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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYSIS OF THE APPLICATION OF DOCTRINE OF PROPORTIONALITY TO ADMINISTRATIVE ACTION IN INDIA

AUTHORED BY - SHIVANSH GAURAV & AMRITA ANAND

ABSTRACT

Legislators, in response to the growth of the welfare state and other circumstances (including technological progress), gave the Executive unprecedented latitude and transferred many of its tasks to bureaucrats, elevating administrative authority to a position of unfathomable power.¹ In light of this backdrop, proportionality evolved, and the Wednesbury unreasonableness principle was born. To determine whether or whether administrative acts violate individuals' rights in a disproportionate fashion, the proportionality doctrine is applied.² Not with Standing the fact that numerous Constitutional Articles grant the judiciary substantial authority in this area, the notion has found only limited application in India. In order to analyze administrative acts and defend human rights to the maximum extent feasible,¹ it is crucial to apply this notion. This paper aims to comprehend the idea of proportionality, the Wednesbury unreasonableness principle, and the doctrine as a whole in light of the aforementioned issues. This study is to analyze and interpret the doctrine's application in India and how the Indian judiciary has interpreted it.

Keywords: Administrative authority, Wednesbury unreasonableness, Proportionality, Human rights

INTRODUCTION

Although the concept of judicial review was created in the case of William Marbury v. James Madison, Secretary of State of the United States in the early nineteenth century, it wasn't until after World War II that the idea gained common knowledge in the rest of the world. Since then, the extent of judicial review has been a hotly contested topic in the field of administrative law.³ The welfare state, along with other factors like technological advancement, led to the legislative branch giving the executive branch a great deal of power and delegating many of its duties to bureaucrats.⁴ As a result, the administrative authority became extremely powerful.

In this situation, there is a good chance that the administrative authority may abuse its discretion and power, demanding judicial examination.⁵

However, any involvement must prevent the Judiciary from infringing on territory reserved for the Executive. As a result, judicial review must always be limited to only the amount of action required to avoid and limit the misuse of discretionary authority by the administrative authority.⁶ The subject of restricting judicial interference in administrative orders was treated differently by legal systems based on common law and civil law. Secondary review was first utilized in common law countries to establish *Wednesbury* unreasonableness as the criterion for judicial intervention. In these jurisdictions, the Judiciary would overturn an administrative order if it appeared "so absurd that no reasonable person could ever dream that it lay within the powers of the authority."⁷ However, the concept of primary review arose in countries with civil law, where judicial action was typically proportional. In such jurisdictions, the judiciary would overturn an administrative order if it seemed "more drastic than was necessary for achieving the desired result."

Primary review and proportionality-based review entered common law systems gradually but steadily due to their inherent benefits, the establishment of the European Court, and the expansion of European jurisprudence, which led to the global spread of civil law doctrines and principles.

As a former British colony, India now uses the same common law legal system that was instituted there. When making decisions, the judiciary frequently refers to English precedents. The administrative law situation in India is also somewhat comparable. Indian courts have generally recognised the British legal requirement of *Wednesbury* reasonableness, despite the fact that Articles 226, 32, and 13 of the Indian Constitution grant the judiciary broad authority to interfere in administrative decisions. In spite of this, the Indian courts were ultimately compelled to recognise the proportionality theory as part of Indian law in the case of *Om Kumar v. Union of India* twenty years ago for grounds including the doctrine's general acceptability and others. In this paper, the proportionality doctrine will be investigated and understood in the context of India.

CONTENT

Proportionality Doctrine and the Unreasonabilities of Wednesbury

In the case of Council of Civil Service Unions v. Minister for the Civil Services, Lord Diplock established a three-tiered categorization system for external judicial review based on illegality, irrationality, and procedural irregularity. This categorization is still useful even after the evolution of judicial review concepts like "legitimate expectation," "jurisdiction," "prerogative powers," and "similar changes and developments." It may be argued, however, that irrationality is even more relevant today than illegality and incorrect procedure.

The Unreasonability Principle of Wednesbury

The Wednesbury unreasonableness theory, which was founded in the case of Associated Picture House v. Wednesbury Corporation⁸, was principally associated with the concept of irrationality. The idea's main consequence is that the administration should exercise its discretion in a legal, ethical, and cautious manner. It follows that while making administrative decisions, only relevant factors should be taken into account, while those that aren't should be disregarded.⁹ The Wednesbury unreasonableness principle applies to any behavior that is seen to be in violation of this. Wednesbury unreasonableness, as defined by Lord Diplock, refers to decisions that are so far removed from logic or accepted moral norms that no reasonable individual applying their thoughts to the issue at hand could have come to such a conclusion.¹⁰ However, no universal standard test can be used in this circumstance, and the principle is somewhat hazy and incapable of objective examination.

The Principle of Proportionality

The proportionality guideline simply holds that administrative judgements and decrees should be only as stringent as is absolutely necessary to achieve a public aim. In contrast to the Wednesbury unreasonableness principle, the proportionality idea provides objective standards for investigation and evaluation that may be implemented on a case-by-case basis utilizing preset procedures.¹¹ Along with illegality, irrationality, and procedural irregularity, Lord Diplock foresaw that the concept of proportionality would¹²

emerge as a future basis for judicial review. This prediction was made while classifying the outer structure of judicial review. The ideas of proportionality and wednesbury unreasonableness are widely accepted as subcategories of the term "irrationality." initially, there was considerable friction between these two ideas, but thanks to subsequent changes and

advancements in the theory, proportionality is now used interchangeably with irrationality.¹³

Doctrines of Proportionality and Margin of Appreciation

By assessing whether there is a reasonable balance between the extent to which people's rights are invaded by administrative actions and the people's ability to exercise those rights, the proportionality principle determines whether or not legal standards are reached. The administration has been given ample leeway to make the call on which of the numerous viable choices represents the optimal resolution, taking into account the nature of the rights at risk and the specifics of the situation. If their decision is within the legal boundaries of discretion, the courts will not overturn it.¹⁴ A judicial inquiry into whether there was an excessive or needless infringement of rights could be conducted even under these circumstances.

The European Court of Human Rights established the concept of a "margin of appreciation" or "margin of state direction" to resolve conflicts and strike a balance between individual rights and national interests.¹⁵ In international human rights law, where the theory is most often applied, it helps the court decide whether or not the parties to a contract have the authority to impose restrictions on the exercise of a protected right. Thus, practical differences in the application of the European Convention on Human Rights provisions are resolved.¹⁶

There was a need for a domestic version of this theory after the United Kingdom passed the Human Rights Act, 1998, which considers the court's interaction and proportionality with other governmental agencies, especially the legislature. The proportionality doctrine might be said to be the domestic equivalent. However, the notions are not identical, and the European Court of Human Rights, as an international tribunal, must take into account cultural variation when interpreting human rights principles. Because of this, the doctrine is also referred to as the "margin of discretion" or the "judgmental discretionary area."¹⁶¹⁷

The two halves of the margin of appreciation are judicial deference and judicial restraint. The idea behind judicial deference is that the judiciary might not always have the necessary knowledge or experience to evaluate the legitimacy of a decision made by the executive branch. People will accept the wisdom exhibited in these instances. Judicial restraint, on the other hand, considers the decision's validity or legal repercussions.¹⁷ This implies that, even if other proportionate decisions are available, the judiciary will refrain from intervening if the administration's decision is reasonable.

Models of Proportionality Doctrine

Model of Proportionality in the United Kingdom

Lord Stynn expanded the British proportionality paradigm in the case of *Regina v. Secretary of State for the Home Department, Ex Parte Daly*.¹⁸ In the case of *De Freitas v. The Permanent Secretary of the Ministry of Agriculture, Fisheries, Land and Housing and Ors*, Lord Clyde created a three-stage test for the doctrine's application.

1. The Act's administrative aim is adequate to justify the violation of people's fundamental rights.
2. When restricting rights, only the minimum amount of force is used to achieve the administrative goal.
3. There is a reasonable connection between the administrative aim and the procedures adopted to achieve it.

The model emphasizes attaining the legislative aim in the most practical and successful way possible, or in the least intrusive way possible. As a result, the model enables the validity of administrative orders and decisions based on the need factor to be assessed. The paradigm is founded on the notion that the Judiciary's primary responsibility is to protect the public from the Legislature and its actions. As a result, the model only permits legislation that limits citizens' fundamental rights when it serves crucial or critical public purposes. Furthermore, the court must respect administrative discretion and refrain from meddling with it unnecessarily. The majority of this is accomplished through judicial restraint and respect.¹⁹

Model of European Proportionality

The proportionality idea initially originated in Prussia in the eighteenth century. Following that, in the case of *R v. Minister of Agriculture, Fisheries, and Food*,²⁰ Ex Parte Federation Europeenne de la Santé Animale, the European Court of Justice adopted the four-stage criteria specified for the theory's implementation. The examination is broken into the following stages:

1. The first and most important step is to analyze the legitimacy of the proposed legislation's objective or goal.
2. The second stage, "suitability," investigates if the legislation is capable of accomplishing this purpose or objective.
3. In the third stage, "Necessity," we evaluate whether or not the use of legislation is the least intrusive way to achieve our goals.
4. The fourth and last step, "fair balance or proportionality," examines whether the legislation provides any benefits after accounting for factors like the restriction of

people's fundamental rights, the accomplishment of the legislation's goal or objective, and so on.²¹

The model's goal is to find a happy medium between the extent to which rights can be restricted and the necessity of those restrictions to achieve the model's stated objective. As a result, the model maintains a neutral posture and concentrates solely on optimizing the situation. To give the Legislature's discretionary power its due, the paradigm uses ideas like judicial deference and judicial restraint. The use of judicial deference at any of the four stages of the model depends on the nature of the rights at stake, the nature of the subject matter, and other factors.²¹ The idea is founded on the assumption that the possibility of a proper conclusion increases when a judicial decision is sent to another competent body, such as the executive. In such a circumstance, the court could either accept or demand the authority to present supporting proof. As a result, deference could be defined as the extent to which the judiciary seeks evidence to support its judgements. The court may exercise strong, moderate, or mild judicial restraint depending on the problem at hand and the nature of the rights. The fourth and final stage of the notion is when judicial constraint is most relevant. If there is a lot of restraint, the judiciary rarely questions the administration's actions; if there is moderate restraint, the judiciary examines whether the benefit of the legislation outweighs the violation of citizens' fundamental rights; and if there is little restraint, the judiciary attempts to strike a balance between restricting the exercise of rights and achieving the goal of the legislation.²²

Theory of Proportionality in the Indian Context

The case of *Union of India v. G. Ganayutham*²³ was the first to address the proportionality doctrine's applicability in India. The Supreme Court ruled in this case that, because people's basic rights were not violated, the *Wednesbury* unreasonableness threshold will be applied nationwide. However, the court made no comments on how the proportionality theory should be applied when a citizen's fundamental rights were violated.

In the subsequent case of *Om Kumar v. Union of India*,²⁴ the Supreme Court officially acknowledged the proportionality requirement. The court also recognised that the idea had been used to uphold laws that ran counter to the rights protected by Articles 14, 19, and 21 of the Indian Constitution since at least the 1950s, despite the fact that it had never been acknowledged by the court. The Supreme Court also decided that the proportionality concept would be used for primary review and the *Wednesbury* unreasonableness requirement would

be used for secondary review when administrative rulings are discriminatory or arbitrary and violate Article 14. The court went on to explain that claims based on service law would be reviewed on a secondary basis, thus the concept of Wednesbury unreasonableness wouldn't be relevant here because Article 14 doesn't prohibit arbitrariness or discrimination.

Despite the Supreme Court's ruling in *Indian Airlines Limited v. Prabha D. Kanan*²⁵ and *State of Uttar Pradesh v. Sheo Shankar Lal Srivastava*²⁶ and other cases that the ground for judicial review in India had shifted from Wednesbury unreasonableness to proportionality, the scope of review in India has not significantly improved. This is because administrative orders requested for review frequently entail arbitrariness or discrimination, which are not subject to review.

While the Indian judicial system did not explain why the Wednesbury concept of unreasonableness is relevant to charges of arbitrariness or discrimination in the *Omkumar* case,²⁴ there are two possible explanations. Wednesbury's unreasonableness and proportionality tests are applied in cases of violation of convention rights and non-convention rights in Indian courts since they simply followed the lead of English courts. The Indian court may have been reluctant to expand the country's judicial review system out of fear that it would lead to an overflowing docket.

There are, however, a variety of possible rebuttals to these arguments. The number of cases requiring judicial review that the court hears could go up if this amendment is passed, but lawmakers might start taking responsibility for their actions if they know they're more likely to be called to account. Furthermore, when it comes to proportionality theory, there is no longer much of a distinction in England between convention-based and non-conventional rights.

Furthermore, the judiciary is incorrect in assuming that arbitrary and biased administrative rulings will not violate people's basic rights. A public servant's freedom of religion and assembly would be violated, for instance, if he or she were suspended without pay for two weeks for attending a religious event. Equally arbitrary and unfair would be an administrative decision that promoted a junior employee with similar experience and credentials over a senior employee who met all of the necessary experience and qualifications for the promotion.

Furthermore, administrative orders would only be challenged in court if a citizen's rights were

violated, and because Article 21 and similar fundamental rights have such a broad scope, it takes a lot of time and effort on the part of the judiciary to determine whether or not a given right is fundamental. The problem is made worse by the fact that it's possible the rights of multiple citizens have been violated. Instead, the court's considerable time may have been employed to reach a fair and reasoned ruling while exercising judicial restraint and deference.

The Indian judiciary will therefore need to decide whether administrative decisions still need to be checked for Wednesbury unreasonableness. If the phrase arbitrariness is interpreted to entail unreasonableness, as the Supreme Court argued in *Shrilekha Vidyarthi v. State of Uttar Pradesh*,²⁷ the Legislature would be exempt from the onerous judicial review mechanism necessary. In certain cases, the proportionality theory should be applied instead of the Wednesbury unreasonableness concept.

There are still unanswered questions regarding the country's selected proportionality scheme. Although the Supreme Court has backed the European model over the British approach in a number of decisions, no definitive conclusion has yet been reached. The court did note, however, that even though the administrative body had wide latitude, it was still up to the Judiciary to determine whether or not that latitude was warranted. Indian courts have the authority to evaluate whether or not a citizen's rights have been violated, relying on the European model's fair balancing step in doing so. Although the proportionality principle has been mentioned multiple times in the Indian context, the concept itself has rarely been implemented, which is one possible cause.²⁸

The only other time the proportionality theory has been used strictly was in *Sandeep Subhash Parate v. State of Maharashtra*,²⁹ which was decided after the *Omkumar* case. Here, a student's caste certificate helped him gain entry to the Bachelor of Engineering programme at Pune's Government Engineering College. This certificate was later revoked by the Caste Scrutiny Committee on the grounds that the Halba Community, of which he was a member, did not meet the criteria for inclusion as a Scheduled Tribe. He finished his coursework and took the necessary exam in light of the High Court's interim judgment in his favor, but the Pune University would not award him credit for his efforts.

After further review, the High Court agreed with the university. A one lakh rupee payment in place of the student's prior education was ordered by the Supreme Court, and the institution

complied by offering the student an engineering degree. Following the principle of proportionality, this was carried out. Article 142³⁰ of the Indian Constitution was relied upon to reach the Supreme Court's decision, and it is unclear how the proportionality approach was implemented in this case.³¹

CONCLUSION AND SUGGESTIONS

The judiciary owes the legislative duty to uphold its decisions. In this light, it might be argued that the notion of proportionality attempts to ensure that administrative acts are in accordance with the law in order to safeguard the rights of the nation's people rather than compromising the administration's power.³² According to the aforementioned study, the Wednesbury unreasonableness idea is less commonly used today, notably in countries such as the United Kingdom. The principle is being superseded with the proportionality hypothesis, which ensures that all relevant considerations are taken into account when making administrative judgements. The theory is seen as a more stringent form of judicial examination.³³

The proportionality theory comprises two models: the British model and the European model, with the European model believed to be the most effective and efficient of the two. Despite the fact that it is still unclear which model India follows, examination of relevant case laws has demonstrated India's preference for the European model. Despite the fact that the proportionality notion has been adopted into Indian law for about 20 years, there have been no significant developments or revisions to the doctrine in the Indian setting as of yet. In India, there are very few examples of the concept being explicitly implemented.³⁴ Furthermore, despite the fact that the Judiciary has been given great power in this area, the principle has only been given limited application in India. Because of the narrow approach taken, the idea has not been able to truly impact the nation.

The necessity of the hour is hence to examine administrative actions using the proportionality notion in order to maximize human rights protection. This is also required if India is to have a brighter and more promising future. Furthermore, acceptance of the theory is required since human rights and related jurisprudence are becoming increasingly important.³⁵ The following are some considerations to make in this regard:

1. When administrative acts deviate from reason and become arbitrary or unreasonable, the judiciary should properly establish the proportionality concept and apply it to put a stop to them.

2. India needs to create a review system based on the principle of proportionality, which incorporates ideas like judicial deference and judicial constraint and takes into account things like the subject matter and the nature of rights.
3. For the proportionality principle to be effectively implemented in India, a conducive legal and political climate, as well as a lenient attitude towards the interpretation of rights, are essential. A change in judicial perspective and an expansion of knowledge of the rule of law and democracy are also necessary.
4. It is also proposed that organizational norms develop through time. This necessitates a flexible attitude on the part of the governing body, which must decide whether to permit exceptions to the rule in certain instances.
5. In all situations involving citizen rights, whether basic or mundane, the courts should apply the proportionality theory. In this context, parameters can be drafted to protect individuals from any invasion of their personal or public freedoms.³⁶

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