19. The Doctrine of proportionality describes government acts as lawful, logical, necessary, stringent and balanced with the goal of protecting individual rights while also serving the general interest. The Doctrine of proportionality protects the fundamental rights, legality, and constitutionality of administrative decisions while fostering a worldwide balance between governmental requirements and individual liberty. The doctrine of proportionality in Administrative Law provides a proper balance between intended outcomes and methods, enabling judicial review to challenge acts that are disproportionate to court awareness. The paper explores the history, constitutional basis, court interpretations and the current trends of the proportionality theory in Indian administrative law, focusing on its effectiveness in integrating rights. The study explores the development of the Doctrine of proportionality in Indian administrative law, focusing on its historical, constitutional, and judicial aspects. It highlights its evolution from absolute powers to a rational, justice-based framework, and its potential integration in environmental and regulatory matters. Indian administrative law has transitioned from absolute authority to a constitutional framework, promoting public and responsible decision-making, balancing government discretion with individual rights in environmental and regulatory issues. However, issues including as clarity and possible judicial overreach may impede its successful implementation. This study examines the implementation of the idea of proportionality in Indian administrative law, focusing on interpretive clarity, judicial subjectivity and possible overreach.¹

Introduction

Judicial review gained prominence in administrative law subsequent to World War II due to the expansion of administrator authority and the misuse of discretion by officials, both of which can be traced back to the 19th century. Aspects of limited judicial participation in administrative directives have been approached differently by the common law and civil law systems. To nullify irrational orders, civil law nations implemented a primary review process based on proportionality, while common law nations adopted secondary review on the basis of *Wednesbury* unreasonableness. Common law systems have adopted primary review, which is also referred to as proportionality-based review, as a result of its advantageous nature and the expansion of the European Court. The British colony of India is governed by common law and the *Wednesbury* reasonableness principle. Over two decades ago, in the *Omkumar v. Union of India* case, the proportionality principle was mandated. Particularly in administrative law, the examination of legislative and executive actions by the judiciary has substantially advanced public law. The welfare state and technological progress have bestowed greater discretion upon administrative authorities; however, courts ought to refrain from intruding into domains that are explicitly designated for the executive branch. Both common law and civil law systems have implemented mechanisms to restrict judicial review. For instance, civil law systems utilize primary review to conduct a more comprehensive assessment, while common law jurisdictions employ secondary review to invalidate administrative orders grounded in *Wednesbury* unreasonableness.

The principle of proportionality dictates that the scope of administrative activities must not surpass what is essential for attaining the intended result. It has become increasingly well-liked in common law nations owing to its merits, the establishment of European courts, and its distinctive pan-European legal system founded on civil law principles. In administrative action proceedings, proportionality is utilized to justify judicial review by ensuring that penalties are commensurate with the gravity of the offenses committed and that administrative procedures are not overly onerous. A

¹Myneni, S.R. (2020). *Administrative Law* (2nd ed.), Asia Law House.

proportionality evaluation has been implemented by the Indian Supreme Court to identify administrative actions that infringe upon Articles 19 and 21 of the Constitution. Formerly a British colony, India has preserved its common law system by applying English legal precedents to matters of national significance. The principle of proportionality was upheld internationally, including in the Supreme Court of India's *Omkumar v. Union of India* case. Although arbitrary orders are frequently perceived as discriminatory or as violating fundamental rights, this does not always hold true. Engaging in religious activities or terminating employees on the basis of their religious beliefs violates their fundamental rights to freedom of assembly and religion. To assert an administrative decision as arbitrary, a petitioner is required to provide evidence of a violation of their fundamental, statutory or common law rights. Judges must invest considerable time and judicial effort in order to determine which type of right has been violated. However, it is crucial for them to evaluate whether a judgment has successfully reconciled contradictory objectives. The concept of judicial restraint permits assessments of proportionality to be conducted with varying degrees of intensity, contingent upon the nature of the rights at stake and the subject matter. The *Wednesbury* principle assumes critical importance in situations where an administrative decision is perceived as capricious.

The Supreme Court, in *Shrillekha Vidyarthi vs. State of U.P.*, equated “reasonableness” and “arbitrariness” on account of the absence of a precise definition. Recently, the Supreme Court recognized that the *Wednesbury* logic is being superseded by the concept of proportionality. Governments are obligated to ensure the balance of any legislation that restricts the fundamental liberties of individuals. Before imposing constraints, it is imperative to establish a primary objective and evaluate whether the preceding stage can be omitted from the procedure. The efficacy of a policy is determined by its influence on fundamental rights and the necessity of implementing measures. Fritz Fleiner's description of the concept of proportionality in 1982 emphasizes the importance of employing particular approaches in order to accomplish a desired outcome. Originating in Canadian and German administrative law, the proportionality test has attained international recognition in the determination of constitutional rights. National tribunals in India, Europe, South Africa, Israel and New Zealand have adopted the examination. In all legal matters, the burden of proof is a critical factor that affects the protection of constitutional rights in accordance with the proportionality principle. This research examines the importance attributed to the notion of proportionality in doctrinal discussions and the skepticism surrounding the Supreme Court of India's emphasis on the principle, specifically in relation to the burden of proof. According to the article, proportionality has been recognized by the Supreme Court as the new standard of review. Nevertheless, the lack of consistency in its execution, particularly with regard to the burden of proof and a subservient attitude towards the government result in insufficient safeguards against violations of human rights.²

Doctrine of Proportionality

As a legal principle, proportionality dictates that administrative decisions ought to be no more restrictive than is necessary to achieve public objectives. It distinguishes itself from the *Wednesbury* concept of unreasonableness through the incorporation of objective criteria for evaluation and inquiry. Lord Diplock posits that proportionality alongside illegality, irrationality and procedural impropriety could potentially serve as a foundation for judicial review. Both proportionality and *Wednesbury* unreasonableness are components of irrationality; however, due to specific developments, proportionality is now closely associated with irrationality. In order to protect the public interest, Lord Diplock emphasizes that public entities must strike a balance between their objectives and methods in order to minimize the intrusion on individual rights. The margin of appreciation theory, which was developed by the European Court of Human Rights, assists in resolving disputes by balancing the interests of states and the rights of individuals. In the United Kingdom, a domestic implementation of the principle of proportionality was required by the Human Rights Act of 1998 in order to regulate the relationship between the Judiciary and other branches of government, including the Legislature. A conventional notion in government action, the proportionality theory emphasizes that minimal government intervention is necessary to accomplish public objectives. The instrument is crucial for judicial review because it provides objective criteria for evaluation and can be applied to case facts through a variety of tests.

Lord Diplock acknowledged the potential future consideration of proportionality as an additional criterion for assessment. At present, proportionality is recognized by the majority of scholars as an additional element of judicial review within the concept of irrationality, of which *Wednesbury* unreasonableness and proportionality are considered to be two components. In *Union of India v. G Ganayutham*, the Indian Supreme Court deliberated on the validity and significance of proportionality and reasonableness. The court has ordered India to adopt the United Kingdom's “*Wednesbury*”

²Myneni, S.R. (2020)., *Administrative Law* (2nd ed.), Asia Law House.

unreasonableness criteria in the absence of fundamental rights. The court has not rendered a verdict regarding the applicability of proportionality in cases involving violations of fundamental rights. The court established a precedent for a Supreme Court ruling grounded in proportionality in *Omkumar v. Union of India*.

The proportionality test has been consistently employed by Indian courts to ascertain the constitutionality of legislation since 1950. In the event of a challenge to a discriminatory administrative action, the court has ruled that it is critical to ascertain whether the conduct in question is both fair and reasonable. To establish arbitrariness, the *Wednesbury* unreasonableness criteria, which are applicable solely in India, must be applied. An expansion of the extent of Judicial Review in India has not been impacted by the court's ruling. Two elements comprise the margin of appreciation: judicial deference and judicial restraint. Judicial deference is predicated on the notion that the Judiciary might be deficient in the requisite expertise or capacities to evaluate the proportionality of an administrative determination. To exercise judicial restraint, one must evaluate the validity of a given option. The Judiciary will abstain from intervening if the administration's decision is considered proportional, notwithstanding the existence of alternative proportionate options.³

Doctrine of Proportionality in India

The doctrine of proportionality was initially established in India with the *Union of India v. G. Ganayutham* case. The Supreme Court expanded the application of the *Wednesbury* unreasonableness standard to the circumstances in which individuals' fundamental rights were not violated. This theory, which originated in nineteenth-century Prussia, evaluates the rationale behind limitations on fundamental rights. Its application in legislative measures dates back to 1950. In the context of judicial review, it is critical to ensure that no irrational decisions are exempt from revision. In the case of *Hind Construction Co. v. Workman, Ranjit Thakur*, the Supreme Court placed dismissal penalties under the principle of proportionality. This decision was appealed by India to the Supreme Court, which reversed the tribunal's verdict. The principle of proportionality in sentencing has been recognized by Indian courts ever since the *Union of India v. G. Ganayutham* case. Its application in situations involving human rights has been scrutinized in the cases of *Wednesbury*, *CCSU*, *Ranjit Thakur*, and *NaikSardar Singh*.

The Supreme Court has evaluated the constitutionality of laws that infringe upon fundamental rights safeguarded by Articles 14, 19, and 21 of the Indian Constitution in accordance with the principle of proportionality. The Indian Judiciary is currently deliberating on whether to employ the proportionality doctrine or maintain the *Wednesbury* unreasonableness threshold. Despite displaying a predilection for the European model, the Supreme Court has yet to render a definitive ruling. When determining whether the rights of individuals have been infringed, Indian courts may employ the equitable balance stage of the European model. The Indian Supreme Court has yet to conduct a comprehensive examination of the application of proportionality in assessing administrative judgments due to the absence of suitable conditions. In accordance with Article 19 (1) of the Indian Constitution, the proportionality principle is applied to assess the legality of laws and safeguards fundamental rights. In the Indian context, deciding between British and European models will be a theoretical exercise.⁴

Doctrine of Proportionality & The Rule of Law

In India, the notion of proportionality is a contentious matter that is evaluated by the judiciary and administration. The essential tenet of the Indian Constitution is that every rule must be linked to its intended purpose. Article 14, a constitutional provision, gives rise to apprehensions concerning the discretionary character of administrative determinations. When official action is considered 'arbitrary', it is invoking the *Wednesbury* principle. In India, the judiciary assesses whether the classification was founded on a clear and distinct differentiation, and whether this differentiation was rationally linked to the intent of the legislature. As stated by A. V. Dicey, the paramount authority of the state in a nation that adheres to this principle is the rule of law. Legal Primacy, Rule of Law, and Equal Treatment Under the Law are the principles mentioned previously.

An organization that upholds the tenets of the rule of law maintains independent tribunals that are not vulnerable to external pressures. A subset of the population holds the opinion that India's rule of law is purely theoretical and not in practice, notwithstanding the existence of adequate safeguards to preserve its integrity. In opposition to arbitrary government

³ HWR Wade and CF Forsyth, *Administrative Law* (Oxford: Oxford University Press, 2004).

⁴ Article 19 (1), The Indian Constitution

policies and authority, the Indian Supreme Court has rendered a verdict that contradicts the rule of law. In order to guarantee the impartial and uniform dispensation of justice, constitutional procedures establish autonomous oversight bodies. The development of the judicial system can be attributed to the multitude of fraudulent activities that have occurred in recent history. The rule of law is a fundamental principle that underpins a democratic society in India.⁵

Judicial Interpretation of Doctrine of Proportionality in India

In several cases, including *Chintaman v. State of Madhya Pradesh*, the Supreme Court of India has applied the proportionality doctrine. The court has emphasized that administrative measures ought not to be overly stringent and that the *Wednesbury* unreasonableness standard will only be applied in cases where individuals' fundamental rights are in jeopardy. In *Omkumar v. Union of India*, the court ruled that administrative actions that violated Articles 19 and 21 of the Indian Constitution would be evaluated according to the proportionality theory. In the event that an administrative decision is challenged on the grounds of arbitrariness under Article 14, the proportionality theory would be employed as an initial assessment.⁶ In numerous cases, including *State of Uttar Pradesh v. Sheo Shankar Lal Shrivastava* and *Indian Airlines*, this principle has been upheld. The court ruled in *Sadhuram v. Pulin Behari Sarkar* that, under certain conditions, social justice should take precedence over technical regulations. The court stated in *Union of India v. S. B. Vohra* that it will vigorously exercise its power of judicial review to safeguard human rights, fundamental rights and the rights to life and liberty of individuals. Courts in India possess the jurisdiction to declare unconstitutional legislation that imposes limitations on fundamental rights on the grounds of proportionality. The importance of proportionality in determining the legality of restrictions described in paragraphs 19(2) to (6) has been emphasized by the Supreme Court. As guardians of fundamental rights, the courts must oversee this process and consider gravely any violation of those rights. Proportionality permits courts to evaluate the validity, suitability, necessity, and equilibrium of a piece of legislation that restricts individual liberties. In the Aadhaar dispute, the right to privacy and the right to development, a component of the right to dignity, are in conflict. The endeavors of the government to advance welfare and economic benefit programs violate individual liberty. The burden of persuasion and the burden of producing evidence are the two distinct components that comprise the burden of proof, according to Justice Barak. In contrast to other jurisdictions, including Canadian courts, India places the burden of proof on the State. While not all courts require the "less restrictive measure" to be equally effective, this is not the case in India.⁷

Criticism against the Doctrine of Proportionality

The administration of judicial review is significantly impacted by proportionality, a fundamental principle of administrative and constitutional law. In order to ensure rationality, actions must be grounded in the available information and establish a logical link between the intended objective and its successful attainment. The purpose of this notion is to evaluate the disproportionateness or unjustification of penalties or rights violations. As a result of the welfare state and technological advancements, judicial review has been significantly transformed in the twenty-first century. However, the judiciary should not intervene in the operations of the executive branch. Bureaucrats who abuse their authority may seek assistance from the court. To avoid the consolidation of inordinate authority, judicial review ought to be limited.

As a result of the influence of both the common law and civil law systems, the Supreme Court established Judicial Review. Subsequent review is a feature of common law, whereas civil law systems adopt a more comprehensive approach known as proportionality-based review (Primary Review). Promoting proportionality, this approach ensures that administrative tasks are limited to the minimum amount required to accomplish the desired goal.

The British Empire-instituted common law system persisted in India following the country's independence from Britain. Personal disputes and administrative law in India have historically been governed by English precedents, such as *Wednesbury's* reasonableness. By ensuring that judicial review is founded solely on reasonable conduct supported by readily available facts, proportionality is a crucial principle in administrative and constitutional law.⁸

⁵ Myneni, S.R. (2020). *Administrative Law* (2nd ed.), Asia Law House.

⁶ *Chintaman v. State of Madhya Pradesh*, AIR 1951 SC 118, 1950 SCR 759

⁷ *State of Uttar Pradesh v. Sheo Shankar Lal Shrivastava*, SCC 410.

⁸ Myneni, S.R. (2020). *Administrative Law* (2nd ed.), Asia Law House.

Suggestions

The proportionality theory is a legal concept that ensures administrative actions adhere to the law and protect the rights of individuals. It has been replaced by the Webnesbury unreasonableness concept, which is implemented in countries around the world, including the United Kingdom. The proportionality doctrine comprises two models the British model and the European model and is a rigorous form of judicial examination. Relevant court decisions demonstrate that India has unequivocally favored the European model.

The proportionality theory has made minimal progress in India and has been applied infrequently by the courts. To optimize the efficacy of the notion, it is imperative that the Judiciary develop and execute it suitably, thereby averting capricious or illogical administrative actions. Proportionality-based assessment ought to incorporate judicial deference and restraint as guiding principles, while also considering subject matter and the inherent characteristics of rights. A supportive legal and political culture, a judicial attitude shift, and a more comprehensive understanding of law and democracy are all necessary for effective implementation. It is suggested that an evolving shift in administrative culture will require certain circumstances to call for flexibility and deviations from standard procedure. The scope of Article 21 of the Constitution has been expanded to encompass administrative actions that violate specific rights. Incorporating good governance standards, such as public accountability and transparency, into a proportionality review that is supported by judicial restraint and deference is possible. Active engagement of civil society is imperative in order to prevent the prevalence of a passive majority. An administrative culture shift is required in which decision-makers are more amenable to the possibility of standard regulations being deviated from. Regarding matters pertaining to the rights of citizens, the Judiciary ought to consistently implement the proportionality theory.⁹

Conclusion

The European and British models are engaged in a competition with respect to the impartiality and efficacy of decision-making. Although proportionality was codified into law in India in 2000, its application is limited. The principle of proportionality has become mandatory for Indian courts to apply in all cases, regardless of the nature of the rights at stake, as a result of the pervasive impact of human rights jurisprudence within the legal system. As a foundation for evaluating administrative decisions, the principle of proportionality was established by the European administrative law system. The objective is to reduce administrative capriciousness and align judicial evaluation with principles of proportionality. The Indian Constitution encompasses fundamental rights, and in determining permissible limitations, courts have customarily applied the principle of proportionality. The absence of an official recognition by the Supreme Court of a reasonableness test for this concept gives rise to legal ambiguity and undermines the responsibility of the judiciary. In India, the concept of proportionality, which has been a part of Indian law since 2000, is rarely applied due to its limited scope and authority. The adoption of proportionality is critical in the development of the legal system and the protection of individual rights, especially considering the prevalence of human rights law.¹⁰

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⁹ HWR Wade and CF Forsyth, Administrative Law (Oxford: Oxford University Press, 2004).

¹⁰ Beatson, Matthews and Elliott's, Administrative Law, 3rd Edition, Oxford University Press.