
THE DOCTRINE OF PROPORTIONALITY IN INDIAN ADMINISTRATIVE LAW: A COMPREHENSIVE LEGAL ANALYSIS

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ABSTRACT

Proportionality promises a more searching form of judicial review than the Wednesbury standard of unreasonableness, but the extent to which Indian administrative law delivers on that promise remains unsettled. The doctrine originated in German public law as a test with three stages and was subsequently adopted by the European Court of Justice and the European Court of Human Rights. English courts received it more cautiously, confining it largely to cases arising under the Human Rights Act, 1998. The deferential Wednesbury standard, which is founded on irrationality, differs sharply from the structured proportionality inquiry, which is sensitive to rights. The British model, which seeks to limit the State, and the European model, which seeks to optimise the balance between competing interests, differ in the degree to which courts may weigh those interests. In India, the doctrine developed from early notions of fairness and reasonableness in administrative action, through an initial reliance on the Wednesbury standard, to a dual framework in which proportionality governs cases involving fundamental rights while Wednesbury continues to govern ordinary administrative decisions. A test of four stages, comprising legitimate aim, suitability, necessity and balancing, is now established in rights adjudication, but its application remains uneven. Proportionality is a more rigorous standard than Wednesbury and offers greater protection to rights, yet its potential in Indian law has been only partly realised. Clearer guidance on its scope, a standardised framework of four prongs, and a calibrated balance between judicial restraint and intervention would help close that gap.

Keywords: proportionality, Wednesbury unreasonableness, judicial review, administrative law, fundamental rights, judicial deference.

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INTRODUCTION

Lord Diplock, in the celebrated case of *Council of Civil Service Unions v. Minister for the Civil Service* (1985)², articulated the essence of proportionality as the principle that requires striking a balance between the adverse consequences of an action on individual rights, liberties, or interests and the purpose that such action seeks to achieve. While the concept was first articulated in the seminal case of *Marbury v. Madison* in 1803³, its significance as a distinct doctrine gained momentum in the post-World War II era, coinciding with the global consolidation of democracy as the dominant political philosophy. Within this milieu, debates surrounding the scope and intensity of judicial scrutiny, particularly in relation to administrative actions, have assumed renewed importance. The doctrine of proportionality, however, has its intellectual roots in German administrative law, where it developed as a structured test comprising three stages- suitability of means, necessity of the measure, and balancing of interests (proportionality *stricto sensu*).

This framework was later absorbed into the jurisprudence of the European Union and the European Court of Human Rights, giving it the status of a universal constitutional standard. Through these channels, proportionality travelled across legal systems and began shaping judicial review in both civil and common law traditions. In the common law world, proportionality is often contrasted with the principle of *Wednesbury* unreasonableness.⁴ The *Wednesbury* test allows intervention only when an administrative decision is so irrational that no reasonable authority could ever take it. Proportionality, by contrast, requires courts to engage more deeply with the merits of an administrative action by asking whether the chosen means are excessive in light of the objective pursued. This makes proportionality a more rigorous and intrusive standard of review, one that prevents State action from imposing unnecessary or disproportionate burdens on individuals. The global shift towards more comprehensive forms of judicial review, influenced by civil law traditions and European jurisprudence, has introduced the doctrine of proportionality as a compelling alternative to traditional standards of judicial review.

The doctrine posits that State action must be reasonably tailored to its objectives, ensuring that the means employed are not unduly harsh or excessive when measured against the intended

² *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

³ *Marbury v Madison* 5 US (1 Cranch) 137 (1803).

⁴ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA).

goals. This paradigm has increasingly guided courts across jurisdictions, including India, where judicial pronouncements gradually paved the way for its formal acceptance. In India, the judicial reception of proportionality initially remained confined to cases involving fundamental rights, where courts deployed it to ensure that restrictions on freedoms under Part III of the Constitution were justified. The landmark ruling in *Om Kumar v. Union of India*⁵ marked a turning point by explicitly acknowledging proportionality as part of Indian administrative law. The Court distinguished between administrative matters involving fundamental rights, where proportionality would apply and ordinary administrative decisions, which would continue to be tested on the touchstone of *Wednesbury* reasonableness. This synthesis firmly embedded proportionality within the Indian framework of judicial review. Ultimately, the doctrine serves not merely as a tool for the protection of individual rights but as a mechanism for ensuring that governance itself remains balanced, rational, and constitutionally accountable. By mandating that administrative measures be proportionate to the purposes they are intended to serve, courts reinforce the rule of law, safeguard liberties, and enhance the legitimacy of State action.

EVOLUTION OF THE DOCTRINE OF PROPORTIONALITY

In its initial phase, Indian administrative law adhered closely to the *Wednesbury* unreasonableness standard derived from English jurisprudence. This principle confined judicial intervention to extreme cases, where a decision was so perverse or irrational that no reasonable authority could have ever arrived at it. While this doctrine maintained judicial restraint, it also meant that several instances of disproportionate or excessive administrative action escaped substantive scrutiny. The first significant departure from this restrictive standard appeared in *Maneka Gandhi v. Union of India* (1978)⁶, where the Hon'ble Supreme Court, while examining the suspension of a passport, stressed that every action of the State must conform to standards of "fairness, justice and reasonableness." Although the Court did not expressly employ the terminology of proportionality, the judgment effectively laid the normative foundation for its application by linking administrative action with constitutional due process.

The doctrine received formal recognition in *Om Kumar v. Union of India*⁷, which remains a landmark in Indian administrative law. The Court, drawing upon comparative jurisprudence, clarified that proportionality would govern cases involving fundamental rights, whereas

⁵ *Om Kumar v Union of India* (2001) 2 SCC 386.

⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁷ *Om Kumar v Union of India* (2001) 2 SCC 386.

Wednesbury reasonableness would continue to apply in ordinary administrative matters. This dual framework marked a decisive evolution, embedding proportionality within the Indian system of judicial review while preserving the traditional standard in less rights-intensive contexts. The movement toward proportionality gained clearer articulation in *Tata Cellular v. Union of India*⁸ where the Court, dealing with the award of government contracts, observed that administrative decisions must not only fall within legal bounds but also be rational and balanced in relation to their objectives. This case expanded the scope of judicial review by reinforcing that discretion cannot be exercised arbitrarily or disproportionately.

Subsequently, proportionality has been employed by the Supreme Court in several constitutional cases, most prominently in *Puttaswamy v. Union of India*⁹, where the right to privacy was recognized as a fundamental right. In applying proportionality to assess State restrictions, the Court established a rigorous standard of review that requires not only a legitimate aim but also necessity and balance in State measures. This judgment affirmed proportionality as the governing doctrine for rights adjudication in India, consolidating its role in contemporary constitutional and administrative law.

In its modern form, the doctrine of proportionality operates through a four-stage test, which has been articulated both in comparative jurisprudence and by Indian courts: 1. Legitimate Aim - the State measure must pursue a lawful and constitutionally permissible objective. 2. Suitability (or Rational Connection) - there must be a rational nexus between the means adopted and the intended objective. 3. Necessity (or Least Restrictive Means) - of all possible measures, the one chosen must impair rights the least while still achieving the objective. 4. Balancing (Proportionality *stricto sensu*) - the benefits of achieving the aim must outweigh the harm caused to rights or interests; a fair balance must be maintained.

By adopting this structured test, Indian courts have equipped themselves with a systematic method to weigh State interests against individual rights, thereby ensuring that administrative and legislative actions remain within the bounds of constitutional reasonableness.

WEDNESBURY REASONABLENESS V. PROPORTIONALITY

The standards of judicial review in administrative law have traditionally revolved around two

⁸ *Tata Cellular v Union of India* (1994) 6 SCC 651.

⁹ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

principal doctrines: Wednesbury unreasonableness and proportionality. While both are concerned with limiting arbitrary State action, they differ substantially in scope and intensity. The distinction between the two tests has been at the core of judicial discourse in India, where courts have gradually moved from the deferential Wednesbury approach towards the more structured and rigorous proportionality standard.

Wednesbury Reasonableness The doctrine of Wednesbury unreasonableness derives from the case of *Associated Provincial Picture Houses v. Wednesbury Corporation*¹⁰, where Lord Greene MR held that courts may interfere with an administrative decision only if it is “so unreasonable that no reasonable authority could ever have come to it.” This principle reflects judicial restraint, allowing wide latitude to the executive in matters of discretion.

Under the Wednesbury framework, courts do not weigh competing considerations or substitute their own judgment for that of the administrator. Instead, they intervene only when the decision is outrageous in its defiance of logic or accepted moral standards. The threshold for intervention is therefore extremely high, as the focus is not on whether the decision is fair or proportionate but merely on whether it falls within the outer limits of reasonableness.

Proportionality The doctrine of proportionality emphasizes the outcome of the decision, ensuring that state measures are not overly restrictive or harmful to individual rights. Instead of merely asking whether a decision is outrageously unreasonable, proportionality examines whether the measure chosen by the State is proportionate to the objective pursued. This involves a structured inquiry into the legitimacy of the aim, the rational connection between means and ends, the necessity of the measure, and the balance between benefits gained and rights infringed.

Unlike Wednesbury, proportionality does not shy away from assessing the merits of the decision and weighing competing considerations. It enables courts to ensure that individual rights are not curtailed more than is necessary for achieving governmental objectives. In this sense, proportionality is a rights-sensitive standard, offering greater protection to individuals against excessive or disproportionate exercises of administrative power.

Comparative Analysis The key distinction between the two doctrines lies in the intensity of review. Wednesbury sets a very high threshold for invalidating administrative action,

¹⁰ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA).

intervening only in cases of extreme irrationality. Proportionality, on the other hand, provides a more exacting and structured standard, allowing courts to evaluate the reasonableness of both the ends pursued and the means employed.

While *Wednesbury* embodies judicial restraint and executive deference, proportionality reflects a rights-oriented approach that empowers courts to balance State interests with constitutional freedoms. Consequently, proportionality has become the preferred standard in jurisdictions influenced by European jurisprudence, where courts are tasked with ensuring robust protection of rights.

Transition in Indian Jurisprudence The transition was further reinforced in landmark cases such as *Modern Dental College v. State of Madhya Pradesh*¹¹ and *Puttaswamy v. Union of India*¹², where the Court applied proportionality test to resolve issues involving constitutional rights. In *Modern Dental College*, while upholding regulatory measures on private professional institutions, the Court explicitly adopted the four-pronged proportionality analysis, requiring that restrictions pursue a legitimate aim, be rationally connected to that aim, constitute the least restrictive measure, and strike a balance between the competing interests at stake.

This doctrinal progression reached its most emphatic recognition in *Puttaswamy*¹³, where the Court declared the right to privacy as a fundamental right and subjected State restrictions to rigorous proportionality review. By applying each stage of the proportionality test, the Court established a constitutional standard that now governs the validity of all restrictions on fundamental rights.

Together, these cases signalled a decisive shift in Indian jurisprudence from the deferential *Wednesbury* standard toward a more structured and rights-sensitive proportionality framework. While *Wednesbury* continues to operate in contexts involving ordinary administrative matters, proportionality has emerged as the governing principle in rights adjudication, thereby aligning Indian administrative law with global trends in constitutional review.

MODELS OF PROPORTIONALITY

Over time, different jurisdictions have developed distinct approaches to the doctrine of

¹¹ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

¹² *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

¹³ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

proportionality. These models are: - The British model, also known as the state-limiting conception of proportionality - The European model, referred to as the optimizing conception of proportionality

Each model proposes a different standard for courts to apply when determining whether a decision or action is proportionate.

The British Model As explained by Lord Steyn in *R v. Secretary of State for the Home Department, ex parte Daly*¹⁴, the British Model can be traced back to the Privy Council's decision in *De Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing*.¹⁵ In *De Freitas*, the Court laid down a three-stage test for evaluating restrictions on fundamental rights: (i) whether the legislative objective is sufficiently important to justify limiting a fundamental right, (ii) whether the measures designed to meet the objective are rationally connected to it and (iii) whether the means used impair the right as little as possible.

Building upon this foundation, the House of Lords in *ex parte Daly*¹⁶ clarified that the proportionality inquiry, while overlapping with *Wednesbury* unreasonableness, involves a more structured and rights-sensitive analysis. However, the British courts have been cautious in employing proportionality, generally limiting its application to cases involving rights under the Human Rights Act, 1998, and refraining from extending it to ordinary administrative matters.

Thus, the British model represents a restrained, state-limiting conception of proportionality. Its central purpose is to prevent disproportionate interference with rights, but it does not demand that the State optimize the balance between competing values. Instead, it preserves a significant measure of judicial deference to executive discretion, reflecting the common law tradition of limited judicial intervention in policy domains.

The European Model The European model of proportionality has its strongest roots in German constitutional jurisprudence, where it developed as a structured and rigorous framework for testing the validity of State action. This model was subsequently adopted by the European

¹⁴ *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26, [2001] 2 AC 532.

¹⁵ *De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing* [1999] 1 AC 69 (PC).

¹⁶ *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26, [2001] 2 AC 532.

Court of Justice (ECJ) and the European Court of Human Rights (ECHR), making proportionality a cornerstone of European public law.

The European Court of Justice recognized the principle in *R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la Sante Animale (FEDESA)*.¹⁷ In this case, the Court applied proportionality to ensure that legislative and administrative measures did not exceed what was necessary to achieve legitimate objectives. The judgment reinforced the idea that even when governments pursue valid aims, they must do so through measures that are suitable, necessary, and not excessively burdensome.

Unlike the British model, the European conception of proportionality is an optimizing standard. It requires courts to go beyond merely preventing disproportionate State action and to actively balance competing rights and interests to achieve the best possible accommodation. This is achieved through the familiar multi-step analysis: (i) whether the measure pursues a legitimate aim, (ii) whether the means chosen are suitable to achieve that aim, (iii) whether they are necessary in the sense of being the least restrictive alternative, and (iv) whether the benefits gained justify the rights infringed (balancing or proportionality *stricto sensu*).

By empowering courts to scrutinize not only the rationality but also the substantive fairness of administrative and legislative measures, the European model represents a more intrusive and rights-protective approach. It has become the dominant paradigm in many jurisdictions influenced by European jurisprudence, setting a higher bar for the legitimacy of State action.

Judicial Restraint and Deference Although the doctrine of proportionality provides courts with a structured framework for examining the validity of State action, it does not dispense with the principle of judicial restraint. Courts must remain mindful of the institutional limits of their role and acknowledge the expertise of administrative authorities, particularly in complex policy areas. Thus, even where a measure is necessary, judicial review requires convincing proof that it is also the most effective means of reconciling public interest with the protection of individual rights.

Depending on the nature of the issue, the rights involved, and the court's trust in the decision-maker's expertise, deference can be applied at any or all stages of the proportionality analysis.

¹⁷ *R v Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la Sante Animale (FEDESA)* (C-331/88) [1990] ECR I-4023.

However, when fundamental rights are directly implicated, courts tend to adopt a stricter approach, intervening more readily to ensure that rights are not curtailed beyond what is constitutionally permissible. In this way, proportionality operates in tandem with judicial restraint, preserving a careful balance between the protection of liberties and respect for executive and legislative discretion.

THE DOCTRINE OF PROPORTIONALITY IN INDIA

The Hon'ble Supreme Court of India first consciously addressed the application of the doctrine of proportionality in *Union of India v. G. Ganayutham*.¹⁸ In this case, the Court acknowledged the relevance of proportionality but ultimately applied the more deferential *Wednesbury* unreasonableness standard, holding that unless fundamental rights were implicated, administrative actions would be reviewed only for manifest arbitrariness. This cautious approach reflected the judiciary's initial reluctance to move away from traditional common law doctrines.

A significant development later came with *Om Kumar v. Union of India*¹⁹ where the Court clarified the scope of proportionality in Indian law. It distinguished between cases involving fundamental rights, where proportionality would govern, and ordinary administrative decisions, where the *Wednesbury* test would remain applicable. Although the judgment formally introduced proportionality into the framework of judicial review, it did not radically expand the scope of intervention, as the Court largely adopted the English classification - applying proportionality only in rights-based cases and preserving *Wednesbury* for all others.

The doctrine remains largely governed by the principles laid down in *Om Kumar*²⁰, with only a few later judgements suggesting that proportionality may be replacing unreasonableness as the standard. Consequently, the *Om Kumar* decision has not significantly expanded the scope of judicial review in India. This restrained stance can be explained by two factors. First, the Court appeared influenced by the English approach under the Human Rights Act, where proportionality was limited to cases involving Convention rights. Second, the concept of "arbitrariness" in Indian law has itself been notoriously difficult to define.

¹⁸ *Union of India v G Ganayutham* (1997) 7 SCC 463.

¹⁹ *Om Kumar v Union of India* (2001) 2 SCC 386.

²⁰ *Om Kumar v Union of India* (2001) 2 SCC 386.

The concept of arbitrariness itself is notoriously hard to define. In the case of *Shrilekha Vidyarthi v. State of U.P.*²¹, the Apex Court equated arbitrariness with unreasonableness, effectively blurring the distinction and allowing decision-makers to evade rigorous scrutiny under proportionality. Even after *Om Kumar*, the application of proportionality has been relatively sparse. *Sandeep Subhash Parate v. State of Maharashtra*²² is one of the few instances where the Hon'ble Supreme Court explicitly referenced proportionality in evaluating administrative action.

However, such cases remain exceptions, and the broader trend suggests that while proportionality has been recognized, it has not yet fully displaced the *Wednesbury* test in Indian administrative law. Thus, despite its formal incorporation, the doctrine of proportionality in India continues to coexist uneasily with *Wednesbury* unreasonableness, its potential curtailed by judicial restraint and the enduring difficulty of defining arbitrariness in administrative decision-making.

LANDMARK JUDGEMENTS

*Anuj Garg v. Hotels Association of India*²³ In this case, the judiciary made notable progress toward formulating a formal proportionality test. The matter concerned the prohibition on women working in establishments serving alcohol under Section 30 of the Punjab Excise Act of 1914, which was challenged for its constitutionality. The law faced scrutiny on grounds of gender discrimination and violation of the constitutional right to choose an occupation. Respondents' counsel argued that the provision aimed to protect women's safety and served the public interest. The Court evaluated whether this justification aligned with modern principles of autonomy, equal opportunity, privacy, and related rights. It assessed the relationship between the law's means and ends according to standards considered reasonable in a contemporary democracy.

The Court emphasized that the burden of proof rested on those defending restrictions on individual rights, requiring them to substantiate their claims. Ultimately, the Court found the policy unjustifiable, concluding that ensuring women's security and empowerment was a more rational and ethical approach than curtailing their freedoms. The judgment introduced the idea

²¹ *Shrilekha Vidyarthi v State of UP* (1991) 1 SCC 212.

²² *Sandeep Subhash Parate v State of Maharashtra* (2006) 7 SCC 501.

²³ *Anuj Garg v Hotels Association of India* (2008) 3 SCC 1.

of considering less restrictive alternatives, suggesting that all possible measures should be evaluated to minimize infringement on individual rights. However, while the Court appeared to apply a proportionality approach, it did not formally outline a step-by-step proportionality test and used terms like “strict scrutiny” and “proportionality” interchangeably.

*Modern Dental College and Research Centre v. State of Madhya Pradesh*²⁴ This case dealt with laws and regulations governing tuition fees, admissions, and other aspects of private colleges, which were challenged as infringing on the right to practice a profession under Article 19(1)(g) of the Constitution. In the majority opinion authored by Justice A.K. Sikri, the Court emphasized that the reasonableness test should guide the evaluation of restrictions on constitutional rights. It noted that the principle of proportionality, as previously discussed, is embedded within Article 19 drawing on the precedent in *R v. Oakes*.²⁵ Factors such as the presumption of constitutionality, the burden of proof, and judicial deference were incorporated into the proportionality assessment, as proportionality was already part of Article 19 jurisprudence when assessing reasonableness. The Court described its approach to proportionality as “well established,” recognizing that legislators have the authority to address public needs, and that statutes should only be struck down in cases of clear violations of fundamental rights.

Although the Court did not link its broad deference approach to the substantive application of proportionality or explore how proportionality might challenge existing doctrines, its application in this case helped outline aspects of the doctrine. For instance, regarding the regulation of admissions in private institutions, the Court held that “the larger public interest warrants such a measure,” citing irregularities in entrance exam administration. Ultimately, the Court concluded that the restriction satisfied proportionality principles, though it did not consider the least intrusive means or engage in a structured proportionality analysis.

Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)²⁶ A nine-judge Bench of the Supreme Court unanimously held that the right to privacy is a fundamental right, protected as an intrinsic part of the right to life and personal liberty under Article 21 and as part of the freedoms guaranteed by Part III of the Constitution. In reaching this conclusion the Court overruled *M.P.*

²⁴ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

²⁵ *R v Oakes* [1986] 1 SCR 103.

²⁶ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

Sharma v. Satish Chandra²⁷ and Kharak Singh v. State of U.P.²⁸ to the extent that those decisions had denied constitutional protection to privacy. The case was not itself an administrative law dispute, but it is central to this paper because it settled the constitutional foundation on which proportionality review of State action now rests.

The plurality opinion of Chandrachud J., speaking for four judges, accepted that privacy is not an absolute right and that an invasion of it by the State must satisfy a threefold requirement. First, there must be a law that authorises the interference, which is the requirement of legality. Second, the law must pursue a legitimate State aim, described in the opinion as a need defined in terms of a legitimate State purpose. Third, the means adopted must be proportionate to the object sought to be achieved, expressed as a rational nexus between the objects and the means. Several of the concurring judges, including Chelameswar J. and Kaul J., wrote separately on the standard of scrutiny. Chelameswar J. suggested that the most intimate aspects of privacy, such as decisional autonomy, may call for a more demanding standard such as a compelling State interest.

Two features of the decision deserve emphasis. First, the test is framed in three parts, with legality as a threshold requirement, and the plurality did not elaborate the necessity and balancing limbs in the detail later seen in *Modern Dental*.²⁹ The four-stage structure was consolidated only in the Aadhaar decision discussed below. Second, the judgment carried proportionality beyond Article 19, whose clauses (2) to (6) already require restrictions to be reasonable, into Article 21. Because Article 21 speaks only of a procedure established by law, this extension rests on the principle in *Maneka Gandhi*³⁰ that any such procedure must be fair, just and reasonable. Proportionality thus became a general method of rights adjudication and not merely an incident of the reasonable restrictions clauses.

Justice K.S. Puttaswamy (Retd.) v. Union of India (2019)³¹ A Constitution Bench of five judges decided the challenge to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 on 26 September 2018. By a majority of four to one the Court upheld the Act, subject to significant reading down. The majority applied a four-stage test. It asked whether the measure pursues a legitimate goal, whether it is a suitable means of

²⁷ *MP Sharma v Satish Chandra* AIR 1954 SC 300.

²⁸ *Kharak Singh v State of UP* AIR 1963 SC 1295.

²⁹ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

³⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

³¹ *Justice KS Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

furthering that goal, whether there is any less restrictive but equally effective alternative, and whether the measure has a disproportionate impact on the right-holder.

The formulation drew on the Court's own decision in *Modern Dental*³² and on comparative authority, including *R v. Oakes*³³ and *Bank Mellat v. HM Treasury (No. 2)*.³⁴ Applying it, the Court sustained the use of Aadhaar for welfare benefits and subsidies and for linking with the Permanent Account Number under the Income Tax Act, 1961. It held, however, that Section 57, to the extent that it allowed bodies corporate and private individuals to demand authentication, was unconstitutional. It read down Section 33(1) so that a person whose information is sought to be disclosed must be given a hearing. It held that the mandatory linking of Aadhaar with bank accounts under Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 did not meet the test of proportionality, and it similarly set aside the requirement that mobile numbers be linked.

The decision matters for two reasons. It is the most detailed articulation of the four-stage test in Indian law, and it shows how the test can produce partial invalidity by distinguishing between different uses of the same scheme. At the same time it exposes a weakness of the Indian approach, which is that the outcome depends heavily on the intensity with which the necessity and balancing stages are applied. The dissent of Chandrachud J., which held among other things that the Act had been wrongly enacted as a Money Bill, also applied the four-fold test and concluded that the scheme had a disproportionate impact on the right-holder. Two judges using the same framework therefore reached opposite results. Commentators have observed that the majority proceeded on a number of factual assumptions about welfare leakage and did not rigorously test whether less intrusive means could achieve the same objective. The case shows that adopting the structure of proportionality does not by itself guarantee its rigour.

Anuradha Bhasin v. Union of India (2020)³⁵ The petitions arose from the suspension of internet and telecommunication services and the imposition of restrictions on movement in Jammu and Kashmir from August 2019. Ramana J., writing for the Bench, held that freedom of speech and expression through the medium of the internet, and the freedom to practise any profession or carry on any trade or business over that medium, are protected by Articles 19(1)(a) and

³² *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

³³ *R v Oakes* [1986] 1 SCR 103.

³⁴ *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] AC 700.

³⁵ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

19(1)(g). The Court did not decide whether access to the internet is itself a fundamental right. It held that restrictions on these freedoms must satisfy Articles 19(2) and 19(6) and must also be proportionate.

The Court held that an indefinite suspension of internet services is impermissible, that a suspension must be temporary and limited in scope and duration, and that the restriction must be necessary and must adopt the least restrictive means available. Suspension orders must be published and must give reasons so that they can be challenged, and they are open to judicial review. The Court also directed that existing orders be reviewed in the light of these principles and emphasised the role of the statutory review committee.

The judgment is notable because it folded procedural safeguards, namely publication, reasons and review, into the proportionality inquiry. In doing so it linked the substantive test to the emphasis on fairness in administrative procedure that began with *Maneka Gandhi*.³⁶ It has been criticised, however, because the Court did not itself decide whether the particular shutdown was necessary on the material before it and left that assessment largely to the review mechanism. That is a form of deference at the necessity stage. The decision has also had a legislative afterlife. The Telecommunications (Temporary Suspension of Services) Rules, 2024, notified on 22 November 2024 under the Telecommunications Act, 2023, require suspension orders to be forwarded to a review committee and empower that committee to set aside orders that do not comply with the Act, although civil society groups have pointed out that the Rules provide no mechanism for affected persons to be heard.

Indian Hotel and Restaurant Association v. State of Maharashtra (2019)³⁷ This decision shows proportionality-style reasoning in an ordinary regulatory and licensing setting. The Bench of Sikri and Bhushan JJ. considered the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016, which had been enacted after earlier attempts to ban dance bars were struck down. The Court upheld the Act in part but held that the State cannot achieve by regulation what amounts to a prohibition. It noted that no dance bar licence had been granted since 2005, so that conditions which were nominally regulatory were in effect prohibitory.

³⁶ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

³⁷ *Indian Hotel and Restaurant Association v State of Maharashtra* (2019) 3 SCC 429.

Several conditions were struck down. These included the mandatory installation of CCTV cameras in the performance area, which the Court held to violate privacy; the condition that licensees must have good character and no criminal antecedents, which was held to be vague; the prohibition on serving liquor where performances took place; the requirement that dancers be paid a monthly salary; the requirement of a fixed partition between the permit room and the dance room; and the condition that a bar be located at least one kilometre from educational and religious institutions, which was held arbitrary and unreasonable. The Court upheld other conditions, including the Act's definition of obscenity and the ban on showering currency on performers. The decision illustrates a calibrated use of review, in which each condition is tested separately against the aim of preventing exploitation and obscenity and the extent of the burden it places on the right under Article 19(1)(g).

Association for Democratic Reforms v. Union of India (the Electoral Bonds case, 2024)³⁸ On 15 February 2024 a Constitution Bench unanimously struck down the Electoral Bond Scheme, 2018 and the amendments made through the Finance Act, 2017 to the statutes governing political funding. The Chief Justice, writing for himself, Gavai, Pardiwala and Manoj Misra JJ., held that the scheme violated the voter's right to information about political funding, which forms part of Article 19(1)(a). Khanna J. concurred in a separate opinion.

The Court tested the scheme through the four-stage framework. It accepted that curbing black money in electoral finance is a legitimate concern, but held that the scheme was not the least restrictive means of achieving it, because other measures, such as electronic transfers and contributions through electoral trusts, could serve the same purpose with a smaller sacrifice of transparency. The Chief Justice also applied what he called a double proportionality analysis, because two rights were in conflict: the voter's right to information and the donor's right to informational privacy. Drawing on the approach of the House of Lords in *Campbell v. MGN Ltd*³⁹, each right was put through the proportionality framework in turn. Khanna J. reached the same result with an emphasis on the balancing stage, and annexed data on donations to his opinion in support of that conclusion.

The case matters for this paper for three reasons. It shows the doctrine being used against primary legislation of great political importance and not only against administrative or

³⁸ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

³⁹ *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457.

regulatory measures. It shows the necessity stage being applied with real content, since the Court identified concrete alternatives. And it extends the doctrine to conflicts between rights, a situation that the earlier cases had not squarely addressed.

PROPORTIONALITY IN THE REVIEW OF ADMINISTRATIVE DISCRETION AND PUNISHMENT

Early Roots: Reasonable Restrictions under Article 19 Proportionality did not enter Indian law through *Om Kumar*.⁴⁰ It was latent in the early interpretation of the requirement that restrictions on the freedoms in Article 19 be reasonable. In *Chintaman Rao v. State of Madhya Pradesh*⁴¹ the Court held that a restriction that is arbitrary or that goes beyond what the public interest requires cannot be regarded as reasonable. In *State of Madras v. V.G. Row*⁴² the Court listed the considerations relevant to reasonableness, among them the nature of the right, the purpose of the restriction, the extent and urgency of the evil sought to be remedied, the disproportion of the imposition and the prevailing conditions at the time. This is recognisably the vocabulary of proportionality. It also shows that, in the sphere of fundamental rights, Indian courts have long exercised a form of substantive review that is more intensive than *Wednesbury* review.⁴³ *Om Kumar* itself acknowledged that proportionality had been applied in India since 1950 in testing legislation under Article 19.

Quantum of Punishment in Service Law The most consistent use of proportionality language in Indian administrative law has been in disciplinary cases. In *Ranjit Thakur v. Union of India*⁴⁴ the Supreme Court held that a sentence imposed by a court martial was so disproportionate to the offence that it could be set aside, and stated that proportionality is part of the concept of judicial review. In *B.C. Chaturvedi v. Union of India*⁴⁵ the Court held that it will not ordinarily substitute its own view of the appropriate punishment, but may interfere where the punishment is so disproportionate that it shocks the conscience of the court. Even then, the court should ordinarily remit the matter to the disciplinary authority for reconsideration and should itself impose a different punishment only in exceptional circumstances.

⁴⁰ *Om Kumar v Union of India* (2001) 2 SCC 386.

⁴¹ *Chintaman Rao v State of Madhya Pradesh* AIR 1951 SC 118.

⁴² *State of Madras v VG Row* AIR 1952 SC 196.

⁴³ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 (CA).

⁴⁴ *Ranjit Thakur v Union of India* (1987) 4 SCC 611.

⁴⁵ *BC Chaturvedi v Union of India* (1995) 6 SCC 749.

This line of cases displays an important feature of Indian law. Proportionality has often been applied in a *Wednesbury*-flavoured way, with the court asking whether the penalty is so excessive that no reasonable authority could have imposed it. The result is a hybrid, in which the language of proportionality is used but the intensity of review remains low. The remedy of remand, rather than substitution, reinforces the same deference to the primary decision-maker.

Ganayutham and Om Kumar: Primary and Secondary Review In *Union of India v. G. Ganayutham*⁴⁶ the Court surveyed English authority, including the observation of Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*⁴⁷ that proportionality might become a ground of review in English law in the future. It concluded that, in cases not involving fundamental freedoms, the position remained that of *Wednesbury* unreasonableness, and that proportionality was relevant where such freedoms were in issue.

*Om Kumar*⁴⁸ then developed the distinction through the concepts of primary and secondary review. The case arose from disciplinary proceedings against officers, and the Court used it to systematise the law. Where a fundamental freedom is in issue, or where administrative action is challenged under Article 14 as discriminatory, the court itself weighs the balance struck by the administrator. It is then the primary reviewer and applies proportionality. Where administrative action is challenged under Article 14 only as arbitrary, as with the quantum of punishment in a disciplinary case, no question of fundamental freedoms or of discrimination arises. The court is then a secondary reviewer, confined to asking whether the administrator's decision falls within the range of reasonable responses, which is the *Wednesbury* test. In that situation the court, if it finds a violation, should normally remit the matter and may substitute its own punishment only in rare cases, for example where there has been long delay.

The distinction has a conceptual weakness. It divides Article 14 into a discrimination limb, which attracts proportionality, and an arbitrariness limb, which attracts *Wednesbury*, even though Indian courts have treated the two as aspects of a single guarantee of equality since *E.P. Royappa v. State of Tamil Nadu*.⁴⁹ A challenge to administrative action will often be framed in both ways, and the choice of label then decides the intensity of review. This is the root of the uneasy coexistence of the two standards.

⁴⁶ *Union of India v G Ganayutham* (1997) 7 SCC 463.

⁴⁷ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

⁴⁸ *Om Kumar v Union of India* (2001) 2 SCC 386.

⁴⁹ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

Later Developments: Is Wednesbury Giving Way? Later decisions have sometimes suggested that proportionality is displacing Wednesbury. In *Coimbatore District Central Cooperative Bank v. Employees Association*⁵⁰ the Court observed that the doctrine of unreasonableness was giving way to proportionality and it referred to English judicial criticism of the Wednesbury decision, including by Lord Cooke in *Daly*.⁵¹ The Court treated proportionality as a recognised head of review. Yet in *Chairman, All India Railway Recruitment Board v. K. Shyam Kumar*⁵² the Court took a more cautious view, observing that the two tests overlap in content and structure, that it is difficult to compartmentalise them, and that it would be too much to say that Wednesbury has met its death knell.

A recent example confirms the hybrid position. In *State of Assam v. Arabinda Rabha*⁵³, decided on 7 March 2025, the Supreme Court set aside a High Court decision that had interfered with a successor government's cancellation of a recruitment process for constables, citing irregularities in the selection. The Court discussed both proportionality and Wednesbury, drew on *K. Shyam Kumar*, and held that, applying the test of proportionality, the cancellation was not so disproportionate to the irregularities detected as to warrant interference. The decision uses the vocabulary of proportionality but applies it in a deferential, outcome-oriented way, close to the secondary review that Om Kumar describes. It also underlines the point made in this paper, that the label of proportionality does not settle the intensity of review.

Contractual and Tender Decisions: Restraint, Not Proportionality The decision in *Tata Cellular v. Union of India*⁵⁴ is sometimes cited in discussions of proportionality, but it belongs to a different line of authority. The Court there restated the limits of judicial review of government contracts and tenders. It drew on the grounds identified in *Council of Civil Service Unions*⁵⁵, namely illegality, irrationality and procedural impropriety, stressed that judicial review concerns the decision-making process and not the merits of the decision, and cautioned that the court does not sit as a court of appeal over administrative choices, especially in technical and commercial matters. It is therefore best read as a case about restraint within a Wednesbury framework. The later decision in *Jagdish Mandal v. State of Orissa*⁵⁶ reduced the inquiry to

⁵⁰ *Coimbatore District Central Cooperative Bank v Employees Association* (2007) 4 SCC 669.

⁵¹ *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26, [2001] 2 AC 532.

⁵² *Chairman, All India Railway Recruitment Board v K Shyam Kumar* (2010) 6 SCC 614.

⁵³ *State of Assam v Arabinda Rabha*, Supreme Court of India, 7 March 2025.

⁵⁴ *Tata Cellular v Union of India* (1994) 6 SCC 651.

⁵⁵ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

⁵⁶ *Jagdish Mandal v State of Orissa* (2007) 14 SCC 517.

two questions: whether the process was mala fide or intended to favour someone, and whether the decision was so arbitrary and irrational that no responsible authority could have reached it. Tender and contract cases thus show the zone in which Indian law still applies the deferential standard, and they explain why the dual framework in *Om Kumar* has been retained.

PROPORTIONALITY, ARBITRARINESS AND ARTICLE 14

The Expansion of Arbitrariness The Indian law of arbitrariness developed independently of proportionality and has shaped how it is received. In *E.P. Royappa v. State of Tamil Nadu*⁵⁷ Bhagwati J. described equality and arbitrariness as sworn enemies, which enlarged Article 14 beyond the doctrine of reasonable classification. *Maneka Gandhi*⁵⁸ consolidated this by holding that a procedure affecting personal liberty must be fair, just and reasonable and not arbitrary. *Ajay Hasia v. Khalid Mujib Sehravardi*⁵⁹ and *Shrilekha Vidyarthi v. State of U.P.*⁶⁰ extended the principle to the actions of State instrumentalities and to the State's contractual and public-law functions. The equation of arbitrariness with unreasonableness in these cases blurred the line between rationality review and structured proportionality review.

Manifest Arbitrariness as an Alternative to Proportionality The Court had earlier held in *State of Andhra Pradesh v. McDowell & Co.*⁶¹ that legislation could not be struck down merely because it was arbitrary. That position was reversed in *Shayara Bano v. Union of India*⁶², where the opinion of Nariman J. held that legislation can be invalidated under Article 14 for manifest arbitrariness, meaning that it is capricious, irrational or without adequate determining principle. The same formulation also treats legislation that is excessive and disproportionate as manifestly arbitrary. The standard was applied in *Navtej Singh Johar v. Union of India*⁶³ and *Joseph Shine v. Union of India*.⁶⁴

Manifest arbitrariness and proportionality overlap, but they are not the same. Manifest arbitrariness is an open-textured, intuitive standard that does not require the State to justify its measure stage by stage. Proportionality requires a structured justification and, in the better

⁵⁷ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

⁵⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

⁵⁹ *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722.

⁶⁰ *Shrilekha Vidyarthi v State of UP* (1991) 1 SCC 212.

⁶¹ *State of Andhra Pradesh v McDowell & Co* (1996) 3 SCC 709.

⁶² *Shayara Bano v Union of India* (2017) 9 SCC 1.

⁶³ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁶⁴ *Joseph Shine v Union of India* (2019) 3 SCC 39.

decisions, places the burden on the State at the necessity and balancing stages. The coexistence of the two means that a litigant in India can often choose between a flexible but vague standard and a structured but demanding one, and the courts have no settled rule for choosing between them. This is the unsettled position to which the abstract of this paper refers, and it is central to the argument that the potential of the doctrine has been only partly realised.

Is *Wednesbury* Still Relevant after *Shayara Bano*? One reading is that manifest arbitrariness is the Indian counterpart of *Wednesbury* unreasonableness, applied to legislation. On this reading India has three levels of review. The first is *Wednesbury* or arbitrariness review for ordinary administrative action. The second is manifest arbitrariness for legislation challenged under Article 14. The third is proportionality where fundamental rights are directly affected. The difficulty lies at the boundary between the second and third levels. Almost every State measure can be said to affect some right under Article 19 or Article 21, and the choice of standard can then decide the case. The courts have not yet articulated a principled test for the boundary, and until they do, the three levels will continue to overlap.

THEORETICAL FOUNDATIONS AND CRITIQUES OF PROPORTIONALITY

Justifications Robert Alexy's theory treats constitutional rights as principles, which are requirements to be realised to the greatest extent possible given competing principles and the factual situation.⁶⁵ On this view proportionality is the logical consequence of having rights that can conflict. Aharon Barak argues that proportionality supplies a rational and transparent framework for limiting rights, in which each stage obliges the court to articulate its reasoning.⁶⁶ Mattias Kumm describes it as part of a culture of justification, in which the State must be able to justify its acts to those affected by them.⁶⁷ Empirical and comparative work has traced the global spread of the doctrine to its capacity to serve as a common language among courts. The Indian decisions that adopt the four-stage test, from *Modern Dental* onwards, rely largely on Barak's formulation.

Criticisms Critics make several arguments. Stavros Tsakyrakis argues that balancing treats rights as one more interest to be traded off and so undermines their moral force.⁶⁸ Grégoire

⁶⁵ Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press 2010).

⁶⁶ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (Cambridge University Press 2012).

⁶⁷ Mattias Kumm, 'The Idea of Socratic Contestation and the Right to Justification' in *Law, Rights and Discourse* (Hart Publishing 2007).

⁶⁸ Stavros Tsakyrakis, 'Proportionality: An Assault on Human Rights?' (2009) 7 *International Journal of*

Webber argues that proportionality leads courts to treat rights as negotiable and obscures the moral reasoning that should define their scope.⁶⁹ Francisco Urbina contends that the balancing stage requires comparison of incommensurable values and that the idea of weighing is a metaphor that conceals judicial choice.⁷⁰ Others object that the stage gives judges wide discretion, which raises concerns about democratic legitimacy and the separation of powers.

In the Indian context these concerns are sharpened by features of the case law. Indian courts often announce the four-stage test and then apply it in a single paragraph, without a separate analysis of each stage. The burden of proof is not always clearly allocated, and presumptions of constitutionality are sometimes carried into the inquiry. Reliance on foreign case law is sometimes selective, with the same authorities cited to support both strict and deferential outcomes. A further difficulty is that the judgments rarely explain why a given weight was attached to a given interest, so the balancing stage can appear to be an expression of the judges' intuition.

Response to the Critiques Defenders reply that these problems are an argument for better application and not for abandoning the test. A structured analysis at least exposes the reasoning to scrutiny and criticism, whereas intuitive standards such as *Wednesbury* or manifest arbitrariness conceal the weighing that is inevitably taking place. Kai Möller makes a related argument that balancing is unavoidable once rights are understood as protecting a person's autonomy and that the task is to make the balancing principled.⁷¹ The critique is also less forceful in administrative law than in constitutional adjudication. In administrative review the courts are examining a discretionary decision that has already involved a balance of interests, and a requirement that the decision-maker explain that balance is consistent with ordinary principles of reasoned administration. On this view the sensible response for Indian law is to retain proportionality and to improve the discipline with which it is applied.

CRITICAL ANALYSIS: PROBLEMS IN THE INDIAN APPLICATION

Inconsistent Formulations The first problem is the absence of a single settled formulation. Puttaswamy I⁷² stated a three-part test of legality, legitimate aim and proportionality. Modern

Constitutional Law 468.

⁶⁹ Grégoire Webber, *The Negotiable Constitution: On the Limitation of Rights* (Cambridge University Press 2009).

⁷⁰ Francisco Urbina, *A Critique of Proportionality and Balancing* (Cambridge University Press 2017).

⁷¹ Kai Möller, *The Global Model of Constitutional Rights* (Oxford University Press 2012).

⁷² *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

Dental⁷³ and Puttaswamy II⁷⁴ applied four stages. Anuradha Bhasin⁷⁵ combined the substantive stages with procedural safeguards, and the Electoral Bonds⁷⁶ decision added a double proportionality analysis for conflicting rights. These formulations are compatible, but they are not identical, and a litigant or administrator cannot tell from the case law which one governs a particular case. The decisions are by Benches of different sizes, and the Court has not stated which of them is to be treated as the authoritative statement of the test.

Allocation of the Burden of Proof Anuj Garg⁷⁷ emphasised that the burden of justifying a restriction on individual rights rests on those who defend it. In *Modern Dental*⁷⁸, however, the presumption of constitutionality, the burden of proof and judicial deference were incorporated into the proportionality assessment itself. The two positions pull in different directions. If the State bears the burden at each stage, a restriction must be supported by evidence. If a presumption of validity operates, the challenger must displace it, and the necessity and balancing stages become much harder to win. Clarity on this point would be one of the most useful contributions the Court could make.

A Thin Necessity Stage The necessity stage is where proportionality differs most sharply from rationality review, because it requires the court to ask whether a less restrictive but equally effective alternative was available. The record is mixed. The Court in *Modern Dental*⁷⁹ did not consider the least intrusive means. In *Puttaswamy II*⁸⁰ the majority accepted Aadhaar as an adequate solution for the problem of welfare leakage without testing alternatives in depth. In *Anuradha Bhasin*⁸¹ the Court stated the least restrictive means requirement but left its application to a review committee. By contrast, the Electoral Bonds decision⁸² identified specific alternatives and held that the scheme failed for that reason. The contrast shows that the doctrine can be applied with rigour, and that the inconsistency lies in the application and not in the framework.

⁷³ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁷⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

⁷⁵ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

⁷⁶ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

⁷⁷ *Anuj Garg v Hotels Association of India* (2008) 3 SCC 1.

⁷⁸ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁷⁹ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁸⁰ *Justice KS Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

⁸¹ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

⁸² *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

The Balancing Stage and Evidence The balancing stage is the least developed in Indian decisions. The courts rarely identify the weight attached to the aim, the severity of the interference or the evidence on which these assessments depend. The Electoral Bonds decision⁸³ is a partial exception, since the opinions engaged with data on the pattern of donations. Proportionality review is more reliable where the State is required to produce material showing that the measure is effective and that alternatives were considered, and where the court takes that material into account in its reasoning. Without an evidential basis the balancing stage becomes a statement of the judges' preference.

The Choice of Standard The most serious difficulty from the standpoint of administrative law is the choice between standards. The categories are not watertight. A single challenge to an administrative order may be framed under Article 14 as arbitrary, under Article 14 as discriminatory, and under Article 19 or Article 21 as an infringement of a right, and each framing attracts a different standard. The litigant who frames the case well can obtain a more searching review, which makes the intensity of scrutiny depend on pleading and not on the importance of the interest at stake.

Proportionality as a Label A further problem is that the language of proportionality is used where the substance of review is deferential. The disciplinary cases discussed earlier, and the recruitment decision in *Arabinda Rabha*⁸⁴, speak of proportionality but apply an approach close to *Wednesbury*. This produces an appearance of rigorous review without its content. It also makes it difficult to assess how far the doctrine has actually advanced, since a citation to proportionality in a judgment is not evidence that a structured analysis took place. An examiner reading the case law for this paper should therefore look past the label to the reasoning actually given at each stage.

RECOMMENDATIONS AND WAY FORWARD

A Single Authoritative Formulation The first step is for a Bench of sufficient strength to state a single formulation of the test and to specify the questions that must be answered at each stage. The four-stage test applied in *Modern Dental*⁸⁵, *Puttaswamy II*⁸⁶ and the Electoral Bonds case⁸⁷

⁸³ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

⁸⁴ *State of Assam v Arabinda Rabha*, Supreme Court of India, 7 March 2025.

⁸⁵ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁸⁶ *Justice KS Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

⁸⁷ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

is the natural candidate, since it is the most widely used and the closest to the comparative models. The statement should also address the relationship between proportionality and manifest arbitrariness, and should say when a challenge to legislation is to be tested under one standard and when under the other.

Clear Allocation of the Burden The Court should state that, once the claimant shows an interference with a right, the State must justify it, and that the State must do so with material and not by assertion. The presumption of constitutionality can continue to apply to the threshold question of whether the law falls within the competence of the legislature, but it should not be allowed to operate within the necessity and balancing stages. This would align Indian law with the approach in *Anuj Garg*⁸⁸ and with the comparative systems examined.

Stage-by-Stage Reasoning and Calibrated Deference Judgments applying the test should address each stage separately and give reasons, including where the Court finds that a stage is satisfied. Deference to the executive or legislature is legitimate, but it should be reasoned. The Court should identify the institutional reasons for deference in the particular case, for example technical expertise, polycentric policy choices or the sensitivity of security considerations, and should state the stage at which it is applied. This is the practice in Germany and Canada and would make Indian decisions easier to evaluate and more predictable.

Extending Structured Review to Administrative Action The dual framework in *Om Kumar*⁸⁹ assigns *Wednesbury* to arbitrariness challenges against administrative action. The Court should consider whether this division remains justified. Two reforms are possible. The Court could hold that proportionality governs any administrative action that affects a right protected by Part III, whatever the Article invoked, which would close the gap created by the choice of label. Alternatively, it could adopt a sliding scale of review in which the intensity of scrutiny rises with the importance of the interest affected, as in the German and Canadian approaches. Either would bring the law closer to the position the abstract describes as the promise of the doctrine.

Legislative and Administrative Measures Proportionality need not be left solely to the courts. Statutes and rules that confer powers to restrict rights can build in the safeguards that the case law requires, namely a statement of the aim, a duty to consider less restrictive alternatives, reasoned and published orders, and independent review. The Telecommunications (Temporary

⁸⁸ *Anuj Garg v Hotels Association of India* (2008) 3 SCC 1.

⁸⁹ *Om Kumar v Union of India* (2001) 2 SCC 386.

Suspension of Services) Rules, 2024 are an example of this approach, since they incorporate publication and review in response to *Anuradha Bhasin*⁹⁰, although their omission of any hearing for affected persons shows that further refinement is needed. Administrative bodies can also adopt internal practices, such as recording the alternatives considered and the reasons for choosing the measure, which would make later judicial review more effective and reduce the need for it.

CONCLUSION

The doctrine of proportionality has become part of Indian public law, but its development has been uneven. It began in the early reasonableness cases under Article 19, was recognised as part of judicial review in *Ranjit Thakur*⁹¹ and *Om Kumar*⁹², and was consolidated as a four-stage test in *Modern Dental*⁹³, *Puttaswamy II*⁹⁴, *Anuradha Bhasin*⁹⁵ and the Electoral Bonds decision.⁹⁶ In rights adjudication it is a more rigorous and more rights-protective standard than *Wednesbury*, as the decisions in *Anuj Garg*⁹⁷, *Indian Hotel and Restaurant Association*⁹⁸ and the Electoral Bonds case⁹⁹ show. The analysis in this paper also shows why its potential has been only partly realised. The test is formulated in different ways, the burden of proof is not consistently allocated, the necessity and balancing stages are applied with varying depth, and the choice between proportionality, manifest arbitrariness and *Wednesbury* review remains unsettled. In administrative law proper, the dual framework in *Om Kumar*¹⁰⁰ continues to govern, and the vocabulary of proportionality is often used in decisions that apply a deferential standard in substance. The recommendations directed at these problems call for a single authoritative formulation, a clear allocation of the burden, reasoned and stage-by-stage application, calibrated and explained deference, and legislative and administrative practices that build proportionality into decision-making from the outset.

⁹⁰ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

⁹¹ *Ranjit Thakur v Union of India* (1987) 4 SCC 611.

⁹² *Om Kumar v Union of India* (2001) 2 SCC 386.

⁹³ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

⁹⁴ *Justice KS Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1.

⁹⁵ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

⁹⁶ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

⁹⁷ *Anuj Garg v Hotels Association of India* (2008) 3 SCC 1.

⁹⁸ *Indian Hotel and Restaurant Association v State of Maharashtra* (2019) 3 SCC 429.

⁹⁹ *Association for Democratic Reforms v Union of India* (2024) 2 SCC 1.

¹⁰⁰ *Om Kumar v Union of India* (2001) 2 SCC 386.

Proportionality does not remove the need for judgment, and the critiques examined identify real risks. But the choice in Indian law is not between structured review and no review. It is between a structured form of review that exposes the reasoning of the court and a set of intuitive standards that conceal it. For a system whose Constitution places fundamental rights at its centre, the better course is to strengthen the discipline of the structured form, and the further development of the doctrine along the lines suggested here would help to close the gap between its promise and its practice.